SENATE  SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 196

OFFICIAL REPORT
(HANSARD)

Tuesday, April 24, 2018

The Honourable GEORGE J. FUREY,
Speaker

CONTENTS

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

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

THE SENATE

Tuesday, April 24, 2018

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

Prayers.

VICTIMS OF TRAGEDY

TORONTO—SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, we were all deeply saddened and shocked by the horrific events in Toronto yesterday, which resulted in the loss of at least ten lives and serious injuries to others. I know that senators will wish to express their support for the grieving families and the city, and I would therefore ask you to rise in a minute of silence in memory of the victims of this tragedy.

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

SENATORS' STATEMENTS

TORONTO TRAGEDY

TRIBUTES

The Hon. the Speaker: Honourable senators, I know that many senators wish to speak about the tragic events in Toronto. I understand that there is therefore agreement to extend the time for statements to 30 minutes. Is this agreed?

Hon. Senators: Agreed.

Hon. Art Eggleton: Honourable senators, I rise today to speak on the abhorrent attack on innocent Canadians that happened yesterday in Toronto. While the motivation behind the attack remains unclear, it shares the hallmarks of similar events that we've seen around the world.

We all too frequently see on the news attacks like this in other places, and it's easy to forget that Canada remains vulnerable to those who would seek to harm us. This is not due to any weakness on our part but, rather, our strengths: our open and accepting way of life, our pluralistic society and our freedoms. Having lived in Toronto my whole life and having had the honour of being its mayor for 11 years, I remain convinced there is no better place that demonstrates these principles that we hold so dear.

It is because of these strengths that Toronto and Canada remain a target for those who would turn to violence because they are unhappy with the way things are. What they fail to realize is that we will not change. As we saw in the attack on the Quebec City mosque last year, Canadians react to these events by reinforcing the sense of community and acceptance that has defined our country for so long.

I would like to thank Toronto's first responders for their quick actions yesterday. Like many of you, I've seen the video of Constable Ken Lam staring down what appeared to be a gun and calmly making an arrest. He did so without discharging his weapon. Because of his actions, the attacker has been charged and will be brought to justice.

In the meantime, 15 individuals have been injured, some critically, while 10 others have lost their lives.

We express our sympathies to the families of those who have lost their lives. We extend our best wishes for recovery to those who are injured. No words of condolence can ease the pain of these individuals or their families, but I say to all of them, just know your country is with you.

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, we find ourselves gathering once again to express our disbelief and shock in the face of horror and tragedy.

That a sunny day in a long-awaited spring — the kind of day that brings out the best in people and brings people outside — should be a day of darkness and senseless death is beyond our comprehension. It is too soon to speculate or do more than mourn those who lost their lives and comfort those who are healing and grieving with open and compassionate hearts.

Once again, we express our thanks and deepest respect for first responders who, selflessly and bravely, protect and save lives and bring order and caring to scenes of chaos and suffering.

We also acknowledge the leadership of municipal, provincial and federal authorities to make sense of the senseless and protect us all from harm.

Indeed, just as the horrific actions that led to this tragedy in no way represent who we are as Canadians, our response to this tragedy is very much an expression of who we are.

To the city of Toronto, we grieve with you and know that the vital energy of your great city — a city that is safe and livable — will turn to the important task of healing and caring.

Once again, as Canadians, we draw on our wellspring of compassion, a source that is deep and generous.

Once again, we rise in respect and silence as well as offer words in the hope that they offer solace and give expression to our boundless empathy and solidarity.

• (1410)

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, I rise today with a heavy heart to offer my deepest condolences to the victims and their families of the terrible incident that took place in Toronto yesterday. To the 10 people whose lives were taken, our prayers are with your families during this difficult time. To the 15 people who continue to fight in hospital, we offer you our prayers as strength for your perseverance during your recovery.

There is no place for this kind of violence in our cities, our communities or our country. We stand with all of those impacted by this tragedy.

I would like to especially thank the men and women who make up our dedicated police force and first responders for their brave efforts in times of crisis. Thank you for your bravery, your diligent action and your commitment to keeping our communities safe.

Together, we stand in support for all people of Toronto, and across Canada, as we work together to encourage kindness in our communities. May we come together in solidarity to support those who were impacted by this tragedy and thank those who work so hard to protect our communities.

Hon. Ratna Omidvar: Honourable senators, I too rise with a heavy heart to honour the victims of yesterday's horrific act of violence in my beautiful hometown of Toronto, and, in fact, on behalf of all independent senators.

As Senator Harder pointed out, it was a particularly beautiful day yesterday, bright and sunny, and the sidewalks were unusually busy. This senseless attack claimed the lives of 10 people and injured 15 others. I think about the quirks of fate — what if it had been a cold and icy day? Perhaps they would not have been on the sidewalk. But it was a warm and sunny day, and they were there, and so was a white van. The carnage in North York stretched more than a kilometre along Yonge south of Finch, lasting a full 26 minutes from the first alarm to the arrest of the suspect.

Their untimely death took the hopes and dreams of families, mothers, fathers, brothers, sisters, daughters, sons and friends. Their lives have forever been changed by this senseless act.

In the middle of this senseless tragedy, we can take some small comfort in noting how well our public institutions of emergency and care excelled in responding under a very stressful set of circumstances. The fire department, the paramedics, the Toronto police, in particular in the person of Constable Ken Lam, who successfully and fearlessly apprehended the perpetrator without taking him down. They are all to be commended as are the many regular citizens who were surrounding the carnage and who were offering help and commiserating with their fellow citizens.

Toronto is a strong and resilient city. We won't let this tragedy break our spirit, but at this point today, we are grieving and I believe we need comfort. So when I need comfort, I turn to books, and perhaps these words from John Donne will help:

> Any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bells tolls; because it tolls for thee.

Hon. Frances Lankin: Honourable senators, today Toronto mourns and the rest of Canada mourns with them. We know what happened, and as we've seen in incidents across the globe, a vehicle was used to commit a despicable act of violence. Ten innocents have had their lives stolen from them, 10 families shattered. Fifteen other innocents are in the hospital, countless others sent into panic, not knowing if their loved ones were safe or not.

What was a beautiful early spring day, that moment when Canadians awake from winter and fill the streets, turned into a nightmare. We won't soon forget the sight of bodies covered by tarps lying in our streets. The sight of Yonge Street, empty and blocked off with yellow tape, captures how many of us feel now.

We are shaken and wounded as a city, a province and a country. To those suffering now, victims, families and first responders, I send my deepest condolences.

In that moment, while we knew what happened, we did not yet know why. Was it an act of organized terrorism, a criminal act? What was the motive?

Despite the sense of oblivion, once again in tragedy we've shown our strength and maturity as people. Our first responders as well as other citizens on the scene came together to help those that were injured. And media across the country showed caution, striking the right tone of sadness, not anger, recognizing this as a tragedy, likely not terrorism.

And as we've now seen in footage online, one exceptional police officer, Ken Lam, confronted the seemingly armed and manifestly dangerous murderer alone. And when he easily could have, he did not pull the trigger. This is a remarkable example of policing at its best, treating all life with the dignity that it deserves, even when facing one who has committed horrendous crimes. That officer, that man, is a hero.

Despite the evil in some, as a whole, Canadians can be uniquely wise and compassionate.

Indeed, this murderer was likely mentally unstable, and it appears he had made comments revealing this online, self-identifying as an "incel," or involuntarily celibate. This man, like others online, felt frustration with the lack of attention he was receiving from women. This subculture leads young men down a path of misogyny and reactionary thinking, leading to a place where they feel they need to take revenge out on society. So beyond rethinking of ways to make pedestrian spaces more protected in busy areas, we must pay greater attention to these dark corners of the Internet where disillusioned youth turn violent, whether it is jihadist radicalism or misogynist radicalism.

But that is for tomorrow. Today we mourn.

Be strong, Toronto.

Hon. Victor Oh: Honourable colleagues, I rise today with a heavy heart to extend my thoughts and prayers to all those impacted by yesterday's attack at Yonge Street and Finch Avenue.

Toronto has long been recognized as one of the most culturally diverse cities in the world. This neighbourhood is known for its large concentration of Chinese, Korean and Iranian populations, as well as for being a home to many newcomers.

The grief and sorrow that we feel right now spans beyond Ontario, to the rest of Canada and the entire world. We are connected by our common humanity and by the familial ties that bind us together.

Colleagues, many of you know that Toronto is my home. It is where I have lived for most of my life. It is where I raised my children and where they have chosen to raise their own families.

I must have walked those streets countless times with them. I'm aware that it could have been me, or someone close to me, who was injured or died. It is hard not to find this senseless and horrific act of violence personal, because it is. It affects me personally and those around me.

Remarkably, amidst the tragedy and loss, the true character of this city and nation has shone through. We have witnessed over the past day an outpouring of love, compassion and unity. I am especially thankful to the brave first responders working at the scene and the medical teams treating those injured. I am also deeply moved by the stories of ordinary citizens who banded together to help one another.

It is clear that we are stronger together and will not let fear or hate take over. We will remain true to the values that make us who we are. We will not let this tragedy undermine our sense of safety and security.

Today and always, we are Toronto the good, Toronto the strong.

Hon. Howard Wetston: Honourable senators, today as Canadians, we grieve the inexplicable murder of 10 people and another 15 who were injured. We stand together with those who have lost their loved ones and with those on the long road to recovery.

• (1420)

Yesterday was an especially heartbreaking day, an attack with a van, a motor vehicle, a weapon of choice. Unfortunately, honourable senators, it is a method we are all too familiar with following the tragic events in Barcelona, London, Nice, Stockholm and Berlin.

How do we make sense of such a senseless travesty? I suggest it may be past our understanding, but we need to give it meaning and find our way through it. I think it is helpful to recall the words of former President Barrack Obama in response to the Orlando nightclub shooting in 2016. He noted that an attack on any of us, regardless of race, ethnicity or religion, is an attack on all of us and on the fundamental values of equality and dignity that define us as a country, and no act of hate or terror will ever change who we are or the values that make us.

This is a tragedy not just for Toronto but for our country. I extend my heartfelt sympathies to the families of the victims of this senseless act.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation led by His Excellency Mr. Alassane Bala Sakandé, President of the National Assembly of Burkina Faso, accompanied by His Excellency the Ambassador of Burkina Faso to Canada, Mr. Athanas Boudo.

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

Hon. Senators: Hear, hear!

[*English*]

WORLD INTELLECTUAL PROPERTY DAY

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable senators, today I would like to bring to your attention World Intellectual Property Day, which occurs later this week on April 26.

The theme for this year is "Women in Innovation and Creativity." It is a most fitting theme, especially considering that this year's budget, a budget billed to promote gender equality, has made strong commitments to encouraging women's entrepreneurship and innovation. In addition, Budget 2018 announced $85.3 million in spending over the next five years for various initiatives, such as a patent collective pilot project, improvements in access to intellectual property expertise for small businesses and the establishment of an intellectual property marketplace.

Intellectual property concerns itself with patents, trademarks and copyrights, among other exclusive rights. Patents, as honourable senators will know, relate to a new and useful method of manufacture, primarily on how something works, whereas a trademark deals with distinguishing a particular product or service from other products or services. Copyright is the exclusive right, as the name suggests, to allow others to copy your work. It could relate to a painting, written manuscript or song.

As honourable senators may recall, the Senate Banking Committee studied the reform of copyright in Canada two years ago. There's been a lot of activity with respect to intellectual property in a lot of the trade agreements that we are negotiating. It is one area that has taken on very serious consideration over the years.

With World Intellectual Property Day right around the corner, I'm pleased, along with the Intellectual Property Institute of Canada, to invite you to a reception this evening in Room 256-S.

We will be welcoming some of Canada's brightest secondary school students and their science projects, such as the emerging pollen epidemic and Parkinson's disease.

Additionally, a student from Carleton University will be presenting her project on the mechanics of para ice hockey, a popular sport in the Winter Paralympic Games. I hope senators will be able to attend that reception from 5 p.m. until 7 p.m. this afternoon. 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 group of participants in the Parliamentary Officers' Study Program.

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

Hon. Senators: Hear, hear!

TANKER AND PIPELINE SAFETY AWARENESS

Hon. Richard Neufeld: Honourable senators, I rise today as a concerned citizen. For months, Canadians have been talking about the Trans Mountain pipeline expansion project. You all know my position on it.

Despite all the rhetoric from our political leaders and commentary, one thing remains: Canada is losing a lot of money because our oil is being sold at a discounted rate to our friends south of the border. As the current impasse persists, Americans are essentially laughing in our faces. Just last week, a Seattle resident published a letter to the editor in the *Vancouver Sun,* thanking B.C. residents for trying to block another pipeline while he enjoys cheap Canadian imported oil. And he writes:

> Those of us living south of the border will continue to enjoy importing your oil at substantial discounts while exporting our oil from gulf ports at world-market prices. Your gift to us, around $100 million per day Canadian, is greatly appreciated. We marvel at your generosity while doubting your sanity.

I guess that's what friends are for.

A TD Bank study recently pointed out that we're losing $28 per barrel due in part to the fact that the U.S. is our only customer. The price differential cost Canadians about $117 billion in the past seven years alone because we don't have access to competitive markets. Alberta's Premier Notley says project delays are costing us $40 million a day in lost revenue. This concerns me.

I understand there's no perfect science in coming up with these projections, but the bottom line is Canada is losing millions while the U.S. is greatly profiting at our expense. Canada urgently needs diversification in its markets to get a better return.

One solution is Trans Mountain. Recent surveys show that a majority of Canadians support the expansion project, but some people remain totally opposed to it, arguing that transporting oil is unsafe.

This is why a number of senators and I are hosting a tanker and pipeline safety awareness session later today in the Aboriginal Peoples Room. The focus of our event is not only Trans Mountain; rather, we are offering industry leaders a platform to inform parliamentarians about the safe and efficient transportation of bitumen. This is a non-partisan initiative.

The Canadian Chamber of Commerce will speak to Canada's energy sector about Canada's energy sector and competitiveness. The Canadian Energy Pipeline Association will address pipeline safety and job opportunities. The Pipe Line Contractors Association of Canada will focus on pipeline training, construction and maintenance. The Pacific Pilotage Authority will talk about tanker safety, and the Western Canada Marine Response Corporation will speak to us about oil spill response capabilities.

As you can see, we have a great lineup of speakers. I encourage all senators to drop by the Aboriginal Peoples Room from 5 p.m. to 8 p.m. for what promises to be a very informative session. I am hopeful the testimony you will hear will appease some of your concerns surrounding tanker and pipeline safety. Thank you.

GENOCIDE, REMEMBRANCE, PREVENTION AND CONDEMNATION MONTH

Hon. Murray Sinclair: Honourable senators, I stand to speak to you, in this last week of April, about Genocide Remembrance, Condemnation and Prevention Month.

In the 1930s, Raphael Lemkin, a Jewish lawyer, invented the term "genocide." He said it is a case of genocide where the destruction not only of individuals but of a culture and a nation is contemplated. In 1947, Canada signed the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. In 2015, our government officially recognized April as Genocide Remembrance, Condemnation and Prevention Month.

• (1430)

For much of Canada's history, Canada had in place legislation and policies making it illegal for Indigenous people to be Indigenous. From the starvation policies of Sir John A. Macdonald to clear the West of Indigenous people to make way for Europeans and the railway, to the creation of the Indian Act to eliminate Indigenous governments and identity as to who can be Indigenous, to the Indian residential school system, which forcibly removed children from their families, policies were enacted that found their way into legislation.

There was also the White Paper of 1969, aimed at eliminating Indian status, and the Sixties Scoop, where children were adopted out to non-Indigenous families, and the current child welfare system, which has been chronically underfunded, resulting in the removal of children from their homes, far surpassing the rates of the Indian residential school system itself.

Canada even had laws to ban Indigenous ceremonies and to ban the wearing of Indian garb. These policies and actions intended to cause the destruction of Indigenous culture amount to genocide. Canada's goal in the exercise of these policies was to cause Indigenous people to cease to exist as distinct legal, social, cultural, religious and racial entities.

We recognize many genocides around the world, yet the Canadian experience is often denied or diminished. Imagine if we had laws to destroy Jewish culture, Jewish religion, that allowed the forcible removal of Jewish children to be raised as Christians in schools designated by the government, that banned the wearing of cultural clothing by Jewish people, that forcibly sterilized Jewish women, that limited Jewish people from living anywhere except in designated communities.

Systematic and purposeful destruction of another's culture, identity, language and way of life is genocide. We can do better. We must do better if we want to achieve reconciliation in this country. Thank you.

[*Translation*]

THE LATE HONOURABLE KEITH ASHFIELD, P.C.

Hon. Percy Mockler: Honourable senators, it is with great sadness that we learned of the passing of Keith Ashfield on Sunday, April 22, in New Brunswick.

[*English*]

I have worked with him for over 15 years and I can assure you that Indigenous people, First Nations, the multicultural communities of New Brunswick, francophones, Acadians and anglophones alike, believe you me, New Brunswick has lost a great and true friend.

Hon. Senators: Hear, hear!

Senator Mockler: Keith's motto was very simple; helping people to better their lives. Keith was a mentor, a role model. He considered his constituents, volunteers, staff and colleagues as his extended family. Family always came first with Keith, but his political family came a close second.

Honourable senators, he made a difference. Keith's political career started locally as a school trustee. I had the pleasure to work with Keith at the provincial and federal level. Senator Poirier, Keith and I were elected in 1999 under the leadership of Premier Bernard Lord. Keith represented the riding of New Maryland from 1999 to 2008. He served as deputy speaker and Minister of Natural Resources and Energy during his provincial political career.

Honourable senators, I will always remember in 2008 he wanted a bigger challenge and was successful in getting elected in the federal riding of Fredericton, New Brunswick, a riding he held until 2015 under the leadership of Prime Minister Stephen Harper. During his time at the federal level, he served as Minister of Fisheries and Oceans, Minister of National Revenue and Minister of ACOA. Former Prime Minister Harper said Keith was a champion of New Brunswick and a great Canadian.

No one can deny the fact that he was a gentleman, a political giant, a hard worker and served his people with compassion and passion. His community, province and country are better off because of his contribution.

Honourable senators, to his wife Judy, his family, I want to offer my deepest sympathies. It also reflects the senators of New Brunswick and the Senate of Canada.

Keith was a wonderful, thoughtful and genuinely kind person and his life was based on the following values: friendship, loyalty, principle and commitment.

Rest in peace, my friend. You have accomplished your road map.

[*Translation*]

I tip my hat to you, Keith; you earned your stripes. The Acadian population of New Brunswick thanks you.

ROUTINE PROCEEDINGS

PARLIAMENTARY BUDGET OFFICER

ECONOMIC AND FISCAL OUTLOOK – APRIL 2018—REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the report of the Office of the Parliamentary Budget Officer, entitled *Economic and Fiscal Outlook – April 2018*, pursuant to the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, sbs. 79.2(2).

COSTING BUDGET 2018 MEASURES—REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the report of the Office of the Parliamentary Budget Officer, entitled *Costing Budget 2018 Measures*, pursuant to the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, sbs. 79.2(2).

THE BORROWING AUTHORITY ACT AND MEASURES OF FEDERAL DEBT—REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the report of the Office of the Parliamentary Budget Officer, entitled *The Borrowing Authority Act and measures of federal debt*, pursuant to the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, sbs. 79.2(2).

AUDITOR GENERAL

COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT—SPRING 2018 REPORTS TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the Spring 2018 Reports of the Commissioner of the Environment and Sustainable Development to the House of Commons, pursuant to the *Auditor General Act*, R.S.C. 1985,c. A-17,sbs. 7(5).

[*English*]

NATIONAL STRATEGY FOR THE PREVENTION OF DOMESTIC VIOLENCE BILL

FIRST READING

Hon. Fabian Manning introduced Bill S-249, An Act respecting the development of a national strategy for the prevention of domestic violence.

(Bill read first time.)

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

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

[*Translation*]

L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

MEETING OF THE POLITICAL COMMITTEE, APRIL 10-11, 2017—REPORT TABLED

Hon. Dennis Dawson: 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 Political Committee of the APF, held in Addis Ababa, Ethiopia, on April 10 and 11, 2017.

[*English*]

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT ON STUDY OF THE EFFECTS OF TRANSITIONING TO A LOW CARBON ECONOMY WITH CLERK DURING ADJOURNMENT OF THE SENATE

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

> That the Standing Senate Committee on Energy, the Environment and Natural Resources be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate, no later than May 4, 2018, an interim report relating to its study on the transition to a low carbon economy, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

• (1440)

FISHERIES AND OCEANS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF MARITIME SEARCH AND RESCUE ACTIVITIES

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

> That, notwithstanding the order of the Senate adopted on Tuesday, November 28, 2017, the date for the final report of the Standing Senate Committee on Fisheries and Oceans in relation to its study on Maritime Search and Rescue activities, including current challenges and opportunities, be extended from June 30, 2018 to December 31, 2018.

THE SENATE

NOTICE OF MOTION TO CALL ON THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS

Hon. Mary Jane McCallum: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Senate call on the Canadian Conference of Catholic Bishops to:
>
> (*a*) invite Pope Francis to Canada to apologize on behalf of the Catholic Church to Indigenous people for the church's role in the residential school system, as outlined in Call to Action 58 of the Truth and Reconciliation Commission report;

(*b*) to respect its moral obligation and the spirit of the 2006 Indian Residential Schools Settlement Agreement and resume the best efforts to raise the full amount of the agreed upon funds; and

(*c*) to make a consistent and sustained effort to turn over the relevant documents when called upon by survivors of residential schools, their families, and scholars working to understand the full scope of the horrors of the residential school system in the interest of truth and reconciliation.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to the motion adopted in this chamber on Thursday, April 19, 2018, Question Period will take place at 3:30 p.m.

[*Translation*]

ORDERS OF THE DAY

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

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill C-25, An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act, and acquainting the Senate that they have agreed to the amendments made by the Senate to this bill without further amendment.

[*English*]

SALARIES ACT
FINANCIAL ADMINISTRATION ACT

BILL TO AMEND—THIRD READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Bellemare, for the third reading of Bill C-24, An Act to amend the Salaries Act and to make a consequential amendment to the Financial Administration Act.

Hon. Elizabeth Marshall: Honourable senators, I'm speaking at third reading of Bill C-24. I'd like to start off by acknowledging Senator Harder's comments, which he gave last week, and also acknowledging the appearance of the minister, who appeared before the Finance Committee with officials last week.

As Senator Harder said, Bill C-24 is a technical bill, but there are two major changes I'd like to speak to.

The first is that the bill adds five specific ministerial positions to the Salaries Act, and as well it adds three unnamed ministerial positions to the Salaries Act. These are ministers of state without a portfolio. They will now be equal to full ministers.

The five ministerial positions are the following: Minister responsible for La Francophonie, Minister of Small Business and Tourism, Minister of Status of Women, Minister of Science and Minister of Sport and Persons with Disabilities.

The other three ministerial positions are unnamed and will be filled and defined at the pleasure of the Prime Minister.

The other issue is that the six regional development ministerial positions are eliminated. The six regional agencies will continue to exist, but all six will now be under the Minister of Innovation, Science and Economic Development.

For me, there are two issues, and these were raised at the National Finance Committee. The first relates to the six regional development ministerial positions, which are eliminated. As I said, the six agencies will continue to exist under the responsibility of the Minister of Innovation, Science and Economic Development.

But for myself, for example, I'm a senator representing Newfoundland and Labrador, and ACOA is the regional development agency for Newfoundland and Labrador, and, of course, our minister responsible for ACOA is a minister that represents a riding in Ontario.

The recent report by the Liberal Atlantic caucus subcommittee reported that there has been an increase in the processing times for applications for ACOA funding. That would be an increase from 30 days to 90 days. Given that there are 32 Liberal MPs from Atlantic Canada, one of these could have been appointed minister responsible for ACOA.

The second issue I'd like to raise relates to the Minister of Indigenous Services. This ministerial position was created after the tabling of Bill C-24. So the salary of this minister will continue to be paid under the authority of a supply bill. This bill provides for three additional ministerial positions which are, at present, untitled. The Minister of Indigenous Services could have been appointed to one of these three untitled positions, so I see this as a missed opportunity, because that ministerial position, the salaries, will now have to be authorized by a supply bill rather than by the Salaries Act.

Those are the only comments that I have on Bill C-24. Thank you very much for your attention.

(On motion of Senator Mercer, debate adjourned.)

[*Translation*]

CRIMINAL CODE
DEPARTMENT OF JUSTICE ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Mitchell, for the second reading of Bill C-51, An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act.

Hon. Kim Pate: Honourable senators, I rise today to speak to Bill C-51, An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act.

[*English*]

I would like to thank Senator Sinclair for his work as sponsor of this bill. In this role, as is a recurring theme in his career, he helps lead the way toward a criminal justice system that is clearer and fairer for all.

As Senator Sinclair has explained, this bill forms part of the ongoing review of the criminal justice system by the Minister of Justice. Specifically, it aims to clarify and strengthen the law of sexual assault, repeal or amend provisions that courts have found unconstitutional or that raise avoidable Charter risks, and remove obsolete or redundant provisions from the Criminal Code. And, for every new government bill, it requires the Minister of Justice to table in Parliament a statement regarding the potential effects of the proposed legislation on the rights and freedoms guaranteed by the Canadian Charter.

[*Translation*]

I support the objectives of this bill, but I have concerns regarding the provisions pertaining to sexual assault law and the Charter statement, which I believe must be examined more closely in committee.

[*English*]

In addition, as was raised at committee in the other place, the provisions of Bill C-51 that delete unconstitutional sections of the Criminal Code fail to remove mandatory minimum sentences that have been struck down by courts of appeal or the Supreme Court of Canada. The minister has indicated that issues related to mandatory minimum penalties are part of her criminal justice review, yet reforms are glaringly absent in this and other bills resulting from her review.

I will not go into detail now about the potential for constitutional violations inherent in mandatory minimum penalties as a result of forcing judges to impose sentences that are inappropriate in light of the circumstances of specific cases, but suffice it to say that this is an issue with which we should all be concerned.

[*Translation*]

The courts have already ruled that a number of mandatory minimum sentences violate the Charter.

[*English*]

In light of the proposed removal of so-called zombie provisions in Bill C-51 — that is, provisions that have been found unconstitutional but linger in the Criminal Code — I believe we must also consider the removal of unconstitutional but not yet repealed mandatory minimum penalties. In addition to the lack of reliable evidence that they deter crime, we do have evidence that mandatory minimums can encourage wrongful guilty pleas, particularly among those who are marginalized by race, sex and income. The risk of lengthy jail sentences for those without supports, resources or the belief that they will be dealt with fairly can encourage people to plead guilty even in circumstances where they might have a legal defence. The continued existence of these provisions therefore poses serious consequences for the rights of individuals to fair trials and adequate defences.

• (1450)

With respect to Bill C-51's sexual assault law provisions, this legislation recognizes that misogynistic and racist stereotypes about complainants continue to influence the ways in which courts interpret and apply law. Discriminatory practices not only re-victimize women who report sexual assault, particularly Indigenous and other racialized women, they also prevent women from reporting criminal activity and thereby undermine the credibility of the justice system. As Professor Elizabeth Sheehy noted in the other place, although women flood traditional and social media with their disclosures of perpetration, the official reporting rates have plummeted from 1 in 10 to 1 in 20 in recent years.

Our debates in respect of Bill C-337 revealed egregious examples of the justice system failing complainants, particularly Indigenous women. These cases have led to public outcry for enhanced judicial education and training. Misogynistic and racist biases only become more prevalent where criminal justice participants, from police to lawyers to judges, are unaware of the manner in which such discriminatory attitudes and biases intersect in the areas of violence against women and sexual assault law.

Bill C-51 contains amendments intended to clarify the Criminal Code in light of established principles of sexual assault law. Knowledgeable experts are generally supportive of the objectives of Bill C-51 but have pointed to areas where the bill's language, already amended in the other place, could be further honed. For example, the amendments in the other place improved on Bill C-51's codification of the case law concerning incapacity to consent, by specifying that consent cannot be given in advance and "must be present at the time the sexual activity in question takes place." These amendments did not, however, address

experts' concerns about the inclusion of the word "unconsciousness" in section 273.1(2) of the Criminal Code, concerning incapacity to consent.

The Supreme Court has established that incapacity includes states approaching, but not reaching, unconsciousness. Professor Sheehy suggests that the Criminal Code must state this rule expressly, rather than simply referring to unconsciousness and leaving open the possibility that there are other states in which a complainant could be incapable of consenting. In particular, she suggests more clearly mapping out considerations for determining when incapacity short of unconsciousness exists.

[*Translation*]

This would be done based on three criteria: the complainant must be capable of understanding the sexual nature of the act and risks associated with it, capable of understanding that she can choose to decline, and capable of communicating voluntary consent to the act.

[*English*]

Professor Janine Benedet raised the same concern, suggesting that the word "unconsciousness" be removed from the provision, to better remind decision makers that they are also required to contemplate situations in which a complainant is not unconscious but is incapacitated for some other reason, such as consumption of drugs or alcohol.

Finally, at the committee in the other place, representatives of the Barbra Schlifer Commemorative Clinic emphasized that making changes to the Criminal Code alone will be ineffective without certain measures to support the implementation of Bill C-51. For instance, while Bill C-51 provides complainants with the opportunity to be represented by legal counsel in situations where an accused is seeking to introduce evidence of personal information about the complainant, meaningful access to counsel would require government funding.

Yesterday, in her end-of-mission statement, Dubravka Šimonović, United Nations Special Rapporteur on Violence Against Women, reiterated that in order to improve criminal justice responses to sexual assault and violence against women, federal spending is required to provide free legal advice to victim survivors at the federal, provincial and territorial levels. Lack of access to legal advice and representation is a significant reason that so few sexual assaults proceed through the criminal justice system. Until they are ensnared in the system, many do not understand that the role of Crown counsel is not to serve as their representative and that they are witnesses whose role is to provide evidence so that the judge or jury may assess whether the accused person broke the law. They are most often on their own navigating the legal system, without updates about their cases and without the ability to participate meaningfully in the process.

Ms. Amanda Dale, the Executive Director of the Barbra Schlifer Clinic, further emphasized the need for accountability mechanisms relating to the implementation of Bill C-51. She recommended that the government establish a community consultation process with front-line agencies and survivors in order to monitor rollout of the bill's provisions relating to sexual assault law and ensure that they have their intended effect.

[*Translation*]

I think the bill would benefit from closer scrutiny of these issues in committee.

[*English*]

Experts at committee in the other place also emphasized that addressing sexist and racist discrimination in sexual assault law cannot stop with Bill C-51. Legislation must be part of a multi-faceted approach that includes judicial training and greater transparency regarding decision making, as contemplated by Bill C-337. It includes training of others in the legal system, particularly police and lawyers. It includes re-establishing sentencing and law reform commissions, both of which Canada disbanded.

[*Translation*]

These commissions — an essential fixture of the criminal justice systems of most other Commonwealth countries — conduct systemic research and analysis on the criminal justice system in order to develop guidelines and provide expert advice to Parliament.

[*English*]

Addressing misogyny and racism in sexual assault law also includes, more fundamentally, support for marginalized and victimized women in our communities. The persistent pervasiveness of discrimination in criminal law processes relating to sexual assault underscores the importance of analyzing bills through the lens of the Charter, and particularly section 15 guarantees of substantive equality.

The Charter statements established by Bill C-51 affirm our obligations as senators to uphold the Charter, not to mention the centrality of this issue to our debates. Witnesses at committee in the other place raised concerns regarding the effectiveness of the Charter statements as well as fears that they will be undermined if they are insufficiently detailed. I share this concern and believe that Charter statements should include principled discussions of legal principles, tests and related factors as well as alternatives considered by the government, in addition to precedents and norms. I therefore support potential committee recommendations to amend Bill C-51 to ensure that Charter statements better allow parliamentarians and the public to assess the constitutional implications of legislation.

Honourable senators, I hope you will join us in voting to send Bill C-51 to committee in order to allow our continued consideration of this bill and our overall responsibilities to promote justice and equality for all.

Thank you. *Meegwetch*.

(On motion of Senator Martin, debate adjourned.)

[*Translation*]

BUDGET IMPLEMENTATION BILL, 2018, NO. 1

CERTAIN COMMITTEES AUTHORIZED TO STUDY SUBJECT MATTER

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of April 19, 2018, moved:

That, in accordance with rule 10-11(1), the Standing Senate Committee on National Finance be authorized to examine the subject matter of all of Bill C-74, An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures, introduced in the House of Commons on March 27, 2018, in advance of the said bill coming before the Senate;

That the Standing Senate Committee on National Finance be authorized to meet for the purposes of its study of the subject matter of Bill C-74 even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto; and

That, in addition, and notwithstanding any normal practice:

1. The following committees be separately authorized to examine the subject matter of the following elements contained in Bill C-74 in advance of it coming before the Senate:

   (*a*) the Special Senate Committee on the Arctic: those elements contained in Division 9 of Part 6;

   (*b*) the Standing Senate Committee on Banking, Trade and Commerce: those elements contained in Divisions 2, 4, 5, 6, 7, 12, 16 and 19 of Part 6;

   (*c*) the Standing Senate Committee on Foreign Affairs and International Trade: those elements contained in Division 8 of Part 6;

   (*d*) the Standing Senate Committee on Legal and Constitutional Affairs: those elements contained in Divisions 15 and 20 of Part 6;

   (*e*) the Standing Senate Committee on National Security and Defence: those elements contained in Part 4;

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

   (*g*) the Standing Senate Committee on Agriculture and Forestry: those elements contained in Part 5, insofar as that Part relates to farming;

2. The various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-74 be authorized to meet for the purposes of their studies of those elements even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto;

3. The various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-74 submit their final reports to the Senate no later than May 31, 2018;

4. As the reports from the various committees authorized to examine the subject matter of particular elements of Bill C-74 are tabled in the Senate, they be placed on the Orders of the Day for consideration at the next sitting; and

5. The Standing Senate Committee on National Finance be simultaneously authorized to take any reports tabled under point four into consideration during its study of the subject matter of all of Bill C-74.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1500)

[*English*]

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Hon. Patricia Bovey moved third reading of Bill S-234, An Act to amend the Parliament of Canada Act (Parliamentary Artist Laureate), as amended.

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I rise today as the Government Representative in the Senate to speak in support of Bill S-234, An Act to amend the Parliament of Canada Act to create the position of parliamentary visual artist laureate.

I want to thank former Senator Willie Moore who introduced the bill and Senator Bovey who sponsored the bill after Senator Moore's retirement, and Senator McIntyre who also rose to speak so eloquently in support of the bill.

Artists are central to the creative economy, exposing and educating us about the world we live in, and in creating vibrant communities in which we all live, work and play.

As our former colleague Senator Moore pointed out, the arts make a significant economic contribution to the Canadian economy. In 2014, culture added $54.6 billion to the GDP and accounted for over 630,000 jobs.

[*Translation*]

By creating the position of parliamentary visual artist laureate, we will be highlighting the importance, value and appreciation of visual artists' contribution to Canada. This is an opportunity to send the visual arts community the message that this Parliament understands and appreciates its work. It is an opportunity to tell artists that we need them and their vision and creativity.

Furthermore, creating this position will show Canadians that we are a creative, productive country with a unique and amazing perspective to share. This position will also shine a spotlight on high-quality artworks that have already been created and those to come.

[*English*]

The position of a parliamentary visual artist laureate will also benefit the institution of Parliament. Parliamentarians are all very busy and can get caught up in the politics and minutia of the work we do, as important as it is. A parliamentary visual artist laureate, who brings contemporary artwork into this institution, will provide us with new perspectives. It will invite Canadian artists to participate in debates and discussions here on Parliament Hill and do so using the skills that they are uniquely positioned to have.

[*Translation*]

The Standing Senate Committee on Social Affairs, Science and Technology discussed the bill and recommended two amendments. These two amendments do not alter the spirit of the bill. They merely clarify the role of the parliamentary visual artist laureate and ensure that the most qualified people sit on the selection committee.

The first amendment seeks to change the name of the position from parliamentary artist laureate to parliamentary visual artist laureate. Adding that word clarifies the title of the artist laureate and clears up any confusion about the arts represented by this position.

[*English*]

The second amendment concerns the process of selecting the laureate and allows officials who comprise the selection committee to identify a designate to participate in their stead if necessary.

Our colleagues have also recommended that the Director of the National Gallery of Canada, rather than the Librarian and Archivist of Canada, sit on the selection committee.

These amendments are sensible and ensure that the selection process benefits from the expertise of those best suited to choose from among the candidates.

[*Translation*]

Honourable colleagues, voting in favour of Bill C-234 is an opportunity for us to support the arts directly. We will be recognizing their importance to Canadians' quality of life by highlighting the skill and drive of visual artists and by preserving Parliament's history through the visual arts.

[*English*]

One of Canada's most well-known philosophers, Marshall McLuhan, said:

> Great art speaks a language which every intelligent person can understand.

Contemporary artwork can raise interesting questions, highlight accomplishments and prompt exhaustive and considered debate. Visual artwork can be an interpreter, an oracle and a translator for society. It can digest and communicate the complexities of a modern world and connect with individuals on a personal level.

I think Canadians and parliamentarians can all benefit from a little more art in their lives, and I hope you will support the passage of Bill S-234.

Finally, let me end where I started in recognizing former Senator Moore who began this bill, as he did another bill still awaiting further consideration. I hope both bills receive the attention of this chamber and can move expeditiously toward the votes that they so richly deserve.

(On motion of Senator Martin, debate adjourned.)

TRANS MOUNTAIN PIPELINE PROJECT BILL

SECOND READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Black (*Alberta*), seconded by the Honourable Senator Bovey, for the second reading of Bill S-245, An Act to declare the Trans Mountain Pipeline Project and related works to be for the general advantage of Canada.

Hon. Rosa Galvez: Honourable senators, I rise to speak to Bill S-245, An Act to declare the Trans Mountain Pipeline Project and related works to be for the general advantage of Canada.

Resulting from the project's environmental impact assessment, Kinder Morgan formally committed to specific mitigation measures. Provided the Governor-in-Council approved the project, the National Energy Board attached 157 conditions to the new certificate. These cover environmental protection, consultation of those affected, including Indigenous communities, and safety and integrity of the pipeline.

I have read numerous reports and articles from government, industry and think tanks and considered these sources in relation to the environmental impact assessment and other issues. My comments today are based on a thorough analysis of facts.

The TMEP project is underscored by three concrete but solvable issues: the underestimation of environmental impacts; the overestimation of economic benefits; and the insufficient consultation with owners and stewards of the land.

The burden of proof for these prerequisites are the responsibility of Kinder Morgan, a company that operates but has never built a pipeline in Canada. Despite important voids and imbalanced circumstances as evidenced by the 157 conditions, the NEB gave its approval. To respect the rule of law is to go forward with construction of the pipeline expansion project.

However, can we blame British Columbia for wanting to protect its coastal waters? Is it clear why Alberta and Canadians must support the TMEP project? Can we blame the Indigenous people for demanding thorough consultations and fair conditions for consent? Is Bill S-245 the correct approach to solve a disagreement between two Canadian provinces?

[*Translation*]

Alberta's economy has been through a lot of ups and downs in recent decades and is just now recovering from a slowdown. Alberta's economy is expected to grow by 6.7 per cent this year, which is much more than all the other Canadian provinces. According to the Conference Board of Canada's latest 2018 projections and the Government of Alberta's 2017 projections, this growth will be led by agriculture, the agri-food sector, renewable energy, tourism, the financial, real estate and insurance sector, and retail sales — not oil. Alberta's growth has boosted job creation by 18.4 per cent.

[*English*]

An increasingly diversified economy is very good news for Alberta. A diversified economy provides the broad base for growth that is crucial to sustaining long-term economic stability. Those who hold dear the stable development of Alberta must support growing economic diversification in the province, particularly in view of the major changes occurring in Canadian and worldwide oil, gas and energy sectors.

• (1510)

In 1971, there was a single oil sands operation at Fort McMurray which produced 30,000 barrels per day. Since the 1990s, only 40 per cent of oil sands are extracted by Canadian companies, with the remainder by American companies and more recently by foreign corporations.

In 2014, oil sands production was 2.3 million barrels per day, representing close to 30 per cent of Alberta's $300 billion GDP. According to Statistics Canada, 98.5 per cent of the crude oil from oil sands is exported to the U.S. With this reduced diversity and a single product buyer, the economy is subject to the high volatility of crude petroleum. The prices of crude oil decreased from US$140 per barrel in 2009 to US$30 a barrel in 2016. Last December, the Western Canadian Select prices dropped to a low of US$20 a barrel. Alberta's old mono-economy struggled to thrive in a US$50 per barrel world. In 2016, more than 3 million barrels per day of Canadian crude were sold to the U.S. at bargain basement prices.

Divestment from fossil fuel is another major concern for oil sand business. Norway's trillion-dollar sovereign wealth fund will fully divest of fossil fuel holdings, which may impact Canadian oil and gas equity shares which are valued at US $2.86 billion. This move could impact 61 Canadian oil and gas equities including Suncor, TransCanada, Enbridge, Canadian Natural Resources Ltd., Encana, Cenovus and Imperial Oil. The retreat comes at the same time as large scale sell-offs by international oil sands producers totalling $30 billion, including ConocoPhillips, Royal Dutch Shell, Statoil. And just yesterday, HSBC, the largest bank in Europe, announced that it will no longer finance oil sands projects.

The International Energy Agency stated in its World Energy Outlook report that the U.S. could be a net exporter of oil within a decade and is set to become the world's dominant oil and gas production leader for the following decades. The U.S. is moving from being our partner to being our greatest competitor.

Can landlocked unconventional oil sands, which need special refining conditions, compete with lighter conventional crudes from the U.S. which are easier to refine?

[*Translation*]

Considering the history of the oil sands, it is rather troubling that fewer than five Canadian refineries can use the oil sands as raw material, while refineries in the Gulf and in the American Midwest have undergone modifications to be able to do so. The new mega-refineries currently being built in Asia and the Middle East have been specifically designed to export refined products. This gives them the flexibility needed to accept the heaviest forms of sulfur-containing crude oil. Given that older refineries are gradually shutting down, complex refineries account for the vast majority of the global refining capacity.

The main reason behind the Trans Mountain pipeline expansion project is to maximize prices by getting the oil sands to tidewater. However, this oil, which could be sold in Asia, commands a lower price than in the United States, considering the high transportation costs. Furthermore, the OECD recently revealed that growth in Asia has slowed and will remain stable. At the same time, renewable energy consumption in Asia has doubled in a little over two decades. According to the International Renewable Energy Agency, China is investing US $364 billion in renewable energy production.

[*English*]

Now, given that the petroleum companies themselves are divesting, that the U.S. will become a net exporter, that Canada does not have oil sands refining capacity, that potential buyers in Asia are moving to renewable energies, that refineries and pipeline companies are foreign owned, and Alberta economic diversification is on a good track, are new pipelines sound decisions or political decisions from an economical perspective? Maybe, but this has to be proven with transparency and due diligence.

The proposed $6.8 billion Texas-based Kinder Morgan TMEP and tanker project would triple capacity to 890,000 barrels per day and would increase tanker traffic nearly 700 per cent in Vancouver's harbour, passing by hundreds of kilometres of beaches, islands and coastal wilderness.

Are the economic benefits of the TMEP sufficient to justify the increased risk of environmentally disastrous spills on the B.C. coastline and the additional contribution to climate change resulting from increased bitumen production?

The Alberta government advertises that 37,000 direct, indirect and induced jobs will be created per year of operation, as well as 15,000 construction jobs and 1,300 marine sector jobs, while the Conference Board of Canada estimates the creation of 34,000 jobs annually for 20 years. These estimates differ largely from what Kinder Morgan mentions in its own Volume 5B of its NEB submission of 2,500 jobs per year for two years. One thing is certain: When compared with similar pipeline projects, most job creation occurs over the two- to three-year construction period and is around a few thousand.

The 60-year-old existing Trans Mountain pipeline has already spilled around 5.5 million litres in 82 separate incidents. It needs replacing. Ships carrying fuel have recently spilled into B.C.'s coastal waters exposing a deficient marine spill response. A spill could put 98,000 coast-dependent jobs, salmon rivers, wildlife, tourism, and the health of coastal residents and ecosystems at great risk.

The initial NEB review did not consider either the upstream or downstream greenhouse gas emissions of the project. GHG emissions from oil sands are between 8 and 37 per cent higher than conventional crude. The pipeline is projected to add 13 to 15 million tonnes per year from increased oil sands production.

In 2016, the U.S. National Academy of Sciences conducted a thorough study on diluted bitumen spills from pipelines. The study examined physicochemical properties from dilbit, environmental toxicity and spill response planning. To paraphrase the report: dilbit is substantially different from other crude oils in its high density, viscosity and adhesion properties. These chemical and physical properties are relevant to environmental impacts and require modification to regulations for spill response plans and cleanup.

Environment Canada jointly with Fisheries and Oceans and Natural Resources Canada have also noted the unique chemistry of oil sands, namely the presence of complex compounds such as n-alkanes, PAH/APAH and saturated biomarkers.

[*Translation*]

A report presented to Transport Canada in 2014 by the consortium WSP/SL Ross assessed the risks associated with oil spills caused by ships in Canadian waters south of the 60th parallel after conducting a risk analysis. One of the main observations was that one of the zones with the highest probability of a large oil spill occurring is the waters around the southern tip of Vancouver Island, and that those spills have the potential to cause significant damage in the very sensitive areas along the southern coast of British Columbia.

Before the project was even proposed, elevated risks and vulnerabilities had already been identified along the path of the pipeline.

Furthermore, the Government of Canada has the responsibility to "consult and accommodate" the First Nations before allowing such a project to go forward on their ancestral lands. However, that does not translate into veto power over a project. Some First Nations are opposed to the Trans Mountain project.

• (1520)

In a recent ruling against Kinder Morgan Canada and the federal government, the Federal Court of Appeal found that the government did not act in the best interest of the Coldwater Indian Band when it failed to modernize the 1952 ruling that allowed the original pipeline to be built on the reserve.

[*English*]

I hope this analysis has shown you that there are genuine concerns and issues, but they can be resolved by increasing transparency and attenuation or compensation measures if, despite solid arguments, politicians and corporations want to go ahead and build this pipeline.

Bill S-245 could have longer-term unintended consequences for industry and Canadian citizens. It could irreversibly damage interprovincial relations and could result in undermining provincial powers. One thing is certain. Pouring oil in the already burning fire between two sister provinces is neither an advantage nor in the interest of Canada. Thank you.

Hon. Murray Sinclair: Thank you, Senator Galvez, for those comments. I just wanted to add a bit to them, recognizing that a sense of urgency is developing around moving this bill to committee.

I want to begin my comments by observing that at this point in time this is really a bill about declaring this to be a federal undertaking solely, and it has nothing really to do, other than as a sub-item, with the question of whether or not this particular pipeline is one that ought to be completed.

The intention, of course, is to give the Government of Canada the authority — exclusively, it would appear — to be able to push the Trans Mountain pipeline to completion as soon as possible. We are debating the question of whether or not this bill accomplishes a useful purpose.

As our colleague Senator Pratte in his comments pointed out, whether or not one supports the pipeline, one really does have to look at this bill to determine whether it's going to accomplish any purpose or, in particular, that purpose.

From a constitutional perspective, I don't think this bill does that. This bill is not going to facilitate the dialogue around the question of whether or not this undertaking falls within federal jurisdiction. I think it has been declared a federal undertaking by the federal government already. I don't think there is any issue around that. They have proceeded on the assumption that they have jurisdiction as a federal government to make it happen. They're not asking for this particular legislation to be enacted.

Accordingly, the real question is what is the purpose of this legislation. I suspect, quite frankly, that the purpose of this legislation is to force the Senate to take a position as to whether or not you support the pipeline. If we are going to engage in that dialogue, I'd like to get this into committee and into third reading so that we can actually look, then, at the question of what are the real benefits, if any, the pipeline is going to have.

As Senator Pratte enunciated in his comments, this bill actually ignores two very important constitutional principles. For that reason, I think that we require certainty in our own minds as to whether we are properly supporting legislation. Those two constitutional principles are the issue of cooperative federalism, which basically indicates that from a perspective of how the Constitution was intended to function, courts have generally tried to read provincial and federal legislation as being able to be compatible. In this case, the mere fact that a federal undertaking has been authorized by the federal government does not necessarily exempt it from provincial regulation.

I said as much in my earlier comments with regard to Senator Neufeld's resolution when it was first introduced into the chamber: There is no secret to the principle that a federal entity still has to comply with provincial law. Just because you're a federally licensed trucking company, for example, or railway company, doesn't mean you can ignore provincial and environmental regulations in the course of the work you do.

In the same way, pipelines, when licensed or authorized to do their work by federal permit or through permission of the National Energy Board, still have to comply with provincial regulations as regards construction or principles of municipal bylaws and operations within recognized jurisdictions, so long as they don't do away with the federal initiative itself and allow the federal entity to continue to function.

Federal authorization doesn't necessarily mean that you don't have to comply with provincial legislation. That principle was commented upon by Professor Mark Walters in an article that was written some time ago, but I want quote you from that essay he wrote. He says:

> To determine whether a conflict between a valid provincial law and a valid federal law exists, the courts will ask two questions. First, they will consider whether there is an operational conflict because it is impossible to comply with both laws simultaneously. If there is, the provincial law will be held to be inoperable. However, if dual compliance is possible, then, second, they will ask whether compliance with the provincial law would frustrate the purpose underlying the federal law. If it would, then, again, the provincial law will be held to be inoperable.

But courts have generally been reluctant to find conflicts under the first part of the test, that which focuses on operational conflict. Instead, they have tended to uphold overlapping federal and provincial laws in recognition of the broad legislative powers of the province and in the spirit of cooperative federalism. Indeed, the test for what amounts to an operating conflict is very narrow. Only when compliance with one law involves a breach of the other will the provincial law be held to be inoperable.

So from a constitutional perspective, I just point out that passing this bill is not going to achieve very much, because right now the issue really is whether a federal undertaking — in this case, a federally approved pipeline — must still comply with provincial legislation, that is, environmental laws.

I think in this case that's the principal position that the British Columbia government is taking, and it's also apparently the position that the federal government is taking. They're going to have to work that out, either themselves through cooperation or they'll have to litigate it and end up in court.

Even if this bill is passed, they're going to have to litigate and end up in court anyway, because this bill does not oust provincial jurisdiction.

Let me also point out that this bill ignores totally two other important principles, one of them constitutional, the other a legal position that I think the federal government has enunciated a couple of times in the course of the recent past.

First of all, section 35 of the Constitution recognizes the existing Aboriginal treaty rights of the Aboriginal peoples in Canada. That particular right allows Indigenous people to, in effect, insist that their position be recognized and be respected whenever there is a provincial or federal undertaking of any kind that affects their traditional territory.

In this case, a number of First Nations have indicated their objection to this particular undertaking because they say there's a good chance — indeed, there is a real chance — that it is going to affect their particular ability to enjoy their traditional territory or their resources or to have traditional use of their territory as they have in the past. We must be wary of overriding that or thinking we can override that in a federal law.

That's a constitutional principle. You can't override a constitutional principle in a federal law or in a provincial law. It requires a constitutional amendment.

That issue is squarely before the courts right now.

• (1530)

The Hon. the Speaker: I am sorry, Senator Sinclair, but it's 3:30 p.m. and the minister has arrived. I'm going to have to interrupt you. Following Question Period, we will return to this item for the balance of your time.

Senator Sinclair: I'll be glad to continue, Your Honour. Thank you very much.

QUESTION PERIOD

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, please join me in welcoming the Honourable Minister Philpott, Minister of Indigenous Services. Welcome, minister.

Pursuant to the order adopted by the Senate on December 10, 2015, to receive a Minister of the Crown, the Honourable Jane Philpott, Minister of Indigenous Services, appeared before honourable senators during Question Period.

MINISTRY OF INDIGENOUS SERVICES

LEGALIZATION OF CANNABIS—PUBLIC EDUCATION

Hon. Larry W. Smith (Leader of the Opposition): Good afternoon, minister. Welcome.

My question for you centres on one of my main concerns about the government's marijuana legalization plans — the absence of a public education campaign targeting Indigenous communities.

Last week your colleague, the Minister of Health, told the Aboriginal Peoples Committee that the government is still in the process of developing culturally appropriate campaigns that also meet the linguistic needs of Indigenous communities.

The government has been in office for two and a half years, and a year ago this month, the government introduced Bill C-45. Yet, a public education campaign for Indigenous communities has still not been developed, let alone rolled out.

Minister, why has the government left it until almost the last minute to develop a public education plan and materials for Indigenous communities? What is the reason for the delay?

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: Thank you, honourable senator. Greetings to all of the honourable senators. It's a pleasure to be back here. This is my fourth time to have an opportunity to interact with you, but my first time in this new capacity as Minister of Indigenous Services. I thank you very much for the opportunity to discuss these important issues. As it relates to cannabis, this is something I know the Senate is devoting considerable effort to, including, of course, your excellent work in a number of committees.

You raise a very important issue because the approach to the legalization and strict regulation of cannabis has to be a public health approach, and the whole point behind a public health approach is maximizing education.

I am pleased to say that we have been able to support Indigenous peoples in this area. One of the things that we did over a year ago now is to establish funding for a task force. We've been working with, for example, the Chiefs Committee on Health in this regard to develop a task force. All of the work we do in relation to First Nations, Inuit and Metis is done with respect to an approach that includes self-determination and that initiatives need to be led and directed by First Nations for First Nations, for example.

I know the chiefs are working hard on this. We have supported them through the financing of the team. We were also able to acquire, in Budget 2018, $200 million specifically around addictions that will go to a number of areas, including working with counsellors in communities — in First Nations communities, for example — who will then have the opportunity to use some of this funding for public education, and we certainly would be supportive of that.

Senator Smith: Thank you for the answer. Maybe we can dig a little further.

It would be very helpful if you could provide us with some concrete details on the public education program as it relates to Indigenous youth in particular. If you don't have the information today, I would ask that you provide it as soon as possible.

What we're asking for, whether it's with the Indigenous population or other Canadians, is to have a mechanism where we can actually track. If the Minister of Health comes in and says that, yes, we have 64 point X million dollars, and then the next question is, "Okay, you have a budget, but what is the rollout plan and how much have you spent?" we want to make sure we understand that there is transparency and accountability so that there will be results that are positive to protecting our citizens.

The example I would ask for is when will the campaign actually physically start? When is it scheduled to end? Does the campaign primarily involve social media, or does it include traditional media, such as print or radio? In which languages will it be available?

To cap it off: How much has been spent, not committed — there is a difference between committed money and spent money — to date on the campaign for Indigenous communities?

With this tracking, it will give us a chance to understand where you are, where you are going, but having facts. Canadians deserve to understand, and I believe the people in the Indigenous communities probably would want to know that also.

Ms. Philpott: Thank you, honourable senator. I appreciate the suggestion, and I definitely will take note of your recommendation and request for specific details as to how much money has been spent and following that over time. We would be happy to provide that for you.

I can tell you again that the way we relate with the communities that we support on the health side of our work in Indigenous Services is very much respectful of for example, First Nations or Inuit directing the campaigns.

When I travel to First Nations communities, which I try to do as often as possible, I'm quite delighted with the things I see in terms of the public health campaigns that they initiate, very often in their appropriate language and appropriate to their culture and teaching materials. I would say that largely more traditional media as opposed to social media campaigns have been used for education around substance use.

You'll see posters in the band office or in the health centre or nursing station talking about the potential risk of substance use. I'd be very happy to get you further details on the specifics of that.

With the Inuit community, I can say, for example, that we supported them with money around mental wellness and addictions. They then have a choice to use that and would obviously use it in Inuktitut to make sure it's spread across their communities.

LEGALIZATION OF CANNABIS—MENTAL HEALTH AND ADDICTION SERVICES

Hon. Dennis Glen Patterson: Welcome, minister.

On March 29, 2018, the Parliamentary Budget Officer reported that of the $14.4 billion announced in 2016 for phase 1 of the new infrastructure plan, $7.2 billion remains unspent.

Recently, in Nunavut, when consulting all 25 communities on the legalization of marijuana, I heard a clarion call from all 25 communities, every one of them, to have addiction treatment and mental health centres built in Nunavut where Inuit could benefit from culturally appropriate Northern-developed programs delivered by Inuit before the bill comes into force.

Minister, since Indigenous Services Canada now houses the First Nations and Inuit Health Branch, will you commit to allocating some of these billions of dollars of unspent infrastructure funding to help build the social infrastructure required to provide the appropriate addiction treatment support that Nunavut communities are crying out for?

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: Thank you. I'm very happy to answer that, and it follows nicely on the previous question. I know that you, senator, are particularly interested in issues in the North and Nunavut, and I'm very happy to speak specifically to that.

The point that you raise, which I think is an excellent one, is that when we're discussing issues such as cannabis, that the approach to the concerns around problematic substance use need to include the whole range — prevention, treatment, harm reduction, as well as enforcement — and that, in fact, the funding that we provide around mental wellness is very much in line with the preventative approach.

I'm happy to report that in the last fiscal year, from 2017 to 2018, our funding for mental wellness and addictions in Nunavut was $7.7 million. So a significant amount of funding is going to those issues there.

I will say that in large part that funding is not necessarily used for physical infrastructure but for the provision of services, including mental wellness teams. We now have five mental wellness teams across the North. We are also able to support traditional healers, which has been very well received and respectful of Indigenous approaches to mental wellness and addiction.

• (1540)

I think in the area of providing additional services in mental health care and addictions care in terms of people power, there are considerable resources there.

You mentioned, though, the infrastructure issue. I will tell you — and I'd be happy to have further conversation with you about this — I know there has been an interest and a desire to develop a residential treatment facility in Nunavut. I'm happy to report that we have in fact funded a feasibility study for this in the order of $388,000 that we've provided to do the study. I'm expecting a report back by June of this year. It's certainly something that we have heard there is great interest in because, yes, I think we can do a tremendous amount with on-the-land programs with counselling services, but there are times when you do require these residential facilities as well, and we look forward to what can be done there.

REINSTATEMENT OF STATUS FOR FIRST NATIONS WOMEN

Hon. Sandra M. Lovelace Nicholas: Welcome, minister. As you know, Bill S-3 received Royal Assent, and according to your website, as of yet, there are no forms for registration for reinstatement of status for Indigenous women.

I would like to have the minister explain the delay in getting the registration form out to the women who have been waiting to finally achieve what has been denied to them for a very long time.

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: Thank you, honourable senator, for your question. This is certainly one of the pieces of legislation that, in the past number of years, the Senate has had a very significant impact on. I want to thank you for the improvements that were provided through your hard work on this.

I will have to inform you that this is a matter that falls under the side of Minister Bennett. As you know, she began the work on this and has continued the work related to Bill S-3. I will certainly be very pleased to pass on these concerns and make sure that her team will be able to get back to you with a further response to that.

INDIGENOUS CHILD WELFARE

Hon. Murray Sinclair: Minister, welcome to the chamber. In January, earlier this year, in a speech that you gave, you indicated a six-point plan with regard to Indigenous child welfare. They are continuing the work to fully implement all orders from the Canadian Human Rights Tribunal to shifting the programming focus to prevention and early intervention; exploring the potential for child welfare legislation; supporting Inuit and Metis nation leadership to advance culturally appropriate reform; developing a data and reporting strategy with provinces, territories and Indigenous partners; and accelerating the work of trilateral technical tables that are in place across the country. I wonder if you might tell us how you are doing on these things.

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: Thank you, honourable senator, for your question. I know this is an issue that is tremendously important to you, as it is to me, and I'm very happy to respond. I could probably talk all afternoon about it, but I'll try to keep it brief.

Thank you for noting that we did hold a meeting on this in January. It was a first of its kind, really, in that we brought First Nations, Inuit and Metis leaders, child welfare experts and people from child and family services agencies to Ottawa. We had as well, of course, representatives from the provinces and territories there. We put out this six-point plan to deal with one of the most pressing social issues that Indigenous people are facing in terms of the over-representation of Indigenous children in foster care.

I'm happy to report that we have made progress on each of the six points. I will note, for example, because I know that the honourable senator has been very involved in this issue, that the first point of action was to fully implement the orders of the Canadian Human Rights Tribunal, and no doubt you followed some of this story. We are working very closely to ensure that all parties to the tribunal agree that we have met full compliance to all of those orders.

One of the pieces that was necessary for that was additional funding to make sure that there was no discrimination against First Nations child and family services agencies. In terms of the amount of funding we got, you may have noted that in our most recent federal budget we got funding in the amount of $1.4 billion, some of which will be used to close those gaps, including making sure that we pay for the actual costs of preventing children being apprehended and shift that model so that the way we flow the funding is not that when you get more money, the more children are apprehended, but that, in fact, the money is there to prevent families from being separated. So there is work in that area.

In terms of the area around jurisdiction and legislation, this is something that honourable senators may be very interested in, and I'd be happy at any time to hear your views on this. You may know that this was Call to Action number 4 in the Truth and Reconciliation Commission that spoke to legislation. Many First Nations communities across the country are saying, "We have jurisdiction. We have a right to care for our own children. We want to implement and exercise that right." So we are very supportive of that and have signed memoranda of understanding to that end.

As I say, I could talk at some length about each of these and would be happy to at any time. The critical thing is the message needs to be put out loudly and clearly that children have the right to be cared for by their own families, surrounded by their culture, their language and their lineage, and families have a right to make choices about the rearing of those children. It's very clearly outlined in the United Nations Declaration on the Rights of Indigenous Peoples. We are really seeing good movement. I'm hearing wonderful stories now on a regular basis about families being reunited that I think will warm your hearts, and we'll continue this work.

INDIGENOUS YOUTH SUPPORT

Hon. Kim Pate: Welcome, minister. In 2016, a jury issued recommendations following the inquest into the deaths of seven First Nations youth: Jethro Anderson, Curran Strang, Paul Panacheese, Robyn Harper, Reggie Bushie, Kyle Morriseau and Jordan Wabasse, all of whom died in Thunder Bay, Ontario, over a 10-year period. Like many of their classmates, these young people were forced to leave home at 14 to attend high school in Thunder Bay due to a lack of adequate high schools in their communities. As a result, they died hundreds of kilometres away from their homes, families and communities.

In August 2017, Aboriginal Legal Services, who represented the families of the seven students, issued a report card evaluating the implementation status of the inquest recommendations. As you undoubtedly know, the government at the time received the lowest grade of all evaluated parties, and the comments were made that in fact the government had failed to implement a number of the recommendations. Nothing was done with some and others were in progress.

Jury recommendation number 59 calls on the Government of Canada to provide sufficient funding to the Northern Nishnawbe Education Council to design, build, furnish, maintain, operate and adequately staff a student residence in Thunder Bay for the students because they have to travel to the city to attend schools like Dennis Franklin Cromarty High School, which I had the privilege of visiting earlier this year.

This would involve the Government of Canada doing some feasibility studies and providing funding, and I'm curious to date what funding has been provided, to whom, what are the results, and when does the Government of Canada anticipate a residence will be open for the students? As well, when do you expect to see concrete steps along the line for the other recommendations?

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: I thank you, honourable senator, for the question and raising another very important issue. This is something that's been, I think, well documented and a real tragedy in terms of what happened to these particular young people, but it also speaks to the conditions that First Nations youth find themselves in when they have to go so very far from home.

We are continuing to respond to those recommendations in a number of ways, and I'll tell you a few of them. I want to respond specifically to your question in terms of the residence, and I will tell you I believe it was the last time I was in Thunder Bay. I've been to Thunder Bay on a few occasions lately, and I

think it was the most recent time that I met with First Nations leaders specifically about this project, and we are making good progress on it. I would be happy to get a report to you in terms of the details, which are not at the top of my head at the moment, but we have recognized this as a necessity. Again, it is being led by First Nations leaders, particularly those who are in the very close environs of Thunder Bay and who send a large number of students to that area to develop a residence as well as further and improved educational facilities for their young people.

• (1550)

In this area, we believe — and the report and the recommendations speak to this — that it needs to be addressed by multiple angles. One of them is providing better facilities in places like Thunder Bay, where many students have to go, in terms of safety, mental wellness supports for those communities, culturally appropriate and language-appropriate supports for those communities, as well as better residence opportunities for them.

But some of it, and this is longer-term work, is to find ways that not so many students will have to leave home as much as possible. My deputy and I had meetings last week to try to determine what more could be done to provide better educational opportunities for students from remote communities so that ideally they don't have to leave, perhaps ever, to complete their high school education, or, if possible, it could be delayed by a couple of years so that you're not sending very young teenagers to these communities.

I'm happy to say some progress is being made in improving educational services that can be delivered by tele-education, for example, which will be helpful.

I think the other area that I would raise, and the inquiry speaks to this, is the broader issue of attitudes of non-Indigenous Canadians and bridging that divide that continues to exist in this country in terms of respect and understanding of one another's cultures. I think the fact that we are facing racism in places in this country is having a negative impact. I think we should be blunt about calling it that. And I think there is a great deal of work to do on this particular area. One of the things I speak to regularly, when I have the opportunity, is to encourage non-Indigenous Canadians to understand the work of reconciliation. But, as I am now starting to say, you can't get to reconciliation without truth. There are still so many non-Indigenous Canadians that don't understand truth, don't understand the real history of our country, don't understand the trauma that countless families have gone through as a result of the legacy of residential schools, and we have to share that truth so that we will understand one another better and so that young people will not be so severely discriminated against when they go to a community that's far from home.

INDIGENOUS HOUSING

Hon. Nicole Eaton: Minister, it's always nice to see you.

According to the pediatrician Dr. Tom Kovesi of the Children's Hospital of Eastern Ontario, substandard housing is leading to chronic respiratory problems for Aboriginal children. A child from Nunavut is 20 times more likely to be admitted to hospital with chronic lung disease than a child from Ottawa. The problem is excessive moisture leading to mould. Some studies show half of First Nations houses have an unacceptable level of mould.

I know there are problems with houses not being built to code. We faced that in the National Finance Committee. But the issue is more complicated. A building code that is relevant to Southern Canada doesn't work in First Nations communities. A typical house in Nunavut is one fifth the size of one in Ottawa and has two or three times as many people living in it. We're spending money on homes on First Nations communities that make people sick and, further, those homes are lasting only 30 years.

Minister, this problem requires more than money. Will you commit to working with the medical experts who have studied this problem to come up with a new approach? If you've started already, can you tell us what it is?

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: Thank you for an excellent question and for your interest in this important issue. I have to say that, again, this is an area where I think the Senate has done very good work, including two studies, if I'm not mistaken, in the past decade on addressing the issue of housing as a very serious matter for Indigenous peoples. No matter whether you're talking about First Nations, Inuit or Metis, there are very serious challenges around overcrowding and under-housing.

Work has been done in this area, but there's much more yet to do. I'll tell you a little bit about some of the things that have been happening, and you have already explained why it needs to happen. There's a long list of reasons why housing is essential, but many of them are health reasons. You talked about the respiratory issues. One of the worst of the respiratory issues is, of course, the terrible scourge of tuberculosis, which is so severe, particularly in the Inuit homeland. We will not eliminate tuberculosis from this country, from Inuit Nunangat, until we address overcrowded housing. You already talked about the other respiratory issues.

We have certainly made investments in this area. I was very pleased in the most recent budget that we had funding for First Nations in the order of $200 million a year. For both Inuit and Metis, we have a 10-year funding commitment. In the case of Metis, it is $50 million a year for 10 years; and in the case of Inuit—I hope I have my numbers right—it's $40 million a year for 10 years. I think those numbers are accurate.

What that will do is allow the long-term planning. As you probably know, there are real challenges. I'm thinking particularly for Inuit. If you don't know what money you can spend next year, you can't place the order to get the equipment on the barge so that it will be delivered in time for the next construction season. We've faced this problem repeatedly.

Long-term funding is part of it. But you are absolutely right that doing business as usual, particularly for First Nations on reserve, will not close the gap. The gap in the number of houses that either need to be entirely built or entirely replaced or extensively renovated is anywhere from 80,000 to 100,000 homes, so a massive gap. We are working with First Nations partners on developing a long-term strategy for housing. I think

your issue around code is essential in this. I think there's more to be done than that, but the issue of building codes is critical, and I'm very happy to report to you that any of the money that has come for housing as of our Budget 2016 requires that the houses are built to code.

This is one step in the right direction. I think it also requires a lot more creativity. For example, I have a real interest in trying to support the building of more traditional housing designs, using more local material and more local labour, rather than always flying in materials that are not from that particular area, and flying in people who are building homes rather than training a local workforce.

This is something that if there are any senators who are interested in providing further input as we work towards a long-term housing strategy, I expect that it would be quite welcomed by our Indigenous partners.

INDIGENOUS CHILD WELFARE

Hon. A. Raynell Andreychuk: Minister, welcome.

I've been listening to you here, and I've certainly followed all of your announcements. You'll forgive me if I'm a little cynical. I have worked with Aboriginal children through the courts, through international conventions and in the Senate; and it seems that we're still caught in what I call the "curative" mode, where there's a crisis, there's a report, and there's a response.

What I want to see from the government—and perhaps you can assure me—is that we are looking at preventative services, more to the issues on a broader basis, involving the community to solve their own problems. Because as you go from province to province, community to community, it's different. I keep hearing, "We will do; we will have a feasibility study; we are in the middle of a feasibility study," et cetera. It seems to me we miss the point because we go from crisis to crisis, and we never really solve the problem. I want an assurance that there's something new in your approach, firstly.

The second part of my cynicism comes from administrative issues. We've divided the department into two. We heard a bit in the Finance Committee that it's not going to cost more to run two departments.

I want some assurance that it is not going to be focused on departmental expansion and employment expansion within the department, and not actually getting to the people that I want them to get to, and that's the children. I keep hearing about so much administrative layering, consultation, plans and strategies.

Where do I go on your website? Where do I see your plan of action where I can track real change, real progress? Because I think I've been through seven or eight administrations, and we still seem to be at the same point.

I got that off my chest. I want to put the onus on you.

• (1600)

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: I thank you very much for your question, honourable senator, and for your interest, particularly in the children. I think that's where the emphasis ought to be, to see a generation of Indigenous children who can be raised and grow up knowing that they have access to every opportunity that every Canadian child should have access to.

What you have pointed out is the solutions are there in communities, and sometimes governments need to back off and simply support communities that already know the answer. I will give you a couple of examples where we see that happening.

I also can't go further without noting that the approach you're supporting is very much in line with something the Prime Minister has been talking about in terms of recognizing the rights of Indigenous peoples. The rights of Indigenous peoples have been well laid out. They're laid out in international law and international declarations like the one that the United Nations has provided. They're laid out in our Constitution. They're laid out sometimes in treaties. So the rights of Indigenous peoples are clear. The challenge has been that they have not always been able to implement those rights.

The one that you're speaking to, which I think is important, is the right to self-determination. The amazing Royal Commission on Aboriginal Peoples 22 years ago said one of the first things that Indigenous peoples need is control over their own lives. We keep trying to control. Historically, we've controlled, and that has wrought horrendous consequences.

Respecting, recognizing and supporting the implementation of the right to self-determination is essential. So let me give you some examples that will hopefully be encouraging to you.

One I thought of as you asked your question is around mental wellness. You know the terrible stories you hear in the news about the high rates of suicide, for example, and the desperate need for mental health workers. One of the things we were able to do — and this truly bubbled up from a community vision — is support a whole new approach to mental wellness in the region called Nishnawbe Aski Nation, which is 49 nations in northern Ontario. They came and talked to us about Jordan's principle, which I suspect you're familiar with. They said, "We would like to use Jordan's principle money to develop a program," which they decided to call Choose Life. Rather than being the medicalized model of a counsellor working with one patient, it would be more of a community-based model. It would include opportunities for young people to get out on the land and learn the ways of their parents and grandparents about working on the land. It would give them opportunities to study their culture and understand who they are.

We said that we would be very supportive of this. We haven't got data yet because it's too early, but I really believe that we will find that those communities that have taken on this Choose Life program, which is entirely designed by First Nations for First Nations, will see improvements in their mental wellness in years down the road. I think that speaks to what you're talking about.

If I may touch on the second part of your question, which was around the administration and not focusing on department expansion, this is something we're very cognizant of. I have a very good deputy who is working with me on these issues and trying to be sure we're highly responsible in terms of dismantling the old Indigenous and Northern Affairs and developing these two new departments so that the administrative burden will not increase but decrease.

I think it's very hard for governments to move in that direction. We've got to be very hard on ourselves because that's the way things have always been. But you're absolutely right that we should not focus on expanding the department. However, it's very much in keeping with our approach to try to shift the focus and the leadership of all programs right to communities so that they have the design. We're not paying government civil servants but we're actually supporting community members and providing jobs, whether it be in health, education or many other spheres.

We'll definitely continue that focus over time and hope that it will be effective.

[*Translation*]

INDIGENOUS HEALTH SERVICES

Hon. Dennis Dawson: Minister, I would first like to commend you for the efforts you have made to learn French since you took office. I hope you won't mind, then, if I ask my question in French.

We know that there are major socio-economic gaps between Indigenous and non-Indigenous communities in Canada. It is difficult for Indigenous people to get quality health care services that reflect their cultural reality.

Not counting the investments set out in recent budgets to improve health indicators in Indigenous communities, can the minister tell us what is being done to ensure that Indigenous communities have access to the health care they need when they need it?

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: I thank the honourable senator for his question. I will try to answer in French, but if that proves too difficult, I will switch back to English.

You asked a very important question regarding the major socio-economic gaps that exist between Indigenous and non-Indigenous communities, particularly in the area of health. You spoke about the investments that our department has made in health and I am pleased that investments were made in each of our government's budgets.

As a matter of fact, we just invested $1.5 billion in health, which will be used to provide grants for research on tuberculosis and to help address a number of issues, including addictions.

As you mentioned, our department changed its approach to Indigenous health, and we hope that this new approach will improve Indigenous peoples' quality of life. As I said, to date, the government was the one that decided how health care would be provided. However, if Indigenous peoples decide to take responsibility for their own health care system, we should see results. There has been a positive outcome in British Columbia with the First Nations Health Authority, which was created by and for Indigenous peoples. The gaps have already narrowed and their health has improved.

We are now discussing the issue in several parts of the country. A few weeks ago, on a visit to Manitoba, our department signed a memorandum of understanding on health care with the Indigenous population.

Quebec would also like to sign a memorandum of understanding with the First Nations of Quebec and our department in order to consider a service delivery model that would be run by Indigenous peoples, for Indigenous peoples. This approach dovetails with our own approach to self-determination, and we hope to achieve good results.

• (1610)

[*English*]

INDIGENOUS COMMUNITY INFRASTRUCTURE

Hon. Mary Jane McCallum: Minister, one of the dire consequences of colonization in Indigenous communities has been the loss of social cohesion. This breakdown was in part because of residential schools. The connectedness which is marked by the mutual moral support in Indigenous communities was broken. Instead, individuals as children were forced to rely on their own resources with little to no guidance. Cohesiveness, when present, brings with it social capital whose features include interpersonal trust and norms of reciprocity. These act as resources for individuals and facilitate collective action. Social capital is an inherent feature of the community to which all individuals belong. The community that existed in residential schools was unlike those that existed outside of this artificial system.

Instead of social cohesion and strong social bonds, there was a distinct lack of trust within the social structure. There was no introduction of social norms. The lack of trust that existed in this social environment was detrimental to the proper function and understanding of one's obligations and expectations.

Outside of residential schools and reserves, society teaches its members to form associations to attend to problems. After the initial problem is solved, this newly formed organization remains as available social capital to improve the quality of life for all residents. However, Indigenous peoples were long prevented from congregating to form such a social structure. Social disorganization is the inability of a community structure to realize the common values of its residents and maintain effective social controls.

From the perspective of crime control, which is a major dimension of social disorganization —

The Hon. the Speaker: Excuse me, senator, but we only have a couple of minutes left for Question Period, so if you want to allow time for the minister to answer your question, I would suggest that you get to the question, please.

Senator McCallum: I'll just finish this statement: That there must be an ability for the community to supervise and control teenage peer groups, especially gangs.

As your mandate letter states, part of your responsibility is to continue to oversee the provision of existing services to Indigenous peoples, including the provision of community infrastructure.

Minister, what is your office prepared to do to ensure the proper infrastructure supports are in place within Indigenous communities during this crucial period of transition with the upcoming Bill C-45?

Hon. Jane Philpott, P.C., M.P., Minister of Indigenous Services: Thank you, honourable senator. I appreciate hearing your comments. I know that you were at the United Nations with us last week doing some very important work on Indigenous issues.

You've already raised some outstanding points in terms of the need for social cohesion and the need for social infrastructure. I think this fits very nicely with a lot of the work that we've been doing, which is again supporting the solutions that are in communities, that they can make decisions, because there's nothing more depressing and demotivating than losing control over your life. That's what we have done and that's part of the legacy you've described.

As we see these solutions and support these solutions, whether they be for mental wellness teams or new programs that respect traditional healing and traditional elders and teachers, I am seeing fantastic work from young peoples' movements saying they want to reclaim their culture and be able to teach in that culture. There is good news on the horizon and we all need to be supportive of that.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators will want to join me in thanking Minister Philpott for being with us today. Thank you, minister.

ORDERS OF THE DAY

TRANS MOUNTAIN PIPELINE PROJECT BILL

SECOND READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Black (*Alberta*), seconded by the Honourable Senator Bovey, for the second reading of Bill S-245, An Act to declare the Trans Mountain Pipeline Project and related works to be for the general advantage of Canada.

Hon. Murray Sinclair: Let me pick up where I left off. I was referencing section 35 of the Constitution as a potential hurdle here and one that's real when it comes to the potential for this particular bill to see the light of day, but more importantly, I think the project itself also faces very difficult legal challenges that we have to recognize.

I've already talked about the potential implications that the bill itself is going to have with regard to the issue of cooperative federalism, but more importantly, one of the things that we also need to keep in mind is that the federal government has an obligation to protect Indigenous rights, and it has announced its intention to see that this project gets built. It seems to have said that without regard for Indigenous consent.

Keep that in mind, because under the United Nations Declaration on the Rights of Indigenous Peoples, the federal government has committed to implementing the UN declaration and indicated publicly many times that they are prepared to endorse it, support it and make it happen.

In Article 32 of the UN Declaration on the Rights of Indigenous Peoples, there is a very strong commitment required of governments that they will undertake to consult with Indigenous organizations, tribes and other entities to ensure that those entities give their free, prior, informed consent with regard to any project that affects their territorial land holdings.

In this case, those First Nations along the line that are resisting this particular project at this point in time have not yet been consulted to obtain their consent with regard to the Trans Mountain pipeline.

In fact, while reference has been made to the fact that there have been 43 Impact and Benefit Agreements signed with First Nations people, 33 of those are in Alberta, and those are not the communities that are most directly affected, because, quite frankly, those were the communities that were affected when the Trans Mountain pipeline was initially built. So they already had a legal right taken away from them by the federal government prior to the establishment of the obligation that the federal government had to protect the rights of Indigenous peoples.

So back in the time when the Trans Mountain pipeline was first put into place, the Government of Canada essentially told First Nations, "You have no choice. We're going to use your land and allow the pipeline to run across it." So take what you can get out of the Impact and Benefit Agreements that were put in place at that time.

Some of those First Nations have simply amended their existing Impact and Benefit Agreements in order to expand upon the payments that they will receive, recognizing that the pipeline that we're talking about here is going to be expanded on the existing territorial area that the pipeline now sits on, so it's not going to affect them any more or any less than the existing pipeline does now. But it's the new, potential impacts upon those in the southern part of British Columbia and the Vancouver harbour area who are being asked to undertake greater risk, and those are the ones who are most resistant. First Nations around the Vancouver harbour area are the ones who are in fact going to court.

There are 18 legal challenges against Trans Mountain pipeline that are sitting in the courts right now. They've all been consolidated into one action by the Federal Court of Canada, but the reality is that those legal actions mean that there is a very significant legal impediment as to whether this project is even going to go ahead.

I have grave concerns over what appears to me to be an effort to stampede this project through the Senate. We are being asked to push this bill through, to promote this project, because we are told that Kinder Morgan has a timeline that they want to meet. Well, quite frankly, Indigenous people have a timeline that they want to meet too, and that is come and get our consent before you do anything. At this point in time, there's been no effort made to get their consent.

• (1620)

When it comes to this bill going to committee — which I recognize is likely going to occur — and coming back for third reading, I forewarn all senators now that it is my intention to introduce an amendment to this bill requiring that if it is declared a federal work and undertaking it cannot proceed until the free prior and informed consent of the First Nations people of Canada is obtained, if it has not already been obtained, in a written agreement.

So those of you who think this project is a done deal, that it's just a matter of putting our stamp of approval on it, you better think twice because it's not going to be that clear. There is a lot of work that remains for us to do.

We have to study the kinds of things that Senator Galvez has brought to our attention. We need to know, in fact, if the project has been overstated insofar as its benefits are concerned, if it has been understated insofar as its potential impact upon the environment is concerned — and I tend to believe that that is true — and if, in fact, the question of Indigenous support itself has been misrepresented to us.

I think the committee to whom this gets referred should be called upon to look at those very questions. Thank you.

The Hon. the Speaker: Senator Sinclair, would you take a question?

Senator Sinclair: Yes.

Hon. David Tkachuk: Senator Sinclair, you mentioned in your speech that you were being pushed. Who is pushing you?

Senator Sinclair: I said the Senate is being stampeded. If you want to quote me, quote me properly.

Senator Tkachuk: By whom?

Senator Sinclair: By all of you who are pushing this bill. Including you, senator.

Senator Tkachuk: So 23 can stampede 60? I don't think so.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

REFERRED TO COMMITTEE

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

(On motion of Senator Black (*Alberta*), bill referred to the Standing Senate Committee on Transport and Communications, on division.)

SENATE MODERNIZATION

NINTH REPORT OF SPECIAL COMMITTEE—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Frum, seconded by the Honourable Senator Beyak, for the adoption of the ninth report (interim) of the Special Senate Committee on Senate Modernization, entitled *Senate Modernization: Moving Forward (Question Period)*, presented in the Senate on October 25, 2016.

Hon. Ratna Omidvar: Honourable senators, I rise to speak to the ninth report of the Special Senate Committee on Senate Modernization dealing with our most favourite time of the day in the chamber, Question Period.

A number of senators have spoken to the ninth report, which was presented over a year ago. I have looked over the debates, and it seems to me there are two opposing points of view on this question of Question Period.

On the one hand, we have colleagues who feel that Question Period ought to be protected. They see oral questions as a key to holding the government to account and fulfilling their duty to represent their regions.

Other senators have argued that we ought to divest from Question Period entirely, because they see oral questions as an inefficient way of getting answers. From their perspective, the Senate would be better served if senators submitted more written questions and created as much time as possible, therefore, to scrutinize legislation.

So here we have two opposing points of view, and I actually think that the Modernization Committee's ninth report finds a reasonable middle way forward. It does not do so without consideration of the other Senate modernization reports that have been put to us. I speak in particular about the eighth report on broadcasting our proceedings, and I think it connects very well to the ninth report. Televising our proceedings is bound to have an impact on the way we see Question Period and the way we interact with one other, and it's bound to influence how Canadians perceive us.

As our small screen debut comes closer, it is our responsibility, I feel, to determine how our chamber proceedings ought to be presented to the public. Not only are we looking to change the channel on how the Senate is perceived, we're also looking to turn up the volume on this institution's best features.

Right now, Question Period is the focal point of every sitting day in both the House of Commons and in the Senate, and they typically occur once per sitting day in both chambers. Both are designed to hold the government to account and are largely governed by the same rules and procedures.

So we have to ask ourselves: What makes Senate Question Period different? How does the Senate add value to the legislative process? What are our institutional strengths and how are these strengths reflected in our Question Period?

Last year I had the privilege of launching Samara Canada's latest report on heckling in the House of Commons here on Parliament Hill. Time and time again during this evening, individuals — and politicians, primarily — came up to me with an almost universal consensus. They said Senate question periods are far more cordial and far more substantive and place far more emphasis on the public record than on talking points and theatrics. There is far less heckling in this place, although we do have some, and I would not maybe go as far as calling it heckling. I would call it friendly jostling, but there is a little bit of that.

Some Hon. Senators: Hear, hear.

Senator Omidvar: I think we have a fair amount on both sides. Let's grant that.

We do not set limits to the time on the questions we ask, nor do we set a time limit on the answers that are given. I believe this is maybe both good and bad. On the one hand, everyone has a really long time — Senator Smith, I'm looking at you — to ask questions. Senator Harder, you have a really long time to respond to answers, or in this case, as a minister. This allows — no heckling, jostling only. No heckling, please. This allows for a deeper dive into policy issues.

However, I have also seen questions and answers that serve as proxies for statements and bafflegab. A solution to this, perhaps, should not be so much embedded in Senate rules but in modelling our own behaviour and asking focused, pointed questions and getting focused, pointed answers.

This holds true for our questions to ministers as well. While some ministers present their government through rose-coloured lenses, this hour is far more informative and cordial than what the House of Commons offers. I note from last week, in particular, the excellent Question Period where we had Minister Qualtrough. She got real questions and she gave us real answers.

Senator Harder, please inform her that we are happy to have her here any time again.

The recommendations found in the ninth report reflect those two qualities. The first two recommendations ask that we formalize the current practice of inviting ministers to appear in the chamber during Question Period and extend the invitation to officers of Parliament.

The recommendations in the ninth report also allow us to focus, in the chamber, on our committee work. We often hear, in the chamber and outside of the chamber, about the Senate's proven track record when it comes to committees, but it is rarely reflected in Question Period. Committee chairs do not often get the opportunity to take questions from their peers and answer questions about special hearings or the latest committee reports. This ultimately prevents opportunities for senators to continue the conversations and propel committee recommendations forward. I must note on this point how much I personally miss Senator Fraser because she would ask committee chairs very good questions.

• (1630)

This was a comment made by many of the witnesses who went before Senate Modernization. I believe the gap needs to be closed now more than ever as we move to broadcast our proceedings. We must acknowledge that our committee work is a source of relevance for Canadians. It ought to be at the forefront of a modern, open and transparent Senate.

The ninth report's third recommendation asks that the Senate limit Question Period to two days per week. This would allow senators to devote more time to scrutinizing legislation while leveraging multiple formats of Question Period. The first would be devoted to a minister or an officer of Parliament, and the other would be devoted to a government leader or a committee chair or possibly a mix of both.

Once again, this recommendation I think goes beyond its literal meaning and sets a new precedent for the Senate to ask that senators amplify important committee work in the chamber itself. It asks that we take the recommendations devoted in committee rooms and continue these conversations here in the chamber. In televising these proceedings, it asks us to invite the Canadian public to join us in these conversations.

The potential for these changes is tremendous considering the issues of the day when they are matched and are being addressed by a committee. Let's take, for example, the Rohingya refugee crisis. If the Senate is unable to receive the Minister of Foreign Affairs to speak to new developments, such as the repatriation agreement that now exists between Myanmar and Bangladesh, the next best person to answer the question might just be Senator Munson, who was Chair of Human Rights when the Rohingya refugee study was done.

Honourable senators, frankly, Question Period is an acquired taste. You either love it or hate it. I vacillate between both points of view. I would much rather, as Senator Mercer has said, have an answer period. I'd like to turn this whole discussion from Question Period to answer period. One of the ways we can do that is, I believe, to either model and self-discipline ourselves as we ask questions and answer them or consider setting time limits. I'm not proposing an amendment, but I am proposing that this is

something that the Rules Committee may want to consider along with all the other very good ideas that have been put on the chamber floor pertaining to this report.

In summary, I believe that the recommendations in the ninth report are a reasonable compromise. First, they differentiate our QP from that of the House of Commons. Second, they play to our institutional strengths. Third, they give us more time to focus on legislation. And fourth, they play up our collegiality and committee work.

Perhaps most important, it gets us ready for the new world in more ways than one. For these reasons, this report should be sent to the Rules Committee as soon as possible for consideration.

(On motion of Senator Smith, debate adjourned.)

[*Translation*]

OFFICIAL LANGUAGES

BUDGET—STUDY ON CANADIANS' VIEWS ABOUT MODERNIZING THE OFFICIAL LANGUAGES ACT—EIGHTH REPORT OF COMMITTEE WITHDRAWN

On Other Business, Reports of Committees, Other, Order No. 79, by the Honourable René Cormier:

> Consideration of the eighth report of the Standing Senate Committee on Official Languages (*Budget—study on Canadians' views about modernizing the Official Languages Act—power to hire staff and to travel*), presented in the Senate on March 29, 2018.

Hon. René Cormier: Honourable senators, pursuant to rule 5-7 (k), I seek leave of the Senate to have item No. 79 under Committee Reports — Other, which requests funding for a travel activity, withdrawn from the Order Paper.

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

Hon Senators: Agreed.

(Order withdrawn.)

[*English*]

BANKING, TRADE AND COMMERCE

MOTION TO AUTHORIZE THE COMMITTEE TO STUDY THE OPERATIONS OF THE FINANCIAL CONSUMER AGENCY OF CANADA, THE OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS AND THE CHAMBERS BANKING OMBUDS OFFICE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion, as amended, of the Honourable Senator Ringuette, seconded by the Honourable Senator Lankin, P.C.:
>
> That the Standing Senate Committee on Banking, Trade, and Commerce be authorized to:
>
> (*a*) Review the operations of the Financial Consumer Agency of Canada (FCAC), the Ombudsman for Banking Services and Investments (OBSI), and ADR Chambers Banking Ombuds Office (ADRBO);
>
> (*b*) Review the agencies' interaction with and respect for provincial jurisdictions;
>
> (*c*) Review and determine best practices from similar agencies in other jurisdictions;
>
> (*d*) Provide recommendations to ensure that the FCAC, OBSI, and ADRBO can better protect consumers and respect provincial jurisdiction; and
>
> That the Committee submit its final report no later than March 18, 2018, and retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

Hon. Marc Gold: Thank you, Your Honour. I understand that this item is approaching the fifteenth day, so I would ask leave to adjourn this motion in the name of Senator Moncion.

(On motion of Senator Gold, for Senator Omidvar, debate adjourned.)

THE SENATE

MOTION TO INSTRUCT SENATE ADMINISTRATION TO REMOVE THE WEBSITE OF THE HONOURABLE LYNN BEYAK FROM ANY SENATE SERVER AND CEASE SUPPORT OF ANY RELATED WEBSITE UNTIL THE PROCESS OF THE SENATE ETHICS OFFICER'S INQUIRY IS DISPOSED OF—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Pate, seconded by the Honourable Senator Marwah:
>
> That the Senate Administration be instructed to remove the website of the Honourable Senator Beyak from any Senate server and cease to support any website for the senator until the process undertaken by the Senate Ethics Officer following a request to conduct an inquiry under the *Ethics and Conflict of Interest Code for Senators* in relation to the content of Senator Beyak's website and her obligations under the Code is finally disposed of, either by the tabling of the Senate Ethics Officer's preliminary determination letter or inquiry report, by a report of the Standing Committee on Ethics and Conflict of Interest for Senators, or by a decision of the Senate respecting the matter.

Hon. Donald Neil Plett: Honourable senators, this has been adjourned in Senator Bovey's name, so I would like to speak under the agreement that it be adjourned in her name again when I am done.

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

Hon. Senators: Agreed.

Senator Plett: Thank you, Your Honour and colleagues. I rise today to speak to Senator Pate's motion, which proposes to remove Senator Beyak's website from the Senate server. My comments today will focus entirely on process.

I am choosing not to express my opinion on some or any of the comments on Senator Beyak's website, as others have, because I believe my opinion on the content is entirely irrelevant to this discussion as, quite frankly, I believe the opinion of others is as well.

This motion, of course, comes after the content in question has already been referred to the Senate Ethics Officer for a ruling. It has been stated already that the Senate's code of ethics was passed unanimously in this chamber, and we, as senators, established the Office of the Senate Ethics Officer.

I believe we have a tremendous ethics process, one that we should all be proud of. In fact, not so long ago we saw the process work fairly and effectively when we believed the behaviour of a senator was in violation of our code and sought a remedy through the appropriate channels.

The motion we have before us seeks to pre-emptively offer up a sanction before the Ethics Officer has even ruled as to whether or not there was a violation.

Reference has been made to the use of Senate resources. Quite frankly, I find those concerns baseless. There is no additional expense or cost to Canadian taxpayers to have Senator Beyak's website remain on the Senate server.

• (1640)

On that note, this does not represent a Senate endorsement of this material any more than it would represent an endorsement of the material on any of our websites. The sencanada.ca profile page on each senator on the Senate of Canada website is, of course, guided by different principles. However, our individual websites are created, controlled and edited by us, as individual senators, and the political staff in our offices.

I am sure there are things on Senator Pate's website that I might find offensive, just as there may be things on my website that she might find offensive. In no way does the material on one senator's website reflect the views or values of another senator and certainly not of this institution.

On that note, I need to say, to be entirely transparent, that I have never been on Senator Pate's website, and I have never been on Senator Beyak's website. We all have the freedom in this country not to log onto websites we do not like and to not seek out material we do not wish to see, just like we have a switch on a television that we turn off when there is a show we do not want to watch.

Further, colleagues, there is an argument to be made that this impedes on Senator Beyak's ability to communicate with those she represents — a point that Senator Beyak has already made quite well in this chamber.

Those in favour of this motion have stated that this is not a matter of freedom of speech or freedom of expression, citing that the comments expressed border on hate speech. Colleagues, this is precisely a matter of freedom of expression. The chartered right to freedom of expression exists in order to protect speech we do not like. That is precisely why the protection is imperative. And while some may find the content on Senator Beyak's website reprehensible, to suggest that the content falls under the legal category of hate speech is simply inaccurate.

Perhaps, most dangerously, this motion has opened up debate which risks influencing the investigation of the independent Senate Ethics Officer. Everything we do in this chamber is precedent-setting. We must always be mindful of that. There is a movement, a push towards censorship, that has gained traction in many facets of society and has even recently crept into this chamber. In an age of safe spaces, trigger warnings and offence-taking culture, there are now opinions that are deemed the wrong opinion. I can't help but wonder at what point some of my views, which are clearly expressed on my website, will be deemed hateful by senators in this chamber.

This, colleagues, is not a far-fetched concern. Honourable senators will recall not too long ago a senator in this chamber accused me of bigotry for using the term "these people" when referring to those who do not fit into either male or female categories. Ironically, on the same day, the Minister of Justice and sponsor of Bill C-16 used that precise term in reference to exactly the same group. That is a very serious charge to level against anyone who simply disagrees with you.

That same senator attempted to discredit the testimony of witnesses at committee by erroneously claiming that they were all White men, as if their race and gender dictate the validity of their argument. On that, I state explicitly in my commentary on that matter that I believe there are two genders. Regardless of the wealth of evidence to support this assertion, this viewpoint is increasingly viewed by some ideologues as intolerant and bigoted.

This is not simply a viewpoint of evolutionary biologists. There are many religions that believe in the *Old Testament*. As I say every time that I quote scripture, I don't often quote scripture in this chamber, but here goes again. Genesis 5:2 states, "He created them male and female . . . ." Yet, I am left wondering how long until that content on my website is deemed so hateful that someone moves it should be taken down. How long until my stance on the sanctity of life is said to be so unacceptable and triggering that it should not be expressed on my website?

The Leader of the Government in the Senate and the Trudeau government have been explicitly clear that this viewpoint is entirely unacceptable. The party will not allow those who have a difference of opinion on when life begins even to seek a Liberal Party nomination. That is absolutely outrageous. They staged a walkout in the Status of Women Committee because the selected chair, a young feminist woman, happened to be pro-life, and the summer grants application requirement has only added to this display of intolerance.

The government has repeatedly portrayed pro-life Canadians as a radical fringe group whose views are not to be tolerated in a progressive society. Based on the latest data, only about half of Canadians agree with the unrestricted access to abortion which our present law allows for. The other half either supports some restrictions or are entirely opposed to abortion.

With that in mind, to suggest that there is some medical, ethical or scientific consensus on when a life is a life is absurd. It does not even exist within the pro-choice community. Yet the government has taken this deeply personal, emotional and divisive debate and chosen winners and losers. They have chosen the right opinion and the wrong opinion. The right one, of course, is the belief of Prime Minister Justin Trudeau.

When I asked Senator Harder about this on February 14, pointing out that pro-life groups are not in violation of any enshrined right, as the government keeps suggesting, his response was truly appalling. He stated:

> Again, as the government has made clear, what is being dealt with in the summer job program is to provide the assurance that the core funding being given by the Government of Canada is not to support activities which are in counterpoint to the views of the government and the policies and law of Canada.

". . . in counterpoint to the views of the government and the policies and law of Canada." This statement truly says it all, colleagues. The government could not be clearer. Those organizations that do not endorse Justin Trudeau's personal agenda need not apply. Additionally, according to this statement, those who support activities that are contrary to the policies and laws of Canada should not be supported.

In essence, that means that any advocacy group working to influence a change in the law would not be an eligible applicant, which is the core mandate of any advocacy group. Would the LGBT groups advocating for a change in a law prior to the passage of Bill C-16 been denied access to funding? Of course not.

Honourable senators, the removal of a senator's website, a primary method of communication, should never be taken lightly. In an age where words like "bigotry" and "hate" can be thrown out on a whim, sadly even in this chamber, I have no confidence that a similar censorship motion will not be brought forward in the future when the "wrong opinion" is expressed. For that reason, it is abundantly clear to me that we should let the independent process run its course.

When Senator Pate was asked by a number of senators why we would move forward with a motion like this when we have already sent this to the Senate Ethics Officer for his consideration, she responded by saying that this is temporary and that it is still our duty to represent minority interests in the meantime. There is no question that it is our responsibility to represent minority interests.

However, regardless of how you slice it, this motion is punitive. It is a sanction on a matter for which we have not received a ruling. At this point, we have simply posed the question to the Senate Ethics Officer. We cannot speculate as to what his response may be.

• (1650)

For Senator Sinclair, an eminently qualified judge, to support this motion, a motion that accepts a sanction before there has been a ruling, is surprising and troubling. I do not believe that Senator Sinclair would accept that in his courtroom, and he should not accept it here. The comments in question have already been made and are already out there in the national media and the highly accessible public record. The strong opposition to this material has garnered even more media attention. To suggest that further action on the website at this point, while we await a decision of the Senate Ethics Officer, will somehow cause excess undue hardship to Indigenous peoples in Canada is preposterous. This motion is evidence that it is no longer enough to simply express one's distaste or opposition to something, but even in the midst of allowing the tried-and-true process to take its course, we have senators doubling down just so no one forgets exactly how offended they are. That's all that this motion is, honourable senators.

Colleagues, as you are well aware, I find it troubling that we are even having this conversation before this esteemed officer of Parliament has rendered his decision. I think it is entirely inappropriate. If Senator Beyak is found to be in breach of our ethics code, then our chamber should, and must, follow the established process and entertain and ultimately determine appropriate sanctions at that point. For that reason, I believe it would be beneath us to upend the process at this point, and I strongly recommend that either this motion be withdrawn or we vote against it.

Hon. Kim Pate: Would the honourable senator take a question?

Senator Plett: Certainly.

The Hon. the Speaker: Senator Plett, you will run out of time. You have 30 seconds. Are you asking for five more minutes to answer questions?

Senator Plett: Let me preface my agreement to that by saying I will only allow myself, as I do others, five minutes.

Senator Pate: Thank you, Senator Plett. I listened very carefully to all of your words, and I wanted to start, before I ask my question, with a couple of corrections.

First of all, this is a motion to take down the website only, pending the decision of the Ethics Commissioner.

Secondly, I actually don't have a website, so likely you wouldn't have been able to find it and turn it off even if you had gone looking.

Thank you for allowing me those clarifications.

Senator Smith indicated that the Senate Conservative caucus removed Senator Beyak from her Senate committees because Senator Beyak's personal opinions "do not reflect the positions of the Senate Conservative caucus."

Mr. Scheer indicated the following when he was asked about this:

> As a result of her actions, the Conservative Senate Leader Larry Smith and I have removed Senator Lynn Beyak from the Conservative National Caucus.
>
> Racism will not be tolerated in the Conservative Caucus or Conservative Party of Canada.

Senator Plett, I'm asking you: Do you consider either of these actions taken by your own party to have followed due process or to have been punitive or violations of Senator Beyak's right to freedom of expression?

Senator Plett: Let me be very frank. As you rightly stated, the comments were that Senator Smith said he had removed Senator Beyak from committees; and the Leader of the Opposition in the other place said he and Senator Smith. Nowhere did they say, "and Senator Don Plett and Senator whoever."

We have leadership in our caucus, and they have been elected to lead our caucus. Much as I agree with the democratic process here, we elect leaders to do what they think is the right thing to do. Senator Smith nowhere said he believed we should remove Senator Beyak from this chamber, nor did he say we should remove her website. He, according to you, said we should remove her from caucus, or Mr. Scheer said "from caucus" and Senator Smith said, "from committees." They, as the leaders, have been elected to lead, and that is what they chose to do, and that, in my opinion, is not always democratic.

Senator Pate: That wasn't really an answer to the question. So you don't consider it to have followed due process. You do consider it to have been punitive and you do consider it also a violation of Senator Beyak's right of freedom of expression. It sounds as though that was your actual answer.

Senator Plett: I'm not sure where in my answer you heard any of that, because I don't think that's what I said. I said that I don't believe that caucuses are necessarily democratic, that we elect leaders to make decisions on behalf of their caucus. That is what a couple of leaders did. They have the right to do that. They did not remove her from this chamber. And whether or not I agree with those decisions is entirely irrelevant. I believe in accepting the good with the bad in any caucus, including ours.

Hon. Murray Sinclair: I do not wish to ask a question, Your Honour. I actually wish to raise a question of personal privilege.

I have been accused by Senator Plett of having supported this motion and spoken in favour of it, when in fact I haven't. I did address the chamber with regard to Senator Beyak's question of privilege, and I responded to that. And I'm sure that he would, if given an opportunity and if he wishes to check the transcript, withdraw his comments and clarify them, but I did not support the motion; I did not speak in support of the motion. Rather, I spoke in response to the question of privilege that was raised.

If he does not withdraw his comments, then I'm going to raise a question of privilege of my own.

Senator Plett: Your Honour, I will be more than happy to check Hansard. I will be more than happy to check my notes. If indeed I said anything that was incorrect, I will at the very next available opportunity correct any comments that I stated incorrectly.

MOTION IN AMENDMENT

Hon. André Pratte: Honourable senators, I rise to speak today and wish to move an amendment.

Therefore, honourable senators, in amendment, I move:

> That the motion be not now adopted, but that it be amended:
>
> 1. by deleting the words "the Senate Administration be instructed to remove the website of the Honourable Senator Beyak from any Senate server and cease to support any website for the senator"; and
>
> 2. by adding the following after the word "matter":
>
> ", the Senate administration be instructed:
>
> (*a*) to remove the 103 letters of support dated March 8, 2017, to October 4, 2017, from the website of Senator Beyak (lynnbeyak.sencanada.ca) and any other website housed by a Senate server; and
>
> (*b*) not to provide support, including technical support and the reimbursement of expenses, for any website of the senator that contains or links to any of the said letters of support".

The Hon. the Speaker: It is moved by the Honourable Senator Pratte, seconded by the Honourable Senator Coyle, that the motion not now be adopted but that it be amended by deleting the words — shall I dispense?

Hon. Senators: Dispense.

Senator Pratte: Let me begin by stating an undeniable fact. Some comments contained in letters published on Senator Beyak's website are racist and therefore disgusting and reprehensible. The publication of such comments, endorsed by a member of the nation's Parliament, could feed some Canadians' hostility and prejudice towards Indigenous peoples, who have already been victims of such sentiments for decades.

I wrote to the Ethics Officer on January 12 last to ask him to launch an investigation. I believe then, as I do now, that the offensive letters should be taken down from Senator Beyak's website and that by publishing them, she violated the Senate's code of ethics. As regards this last issue, due process requires that we wait for the Ethics Officer to complete his investigation before arriving at any conclusion.

However, in the meantime, exceptionally derogatory content has been available for months on a senator's website. This is intolerable for Canadians, both Indigenous and non-Indigenous. It is also unacceptable to us senators, as we find ourselves de facto associated with these shameful comments.

Can something be done without violating due process? Not only can we do something, but we must do something.

• (1700)

We can't act in the direction suggested by Senator Pate's motion, because it does not address the issue subjected to the Ethics Officer's investigation. The purpose of the investigation is to determine whether or not there is a code of ethics violation. In contrast, Senator Pate's motion concerns the removal of racist content that is targeted towards a specific group. The removal of such content does not usurp the role of the Ethics Officer. It does not replace future sanctions or aim to prematurely conclude that a violation of the code of ethics took place.

That being said, in my view the motion's language overreaches its laudable goal. It has the appearance of a sanction even if this is the mover's intention; hence the confusion regarding due process.

The motion orders the Senate's administration to remove not only the offensive letters but also Senator Beyak's entire website. This exceeds what is necessary and infringes on the senator's right to freedom of expression.

Parliament's capacity to carry out its duty depends in large part on our freedom of expression. We may often take it for granted, but it is exceptionally precious to be free to rise in this chamber and say whatever we think. This is a freedom that we should cherish and protect for ourselves and for others.

It is easy to defend the right to free speech of those we agree with. It is more difficult to do so when it concerns someone whose views we find abhorrent. Nonetheless, we should defend a senator's right to express them, as long as these opinions do not cross the line of hate speech or racism.

This is where I have a disagreement with Senator Beyak and those who defend her. This is the view expressed a few weeks ago by Senator Housakos. He said, "There is no limit on free speech." With the greatest of respect for this opinion, I must remind honourable senators what the Supreme Court has ruled on many occasions, that freedom of expression, like all other fundamental rights, is not absolute. Let me quote briefly from the most recent of these rulings, the *Whatcott* decision in 2013:

> We are therefore required to balance the fundamental values underlying freedom of expression . . . with competing Charter rights and other values essential to a free and democratic society, in this case, a commitment to equality and respect for group identity and the inherent dignity owed to all human beings: . . . .

This is precisely what is at play here: on one side, Senator Beyak's freedom to disseminate ideas expressed by her supporters, some of which are racist towards Indigenous peoples; and on the other side, the respect and the dignity owed to the members of the Indigenous communities targeted by these derogatory comments.

Before allowing infringement of free speech, the Supreme Court requires that the opinions expressed reach the level of hate speech, defined by very strict criteria that is "ardent and extreme feelings constituting hatred."

I believe that the standard that applies to us should be slightly less stringent, since we, as an institution of the Parliament of Canada, have larger responsibilities than ordinary individual Canadians. The question we should ask ourselves is: Should the Senate condone racism directly or indirectly?

Free speech is even limited in this chamber, as it is in all parliaments. Even though we do enjoy an extraordinary freedom to speak our mind, there are words that we cannot utter. These are called "unparliamentary language." One of these words banned in Parliament in most contexts is "racist." You cannot call a colleague racist or a bigot. Wouldn't you find it paradoxical that we, amongst ourselves, could not use the word "racist," but that one of us could widely disseminate racist insults.

Another error in Senator Beyak's supported thesis resides in the claim that whether a comment is racist or not is a matter of opinion. Therefore, goes this argument, you cannot censor an idea on the basis that is racist because this is purely a subjective evaluation. I strongly disagree with this proposition. If someone would assert that Indigenous persons are genetically inferior to White Canadians, this would be objectively a racist comment, period.

Let me give you an example from Senator Beyak's correspondence — and I quote:

> When I see an aboriginal person I can talk to him or her. They can operate in our modern world, to some extent.

Honourable senators, this is a racist comment. It is not a matter of opinion. It is a fact. Having said this, I agree entirely with Senator Housakos when he says:

> I believe, at the end of the day, the right side will win. But the right side never wins when we muzzle opinions that we don't like.

Senator Beyak thinks that a lot of good was done in the residential schools. Many people strongly disagree and are deeply hurt by such comments. I understand why they feel that way, and I empathize. But I'm also convinced that she has the right to state this opinion. Even though I disagree completely with her, I will defend her right to do so. I am wary of anything that even remotely resembles censorship, which is why I move

this amendment. But I also despise racism, which is why I applaud Senator Pate's efforts to take action against racist comments that Senator Beyak published on her website.

Senator Beyak is bolstered in her controversial opinions by the belief that she speaks for the silent majority — people who "are contributing to this country by working, building and selling things, taking care of their parents and children."

And what of the large number of Canadians, Indigenous and non-Indigenous alike, who strongly oppose her views? What are they? Are they not also working, building and selling things, or are they parasites like many of her supporters claim or imply?

In the question of privilege she raised, Senator Beyak stated that, "A senator's website is to . . . address the concerns and opinions of all Canadians." If this is so, why does she publish on her website only the letters of the few tens of people who agree with her? Why censor the voices of Canadians who have let her know they disagree?

On September 1, the senator wrote: "Let's not . . . call one another nasty names." This is a nice thought. Why, then, did she post racist letters on her website?

Of course, Senator Beyak denies that some of those comments are racist. Rather, she says they represent "the thoughtful ideas, stories, research and wisdom of the people."

Senators, if you have read these emails, you know that they are not the thoughtful and wise beliefs of the vast majority of Canadians. When she endorses these derogatory and offensive comments, Senator Beyak speaks for a minuscule minority.

[*Translation*]

Honourable senators, I carefully reviewed the senator's website. Outside of the "Letters of Support" section, there is no hateful or racist content. There are some news releases, news articles and speeches, many of which attempt to minimize the negative effects of residential schools. This content is obviously unfortunate and hurtful, but it is not racist.

I agree with the Truth and Reconciliation Commission's description of residential schools as being an essential component of the Government of Canada's cultural genocide policy. The living conditions in these residential schools were deplorable. My point of view on the issue is light years away from that of Senator Beyak. I am flabbergasted when I have occasion to hear or read what she has to say on the matter.

Nevertheless, this does not justify censoring her speech. As pointed out by the Supreme Court, legislators must prohibit only the vilest forms of speech. This should also apply to limiting a parliamentarian's right to speak.

[*English*]

Rather than shutting down the entire website, I suggest that the Senate administration remove only the letters of support. Why take down all the letters rather than just some of them? It is true that not all the emails are squarely racist, but I would say that nearly a third of them are highly problematic. More importantly, it is the combination of the letters, all on the same side of the debate, that produces a foul impression that Indigenous persons are slackers living off government handouts, whiners who exaggerate the negative impacts of the residential schools in order to justify the compensations they have received.

• (1710)

As I said, besides the letters, other troubling comments are published on Senator Beyak's website, but these are not racist, as completely wrong and abhorrent as I find them to be.

As a member of this chamber, Senator Beyak has both the duty and the right to participate in public debate. Consequently, she should be allowed to use the modern tools of debate, including a personal website hosted by a Senate server where and as long as the views posted on it do not pass the threshold of racist commentary.

I know that if the amendment I propose were to pass, some would find it insufficient. Others will condemn us for going too far. As always, when fundamental rights are at stake, it is a question of finding the right balance.

In her speech, Senator Pate remarked: "The consequences of our actions as senators are incredibly far-reaching." The senator is right. This is why we cannot tolerate that one of ours endorses racist comments, because if we do, we condone prejudice. It is why we must also exercise restraint in the rare cases where we consider limiting the speech of a parliamentarian, because if we don't, we encourage intolerance.

The Truth and Reconciliation Commission asserted:

> Without truth, justice is not served, healing cannot happen, and there can be no genuine reconciliation between Aboriginal and non-Aboriginal peoples in Canada.

Consequently, should we silence erroneous perceptions of the residential schools, such as those found on Senator Beyak's website, for fear that it will prevent Canadians from knowing the truth?

Forty years spent debating ideas in the public arena has convinced me that truth does not emerge from silencing falsehoods but by confronting them. Free speech is a vote of confidence in the power of truth and reason. This is why it is one of the foundations of the parliamentary system. Hence, we should tread very carefully before we consider curtailing a parliamentarian's free speech, for though we think it would serve to protect and strengthen the truth, in fact it may do the opposite.

Honourable senators, for too long now, as an institution, we have remained silent as racist comments were posted on a website hosted by a Senate server. Thanks to Senator Pate's initiative, we now have the opportunity to begin healing the wound caused by Senator Beyak's egregious error. This amendment allows us to do so while preserving a crucial right for Canadian democracy and for Parliament. Thank you.

The Hon. the Speaker: Senator Bovey, we only have two minutes left before we have to go to the bells for the vote. Do you want to enter debate on the amendment?

Hon. Patricia Bovey: I want to enter the debate.

Honourable senators, I rise in support of Senator Pate's motion as amended by Senator Pratte. I do so with a heavy heart, and as one who has always sought to do what I can do to "make things better." At times, alas, reality stands in the way of "better." I sincerely hope today we can ensure the reality to define a positive path to a better future for Canada after a troubling part of our past.

How often do we hear the words "get over it," whatever "it" might be. Words so easy to say yet so terribly hard to hear if the "it" relates to our own experience, whether loss of a loved one, a theft or being a victim of crime or slander. Those "its" never go away but re-arise, triggered by all sorts of situations. Those feelings are always with us, buried at different depths within. However, we do try to build bridges across the crevices inside us. I am sure anyone who has suffered the loss of a loved one has travelled that road.

The same is true of societal losses, thefts and victimizations. We each obviously have the freedom to express our own perspectives, thoughts and concerns about the "its" of those situations. However, in civil society, we come together to resolve those "its" and can only do so with facts.

The Hon. the Speaker: I'm sorry Senator Bovey, but it being 5:15 p.m., pursuant to rule 9-6, the bells will ring for 15 minutes for a vote on Motion 92. Following the vote, we will return for the balance of your time on debate on the amendment.

Call in the senators.

• (1730)

THE SENATE

MOTION TO URGE THE GOVERNMENT TO TAKE THE STEPS NECESSARY TO DE-ESCALATE TENSIONS AND RESTORE PEACE AND STABILITY IN THE SOUTH CHINA SEA ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Ngo, seconded by the Honourable Senator Cowan:

That the Senate note with concern the escalating and hostile behaviour exhibited by the People's Republic of China in the South China Sea and consequently urge the Government of Canada to encourage all parties involved, and in particular the People's Republic of China, to:

(*a*) recognize and uphold the rights of freedom of navigation and overflight as enshrined in customary international law and in the United Nations Convention on the Law of the Sea;

(*b*) cease all activities that would complicate or escalate the disputes, such as the construction of artificial islands, land reclamation, and further militarization of the region;

(*c*) abide by all previous multilateral efforts to resolve the disputes and commit to the successful implementation of a binding Code of Conduct in the South China Sea;

(*d*) commit to finding a peaceful and diplomatic solution to the disputes in line with the provisions of the UN Convention on the Law of the Sea and respect the settlements reached through international arbitration; and

(*e*) strengthen efforts to significantly reduce the environmental impacts of the disputes upon the fragile ecosystem of the South China Sea;

That the Senate also urge the Government of Canada to support its regional partners and allies and to take additional steps necessary to de-escalate tensions and restore the peace and stability of the region; and

That a message be sent to the House of Commons to acquaint it with the foregoing.

The Hon. the Speaker: Honourable senators, the question is as follows: It was moved by the Honourable Senator Ngo, seconded by the Honourable Senator Cowan:

That the Senate note with concern the escalating and hostile behaviour exhibited by the People's Republic of China in the South China Sea —

Shall I dispense, honourable senators?

Hon. Senators: Agreed.

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	McPhedran
Batters	Mitchell
Beyak	Mockler
Boisvenu	Munson
Brazeau	Neufeld

Carignan
Dagenais
Doyle
Duffy
Eaton
Frum
Greene
Griffin
Harder
Housakos
MacDonald
Manning
Marshall
Martin
Massicotte
McInnis
McIntyre
Pate
Patterson
Plett
Poirier
Raine
Richards
Seidman
Sinclair
Smith
Stewart Olsen
Tannas
Tkachuk
Unger
Verner
Wetston
White—43

NAYS
THE HONOURABLE SENATORS

Bellemare
Black (*Alberta*)
Black (*Ontario*)
Boniface
Bovey
Campbell
Christmas
Cools
Cordy
Cormier
Coyle
Dawson
Day
Deacon
Dupuis
Dyck
Eggleton
Gagné
Galvez
Joyal
Lovelace Nicholas
Mégie
Mercer
Moncion
Omidvar
Petitclerc
Pratte
Saint-Germain
Woo—29

ABSTENTIONS
THE HONOURABLE SENATORS

Bernard
Gold
Lankin
Maltais
McCallum
Ringuette—6

The Hon. the Speaker: Honourable senators, accordingly, the motion is adopted.

We will resume debate on the motion in amendment to Motion No. 302 —

Hon. Anne C. Cools: Your Honour, normally people who abstain are allowed to say why they have abstained. Senator Ringuette was hoping to have an opportunity to state to the house why she abstained. It's the normal process.

The Hon. the Speaker: Honourable senators will know that whenever an honourable senator abstains from a vote, that honourable senator has a right to express a reason for that abstention to the chamber.

I didn't realize that's what you were doing, Senator Ringuette. I apologize. Please proceed.

[*Translation*]

Hon. Pierrette Ringuette: Mr. Speaker, my abstention results from a breach in procedure in this chamber. This motion has been on the Order Paper for two years now, and we have had neither the courage nor the dignity to refer it to a committee for sober second thought and to hear the opinions of experts from outside the Senate. That is why I chose to abstain.

[*English*]

THE SENATE

MOTION TO INSTRUCT SENATE ADMINISTRATION TO REMOVE THE WEBSITE OF THE HONOURABLE LYNN BEYAK FROM ANY SENATE SERVER AND CEASE SUPPORT OF ANY RELATED WEBSITE UNTIL THE PROCESS OF THE SENATE ETHICS OFFICER'S INQUIRY IS DISPOSED OF—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Pate, seconded by the Honourable Senator Marwah:

That the Senate Administration be instructed to remove the website of the Honourable Senator Beyak from any Senate server and cease to support any website for the senator until the process undertaken by the Senate Ethics Officer following a request to conduct an inquiry under the *Ethics and Conflict of Interest Code for Senators* in relation to the content of Senator Beyak's website and her obligations under the Code is finally disposed of, either by the tabling of the Senate Ethics Officer's preliminary determination letter or inquiry report, by a report of the Standing Committee on Ethics and Conflict of Interest for Senators, or by a decision of the Senate respecting the matter.

And on the motion in amendment of the Honourable Senator Pratte, seconded by the Honourable Senator Coyle:

That the motion be not now adopted, but that it be amended:

1. by deleting the words "the Senate Administration be instructed to remove the website of the Honourable Senator Beyak from any Senate server and cease to support any website for the senator"; and

2. by adding the following after the word "matter":

", the Senate administration be instructed:

(*a*) to remove the 103 letters of support dated March 8, 2017, to October 4, 2017, from the website of Senator Beyak (lynnbeyak.sencanada.ca) and any other website housed by a Senate server; and

(*b*) not to provide support, including technical support and the reimbursement of expenses, for any website of the senator that contains or links to any of the said letters of support".

Hon. Patricia Bovey: Honourable senators, I was talking about the feelings of "its" and getting over "its." I had just said that in civil society, we must come together to resolve the "its," and we can only do so with facts. Now I say we must come together in reconciliation. We cannot condone anything that deepens or hides the hurt of the shattered lives of the residential school survivors and their families.

• (1740)

Colleagues, Canada is a rich country. It is rich not only because we have the resources that put us on a solid economic basis, not rich only because we have access to food and a means to contribute substantially to world food security, but rich particularly because of who we are — a country whose citizenry includes people from every country in the world. We are rich because we are seen to be welcoming to immigrants and refugees, rich because of the original peoples of Canada, First Nations, Inuit and Metis, rich because of their heritage, traditions and history, and because our collective history has witnessed many exciting and exhilarating highs and coming together.

Yet our history has also had truly painful lows, the residential schools being a hugely dark chapter in Canada's history. A crisis affecting the well-being and opportunities of generations of First Nations and Inuit citizens from coast to coast to coast. Our strength as a nation comes not from how we handle good times but how we approach and deal with our most difficult times, the personal and those affecting us all.

We must remember that the treaties made with the First Nations are not First Nations treaties. They are shared treaties of, for and by us all, promises made by and for all. We in the Senate represent all, serving all Canadians in this place. We must keep the conversations going. We must build pathways of reconciliation.

In recent decades, I have seen the growth of understanding of these treaties and recognition that the responsibilities for them are held by all. Non-Indigenous Manitoba artist Tim Schouten underlines this collective responsibility clearly in his Treaty Lands Project. His goal is to bring attention to issues of long-term accountability and troubled cultural trusts emanating from those formal agreements.

Drawing from history and his own sensibility of the prairies, the landscape is his primary entry point. Schouten visited each treaty site, researched the treaties themselves and the subsequent impacts. He interviewed First Nations elders and Aboriginal and non-Aboriginal historians. He built his works to underline our shared histories. They are philosophical archaeological digs, becoming a foundation for dialogue towards constructive meaningful futures honouring the intent of the initial treaties. Executed in wax on parchment, he portrays the rough terrain, long horizons and characteristic prairie light. He incorporates text, clauses from the treaties themselves. One hangs in my office as a reminder of our collective responsibilities.

I want to share a story from one of my most troubled professional days — an afternoon in the early 1980s. While Nuu-chah-nulth and Coast Salish artist Art Thompson was installing his exhibition at the Art Gallery of Greater Victoria, he told me something that still haunts me, as vivid today as it was those decades ago. It was the story of what happened to him at the Port Alberni Residential School. He asked if he should tell anyone. My response was "Yes," and I would support him in any way I could. He went public for his daughter. Alas, Art died of cancer before the Truth and Reconciliation Commission began and how I wish he had had the opportunity to bear witness and tell his story. He did, however, through his art, leave a lasting legacy for us all.

In Ottawa earlier this year, the Carleton University Art Gallery presented the major exhibition of Governor General Visual Arts award recipient Robert Houle. It featured his 2008 residential school series composed of his one-a-day for a month oilstick works recalling his time in Sandy Bay Residential School. They're visceral, direct, true, moving and so important. I commend them to you. They were purchased several years ago by the University of Manitoba's School of Art with monies from the York Wilson prize. That same university is home to the Truth and Reconciliation archives. These works prove to me that we don't get over it. In 1999-2000, the Winnipeg Art Gallery raised funds to buy Houle's large painting, "Sandy Bay." For me, it is one of the most important works in Canadian art.

When Robert spoke to the staff about the work then, he told us about the school, his parents being forced to send him, his sisters going through one door, he and his brothers the other, and that the brothers and sisters could not see each other thereafter. There are no doors in that painting. The windows are veiled. Robert spoke kindly of one priest and still does, but in no way does that one kindness erase the horrors of his experiences. Robert's composure and almost lack of emotion struck me then — the reality and impacts of his school experience still remain deeply buried within. It took time for him to reach the point where he could unveil and actually express them, just as it had for Art Thompson.

Houle's expression of truth came almost 10 years later through those powerful drawings. Recently, he told me that having shared his realities, his deep anger is now past. He has built his bridge, but the scar is irreparable. He will never forget, nor will his family.

I watched last spring's residential school totem pole raising at UBC on TV, wishing I was there. Nothing is more empowering than being part of a pole raising. Several things in particular have stuck with me — obviously the pole itself and the school on its top with the copper nails representing victims. However, a comment by a young First Nations woman will be with me forever. She said with this pole and the conclusions and recommendations of the TRC, most First Nations have accepted that the hurtful and damaging past of the schools happened, and now they can begin to heal. But she said she felt sorry for those of us who are not First Nations, as many have not accepted the reality of our past and until we do, we cannot begin to heal.

She's right. Until we accept a loss, a theft, a wrong, we cannot heal, whether we are the victim or the perpetrator.

Colleagues, I urge us all from the bottom of my heart, as we represent all Canadians, to do our part to build those critically important bridges across the crevices and divides in our society. There have been dark times in our history where divides have been far greater than confluences. I would hate us to develop another period of divide now when we have the opportunity to build. Divides in our society are not a richness. Our richness as a nation is the welcoming, understanding, honouring of our treaties and peoples and the recognition and healing of our wrongs.

Residential schools under the guise of education set out to eradicate whole cultures. They were the root of the societal crisis and only real education with a genuine sharing of learning and perspectives will pull us out and enable a growing together. Real learning is lifelong learning. May we all deepen our understanding of these realities so, as was said in Vancouver, we can all start to heal.

As Senator Sinclair cautioned Canada's museum community a year ago, it took years to get into this situation and it will take years to get out.

Working towards real reconciliation today, using all our means appropriately — schools, our websites, our public pronouncements and our actions — the healing towards a solid future will start now. But if we prolong the divide, extenuate the misfacts by presenting misnomers, the healing cannot and will not start. I believe as senators we have a duty to lead, and to lead now. We have a duty to fulfill our responsibility to truth so all viewpoints are founded in fact and not on illusion. I have called on museums, galleries, archives and libraries to fulfill their responsibilities to teach, to show and to be a platform for dialogue and debate on all societal issues concerns and conundrums, including this dark past of residential schools. And I will continue to make that call.

Honourable senators, I again turn to Canada's artists. They have the insights, vision and ability to see and express societal crises long before the rest of society. The Lesson by Alberta First Nations artist Joane Cardinal-Schubert depicts the attempt of the residential schools to eradicate First Nations languages. From the 1990s, pre-dating the establishment of the TRC, this work was a gutsy, clairvoyant and important clarion call to understanding and redress. Or consider First Nations artist Faye Heavyshield's 1985 work "Sisters," a circle of outward facing pointed gold shoes giving voice to another societal injustice. How many more years did it take to establish the national inquiry into murdered and missing Indigenous women and girls?

Art is truly a work in reconciliation. This month, Peguis First Nation's Lorilee Wastasecoot, now from the University of Victoria, escorted paintings by the children of McKay Indian Residential School to the Reconciliation Conference in Thompson — the first step of repatriation to that school's survivors and their families.

Colleagues, we all have a duty to see, hear, listen and learn. May the days of learning never stop for me, for us, for Canadians and for Canada. Please, let's all go to a better place and look at our websites, speeches and actions to ensure we create that place proactively for all to understand the truth facts and realities, the horrific fallout, human cost, suicides, lost lives and threatened theft of whole cultures through Canada's residential schools. There must be nothing on our websites or in our actions that pulls the substance of the Senate and senators down. We must ensure we do not perpetrate fake news, mistruths or unfounded conclusions. We must, as senators, singly and collectively fulfill our obligations to all.

I support Senator Pate's motion as amended.

• (1750)

I truly believe there should be no place for offensive or erroneous material or discriminatory comments on or under any Senate banner at public expense.

My concern is not to curtail expression. I agree with Senator McCallum that we need to encourage discussions to bring us to a better place, one of honesty, respect and reconciliation, while ensuring public resources are not used to perpetuate hurtful comments. I can go nowhere without hearing that plea from both Indigenous and non-Indigenous Canadians. Many express it with anger. We must lead the building of the real richness of our country with pride. I fear that, if we don't, we will instead build an irreconcilable divide, a divide which will only continue the pain of thousands of shattered lives through even more generations. That would not be a build of pride. That build, being without foundation, would only diminish or destroy Canada's richness.

Colleagues, we are at a time when Canada is at an age when we can face those past harms and treat all with equal respect and truth. Let us move forward with "reconcili-action."

(On motion of Senator Dyck, debate adjourned.)

"SOBER SECOND THINKING" PROPOSAL

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Wallin, calling the attention of the Senate to the proposal put forward by Senator Harder, titled "Sober Second Thinking," which reviews the Senate's performance since the appointment of independent senators, and recommends the creation of a Senate business committee.

Hon. Nicole Eaton: Honourable senators, I want to say a few things on Senator Wallin's inquiry into Senator Harder's sober second thinking proposal. This matter was adjourned in the name of Senator Cools, but she has consented to let me speak today on the condition that it be adjourned again in her name.

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

Hon. Senators: Agreed.

Senator Eaton: I stand here, colleagues, not as a constitutional lawyer or scholar, not as a procedural expert, nor have I been a member of the Modernization Committee, which has spent considerable time on this topic. I am just a senator who has been a member of the chamber for nine years now, appointed on the recommendation of Prime Minister Harper. I was not named to the Senate under the new method of appointment that Senator Harder so carefully describes as merit-based, as he distinguishes senators appointed under the current government from those of us who have been here for a while.

I believe that my colleagues in the Conservative caucus and those in the independent Liberal caucus have merit too, but I won't belabour that point.

Senator Harder's proposal of sober second thinking was motivated by his concern that legislation is not moving quickly enough in the Senate, and he lays much of the blame for that at the feet of the opposition. He argues for a more businesslike approach to the legislative agenda in the Senate, while other recently appointed senators believe things would go more smoothly if we do away with the opposition altogether. Senator Harder's more limited reform may well be within our Westminster parliamentary tradition, while others are suggesting something that runs counter to the basic principles of Westminster.

Colleagues, I have a lot of time for Senator Harder. I disagree with him on many things, but I believe he is a dedicated public servant trying to make the best out of a difficult situation. But he is missing an essential fact. It is not supposed to be easy to get legislation through the Senate. That's the point.

When I was appointed, the Conservative government did not command a majority in this chamber yet still managed to pass legislation. The senators who comprised the majority, the Liberal opposition, were no shrinking violets, let me tell you. Senators Cowan, Tardif, Furey and Fraser, just to name a few, were formidable parliamentarians. They knew their files, and they knew how to use the rules to their advantage. They didn't make it easy for the government, but we Conservatives understood their role, their rights and their privileges as the Official Opposition. We knew, as the government caucus, that we had to be disciplined to ensure that government legislation proceeded. How times have changed.

Now, we have moved from Senator Harder complaining about the opposition to Senator Gold, in his speech of February 13, suggesting there may be no need of an opposition at all. It's not hard to see where this is going, but they are blaming the opposition for a problem created by Prime Minister Trudeau. It escapes me why an opposition caucus of 30-some members, in a chamber of 105, should be blamed for the government failing to properly organize itself to move legislation through the Senate.

For most of Canada's 150 years, there has been a Leader of the Government in the Senate who led a caucus. The current government has moved away from that, for whatever reason, and established a three-person team to represent the government in the Senate.

Gary Levy, the longtime editor of the *Canadian Parliamentary Review*, who is now a research fellow at Carleton University, appearing before the Modernization Committee a year ago, described this as "a very odd and in my view unsustainable structure."

How did we get to this position of a fundamental change in the appointment system and the structure of the Senate? Through a unilateral announcement by the Prime Minister, which may help to explain why it hasn't exactly gone very smoothly.

I'd like to quote Professor Andrew Heard, of Simon Fraser University, in his testimony before the Modernization Committee on December 14, 2016:

> . . . I think this was an appalling example of how not to conduct public policy. My colleagues who examine the public policy process would say the first thing you do is consult stakeholders.
>
> This was a proposal developed without any effective input, even from the leader's own caucus members. An open cheque is being left to be written by the whole Senate to try and sort out the consequences. I think that's very problematic.

I do sympathize with Senator Harder, but I do not believe the opposition should be blamed for a mess that is entirely the creation of the Prime Minister.

I'd like to turn to Senator Gold's suggestion that there is no sound basis for even having an official opposition in the Senate.

If there is a need for government representation in the Senate — and I believe most experts accept that premise — it follows that an opposition is also necessary. There is a reason that an official opposition is a foundational characteristic of the Westminster system, a system developed over centuries and used in democracies around the world.

Lord Norton, perhaps the greatest living expert on Westminster democracy, wrote on his blog earlier this year:

> Two of the principal functions of the House [of Lords] are legislative scrutiny and calling the government to account.

He told our own Modernization Committee last year that the opposition provides "structured scrutiny."

> There's always someone on the opposition's front bench there to put questions and ensure that bills are thoroughly scrutinized.

We know that the Prime Minister and cabinet have extraordinary power. The government has significant resources and expertise to pursue its agenda. The legislation that comes before this chamber is exceedingly complex.

Senator Joyal, who I believe knows as much about this place as anyone, has spoken at length at the Modernization Committee about the power the government has and the need for a countervailing capacity to oppose. In my view, proposing that this essential function of opposition can be carried out by 102 freelancers is fanciful at best. The idea of an official opposition is closely linked to the question of partisan caucuses in the Senate.

If we consider the last two years in this chamber as a case study, it is apparent that we have lost something valuable as membership in partisan caucuses has declined. Party caucuses impose discipline on members. They provide support in policy analysis and establish the conditions for a coherent approach to organizing the legislative agenda of the Senate Chamber.

• (1800)

Belonging to a political caucus provides an important form of accountability. If you misbehave or don't do your job, you're letting down the entire team. You are answerable to your whip and to your leader.

The Hon. the Speaker: Excuse me, senator. It being six o'clock, I must interrupt you unless we agree not to see the clock. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Eaton: What have we seen in this chamber since the move away from partisan caucuses, aside from the fact that the Independent senators vote with the government on almost all of the big things, 90 per cent of the time? We've gone from an orderly, civil exchange of ideas and debate, structured by the government-versus-opposition dynamic, to a free-for-all.

Recently, when there was an apparent agreement to refer a bill to committee following speeches from both the ISG and the Conservative side, an ISG senator popped up and took the adjournment. Senators come and go at committee meetings, accountable to no one.

Late last year, we Conservatives on the National Finance Committee had the opportunity to amend the second Budget Implementation Act. Why? Because there were a lot of empty chairs on the other side of the table. In the end, we did not amend the bill, choosing not to embarrass the government. That is just one example of the risks of proceeding down the path the Prime Minister has taken.

When I arrived here in 2009, I found the Senate a bit overwhelming. The rules and practices were confusing. Over time, I realized there are sound reasons, developed over many decades, for the way this place works.

Is there room for improvement? Obviously.

Many of the changes adopted recently to encourage greater equality between senators and to make the Senate more accessible and transparent to the public are positive steps forward. But that doesn't mean it's wise to toss out the basic architecture of the Senate.

This institution has served Canada through two world wars, through the Great Depression and through all manner of challenges. There have been many bumps along the road, most notably the expense scandal in the early part of this decade, a scandal that led directly to Justin Trudeau, then the leader of the third party, distancing himself from the Senate by removing senators from the Liberal caucus. That, however, was a scandal caused by spending, not by partisanship. If anything, the partisan connection led to greater accountability, resulting in consequences for an entire government.

As Professor Levy told the Modernization Committee in March 2017:

> The idea that political caucuses are somehow the root of all evil is not a good basis for reforming our institutions.

I couldn't agree more. The arguments for reform are based on the faulty premise that the Senate is broken. It's not. The government is there to propose, and we are here to oppose, using all the procedures and resources at our disposal. It is a system based on centuries of parliamentary tradition. We should not forget that Parliament is, at its essence, a vehicle for opposition. It can be frustrating; it can test your patience; but in the end it works.

Thank you.

(On motion of Senator Cools, debate adjourned.)

FISHERIES AND OCEANS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE WITHDRAWN

On Motions, Order No. 321, by the Honourable Fabian Manning:

> That the Standing Senate Committee on Fisheries and Oceans have the power to meet on Tuesday, April 24, 2018, at 5 p.m., even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

Hon. Fabian Manning: Honourable senators, pursuant to rule 5-10(2), I ask that notice of Motion No. 321 be withdrawn.

(Notice of motion withdrawn.)

CANADA'S FOUNDING FATHERS

GENERAL WOLFE AND KING GEORGE III—
DEBATE CONCLUDED

Hon. Anne C. Cools rose pursuant to notice of March 1, 2018:

> That she will call the attention of the Senate to the great nation-builders of Canada and its constituting statute, the *British North America Act, 1867* and to this Act's single comprehensive and conceptual framework expressed in section 91, in the words "It shall be lawful for the Queen to make Laws for the Peace, Order and good Government of Canada"; and, to General Wolfe's 1759 conquest of Quebec, and to the October 7, 1763 Royal Proclamation, given by Britain's King George III, which proclamation gave the Governors of the colonies, later called Ontario and Quebec, the power to summon and call General Assemblies in such manner and form as was used in said colonies under British rule.

She said: Honourable senators, today I speak to my inquiry, No. 37, calling the attention of the Senate to the distinguished men and women nation-builders, who in 1867, birthed the new sovereign Confederation named Canada and authored its Constitution, the British North America Act, 1867. Tonight I speak to the greatness and success of this statute of the British Parliament at Westminster, which greatness and success have been well proven by its longevity and continuity in the wise governance of our noble and vast country, Canada. I shall trace the roots of this act's section 91, headed "Powers of the Parliament," which says:

> It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada . . . .

Colleagues, I invite you to explore Canada's centuries-long journey that made it a strong and free country. I invite you to look at Canada's constitutions, the great men who made them, and the many others who endeavoured to build Canada, east to west, from sea to sea.

My goal is to explore the minds and labours of the many fine and great human beings who set out to make Canada a just and prosperous country. I shall begin my journey in time after the 1759 war and British conquest of Quebec at the Plains of Abraham, in which war the able Anglo-Irish British officer Guy Carleton had served prior to his service in the 1775-83 American Revolutionary War. I note that Carleton had also been Governor in Chief of Quebec.

We meet British General Sir Guy Carleton, made Lord Dorchester in 1786, in his famous May 6, 1783, encounter with United States General George Washington. The matter at issue between these two Generals was Washington's desire to recapture his personal property. This personal property was Washington's Negro slaves, then in the protection of the British General Guy Carleton, who saw and treated them as free men.

I note that Carleton had charge of the safe passage of the United Empire Loyalists and freed African slaves fleeing from the United States to the still British North American provinces, particularly Quebec and Nova Scotia.

In her 2011 book *Liberty's Exiles: American Loyalists in the Revolutionary World*, published by Alfred Knopf, New York, author Maya Jasanoff records the bewildering but instructive exchange on Washington's Negro slaves that ensued between these two powerful generals, Carleton and Washington. Jasanoff writes, at page 89:

> The commanders had pressing items of business to discuss, including the ongoing depredations of partisan raiders in the countryside, the exchange of prisoners of war, and the timetable for evacuation. But Washington started off the conference by lecturing Carleton on what, to him, was the most urgent matter of all, the removal of human property from New York. Carleton calmly explained that a fleet had already embarked for Nova Scotia with registered black loyalists on board. "Already imbarked!" exclaimed a startled Washington. (He might have been yet more surprised to know that one of the blacks embarked, Harry Washington, had once belonged to him.) Carleton replied that he could not abide by anything in the treaty "inconsistent with prior Engagements binding the National Honour, which must be kept with all Colours."

Jasanoff continues, at page 90:

> . . . He demanded to hear from Carleton exactly what procedures had been put in place to prevent such miscarriages in future. But Carleton could match his counterpart's accusations point for point, meeting outrage with moral superiority. It was odd that Washington should be surprised by the news, Carleton dryly observed, when everything had been conducted in the most open manner. All the ships for Nova Scotia had been inspected, and the only disputes "arose over negroes who had been declared free previous to my arrival. As I had no right to deprive them of that liberty . . . , an accurate register was taken of every circumstance respecting them." Besides, he concluded, "Had these negroes been denied permission to embark, they wou'd, in spite of every means to prevent it, have found various methods of quitting this place, so that the former owner wou'd no longer have been able to trace them, and of

> course wou'd have lost, in every way, all chance of compensation." In short, he had acted entirely in keeping with the spirit and letter of British law. "The negroes in question . . . I found free when I arrived in New York, I had therefore, no right . . . to prevent their going to any part of the world they thought proper.

Insightful, Jasanoff noted, at page 91:

> Carleton's principled defense of the black loyalists stands out for its clarity of conviction, and highlights an emerging contrast between certain American and British attitudes towards slavery. . . . Carleton himself was not an abolitionist as such; he had not explicitly set out to free the slaves. His actions spoke in part to a sense of personal honor. Promises had been made, promises must be kept. But they also reflected his commitment to a concept of national honor — and the paternalistic government's responsibility to uphold it — that would rapidly gain momentum among the rulers of the postwar British Empire.

• (1810)

Honourable senators, this exchange between these two capable and famous soldier-generals provides marvellous and telling insights into the profound difference in the minds and perspectives of American, British and British Canadian leaders. Guy Carleton had been the driving force and directing mind behind the 1774 Quebec Act. The British Westminster Parliament's enlightened statute upheld British North America's French-speaking peoples and granted them the free use of their French language, their Roman Catholic religion and their French Civil Code.

Seventeen years later, in 1791, the British Westminster Parliament enacted the Canada Act 1791, also called the Constitutional Act 1791. This British statute divided the territory conquered from France in 1759 by General James Wolfe's British forces and constituted the two new provinces, Upper Canada and Lower Canada. This division was part of Britain's political and constitutional efforts to hedge these two new British North American Canadian provinces from the terrible and dangerous consequences of the American Revolutionary War. These consequences included American support for the French Revolution, American privateers' aggression and belligerence on the two Canadas' borders, and also on the borders of our British Eastern, Maritime Lower Provinces.

In 1791, Americans were still unhappy that, despite their best efforts, they had failed to obtain Canada's support and participation in their 13 colonies' revolt against Great Britain. They were also troubled by the Canadas' and the Brits' abolitionist and anti-slavery proclivities.

I note that William Wyndham Grenville, the Canada Act 1791 sponsor, had risen to the House of Lords in 1790. He had worked with and well knew Britain's great slavery abolitionists, in and out of parliament, including Prime Minister William Pitt the Younger, James Stephen, Charles James Fox, Thomas Clarkson, Guy Carleton, John Graves Simcoe, Edmund Burke, John Wesley — the founder of the Methodist Church — and others, including the legendary William Wilberforce, who from the British House of Commons floor, had led a 40-year successful campaign to abolish that great human evil, the cross Atlantic African slave trade and slavery in the Americas and the West Indies.

I shall quote John Wesley, who just days before his death on March 2, 1791, wrote to William Wilberforce, recorded in Samuel Wilberforce's 1868 book *The Life of Wilberforce*. John Wesley wrote:

> . . . I see not how you can go through your glorious enterprise, in opposing that execrable villainy which is the scandal of religion, of England, and of human nature. Unless God has raised you up for this very thing, you will be worn out by the opposition of men and devils; but if God be for you who can be against you. . . . . Oh be not weary of well-doing. Go on in the name of God, and in the power of His Might, till even American slavery, the vilest that ever saw the sun, shall vanish away before it. That He who has guided you from your youth up may continue to strengthen you in this and all things, is the prayer of your affectionate servant, John Wesley.

Colleagues, my mother was a strong Methodist. I am sure senators know who the Methodists were.

Honourable senators, Upper Canada's first Lieutenant Governor, the British soldier-General John Graves Simcoe, the great abolitionist, who had also served in the American Revolutionary War, was a member of the British House of Commons from 1790–1792. Therein, Simcoe had strongly supported the slavery's abolition. In his book, *Correspondence of Lieut. Governor John Graves Simcoe*, published by the Society in Toronto, Brigadier-General E. Cruikshank noted that in Quebec on May 7, 1792, John Graves Simcoe in a letter to one Phineas Bond wrote, at page 153:

> The principles of the British Constitution do not admit of that slavery which Christianity condemns. From the moment that I assume the Government of Upper Canada, under no modification will I ever assent to a law that discriminates by dishonest policy between the natives of Africa, America, or Europe.

Simcoe's words are compelling on this moral point. As I said, the constitution and constitution-makers of Canada are an insufficiently known story of human intelligence, human labour and fantastic human moral courage. The Canada that we love was founded in the humane liberal concepts called constitutional governance. It is the story of some great and judicious leaders' deep commitment to government with the consent of the governed, meaning that government must be founded in sound constitutional principles and, in law, agreed to by our citizens and their representatives in their legislative assemblies. I note that Canada's constitutions were conceived and framed by these judicious persons, in response to the terrible wars and savage carnage that had twice plagued our powerful American neighbours in their two large episodes of constitutional failure. The first of which was their American Revolutionary War, wherein their dominant republican instincts and labours yielded their new United States of America. Their second was when they took to arms again in their American Civil War between their Northern Union states and their Southern Confederacy states. Of interest, I note that Jefferson Davis, the southern Confederacy

president, had taken refuge in Quebec's Eastern Townships. Many of them had in those days. I also note that the name "Canada" had been long in use and had long pre-existed Canada's 1867 Confederation.

Honourable senators, by the end of the 18th century, the people and the leaders of British Canada had determined upon and had adopted a wholly different approach and path to constitutional governance and nationhood. This different approach was expressed and recorded as our ancient and abiding single constitutional phrase "peace, welfare and good government," which phrase later became "peace, order and good government" as section 91 of the British North America Act, 1867, our Confederation statute. This single, cohesive, conceptual and comprehensive phrase has been central to each of our constitutions, from the 1759 Plains of Abraham capitulation until the present.

I shall list Canada's constitutions in chronological order. They are the 1763 Royal Proclamation; the Quebec Act 1774; the Canada Act 1791, also called the Constitutional Act 1791; the Union Act 1840; and famously, the defining and crowning achievement, the British North America Act, 1867, wherein its section 91 amended the earlier phrase "peace, welfare and good government" to the phrase "peace, order and good government," that some lovingly call the P.O.G.G. powers.

Colleagues, we first meet this ancient constitutional phrase, "peace, welfare and good government," in King William III's 1696 Order in Council, given under his hand to the tiny British West Indian Island, Montserrat. In his 1880 book, the *Powers of Canadian Parliaments*, Samuel James Watson, the Parliament of Ontario Librarian, wrote about this recurring, defining phrase, at page 14:

> The words "peace, welfare and good government" occur first in an Order in Council, dated "At the Court at Kensington, the 31st of December 1696." The Order, before declaring the approbation of the King in Council of certain laws passed in "the General Assembly of His Majesty's Island of Montserrat," proceeds: "Whereas His Majesty has been pleased by his Royal Commission of October 26, 1689, to authorize the Governor, Councils, and Assemblies of their Majesty's Leeward Charibee Islands in America, jointly and severally to make, constitute and ordain laws, statutes and ordinances, for the public peace, welfare and good government of the said Islands," . . . .

Honourable senators, we must be mindful that 1696 was just seven years after the 1689 Glorious Revolution when, by the first act of settlement called the 1689 Bill of Rights, the British Parliament settled and ended Britain's terrible civil war strife. These events and this statute had also compelled the abdication of the Stuart, King James II. In his stead, the Parliament installed King William of Orange as King William III of England and his wife Queen Mary as the two joint sovereign monarchs of Britain and the colonies. Mary and her sister Ann, who in 1702 succeeded them as Britain's Sovereign Queen, were both daughters of James II of England.

The British parliament had settled many large and difficult constitutional problems, including the succession to the British Throne, and had ushered in a new and bold era of politics and reforms, advanced by political persons called Whigs. This term has long been forgotten, but I heard about it when I was a child. This British political group, the Whigs, many of whom were aristocrats, was a truly new political party. In ascendancy for the next 150 years, the Whigs became the great British Liberal Party.

The Hon. the Speaker: Excuse me, Senator Cools, but your time has expired. Are you asking for five more minutes? Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Cools: This era was stellar in its parliamentary reforms, achieving representative government, ministerial responsible government, and constitutional monarchy, the distinct features of the British constitution. I close on the Constitution of Canada, its birth, its creation, and its now 150 years of unbroken existence. I thank senators for their attention. I urge all to uphold the proposition that governance and government should never be about personal ambition. It must ever be for the peace, order and good government of our people. I shall repeat section 91 of the Constitution Act, 1867, as the British North America Act, 1867 is now known. The powers of the Parliament are:

> 91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada . . . .

• (1820)

I thank senators for their attention, and I hope that you can stand me for another few minutes, because I intend to proceed from here on to my next one.

The Hon. the Speaker: Senator Cools, before you do that, I'll have to call it. If no other senator wishes to speak on this matter, the matter is considered debated.

(Debate concluded.)

GUY CARLETON—INQUIRY—DEBATE CONCLUDED

Hon. Anne C. Cools rose pursuant to notice of March 1, 2018:

> That she will call the attention of the Senate to the great nation-builders of Canada and its constituting statute, the *British North America Act, 1867* and to this Act's single comprehensive and conceptual framework expressed in section 91, in the words "It shall be lawful for the Queen to make Laws for the Peace, Order and good Government of Canada;" and, to the British soldier-general Guy Carleton, later Lord Dorchester, the architect of the *Quebec Act, 1774,* which Act guaranteed the Roman Catholic religion, the French language and the French Napoleonic Civil Code to King George III's French-speaking subjects in British North America.

She said: Honourable senators, I rise to speak to my Inquiry No. 38, respecting the Fathers of Confederation, and the many who bravely endeavoured to build a constitutional nation, Canada, that would be governed by its abiding and enduring

Constitution, the British North America Act, 1867. Again I call colleagues' attention to the primacy of its well-tested and well-used section 91, which section with majesty, confidence, elegance and poise declares that:

> It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada . . . .

Colleagues, tonight I speak to Canada's constituting statutes, including the Quebec Act, 1774, which guaranteed to British King George III's British North American, French-speaking subjects of Quebec their Roman Catholic religion, their French language and their French Law, the Napoleonic Civil Code. Unlike Canada, the British West Indies island colonies had been granted legislative assemblies and legislative councils very early in their history. In 1989, my birthplace Barbados celebrated 350 years of their House of Assembly, their parliament, which was established in 1639 and is the second oldest after Westminster. By its 1652 Charter, Barbados was granted the bundle of constitutional powers and rights that are embodied in the two constitutional phrases, "no taxation without representation" and "the control of the public purse." In continental America, the absence of these constitutional powers had been a defining factor and cause of their 1776 American Revolutionary War. The 1652 Barbados Charter antedates the constitutions of both Canada and the United States by a century. I shall cite its Article 3, its famous no taxation without representation article, recorded in Sir Robert Schomburgk's 1848 book *The History of Barbados: Comprising a Geographical and Statistical Description of the Island*. This book was republished in 1971 by Frank Cass, London, England. It records the complete 1652 Barbados Charter. Barbados, known as Little England, was seen as Britain's most important colony, where sugar cane, the sugar plantation, and even slavery, were created, developed and established. The 1652 Barbados Charter Articles of Agreement were concluded on January 11, 1652, between the Commissioners of the Right Honourable Lord Willoughby of Parham, and the Commissioners for the Commonwealth of England. Its Article 3 said, at page 280 of Schomburgk's book:

> 3. That no taxes, customs, imports, loans, or excise shall be laid, nor levy made on any of the inhabitants of this island without their consent in a General Assembly.

Honourable senators, it is remarkable that Barbados had achieved this high constitutional point a hundred plus years before the 1759 battle for Quebec at the Plains of Abraham between the forces of Britain's General James Wolfe and France's General Louis-Joseph de Montcalm, and 124 years before the 1776 American Revolutionary War. Clearly, the unique social and historical development of Barbados was enriched by its vast and long experience in constitutionalism and in parliamentary assemblies. But I'm speaking about Canada's Constitution, and the genius and longevity of the phrase "peace, welfare and good government" as the constitutional framework of our government and governance structures.

Colleagues, from the 1759 Conquest and Capitulation at the Plains of Abraham, to the British North America Act, 1867, and until now, our Confederation statutes have consistently provided Canada and Canadians with the single, wise, comprehensive and conceptual framework for governance in Canada, expressed as the single phrase "peace, welfare and good government." Whig and Liberal in origin, this single conceptual governance framework has served Canada well and long.

Honourable senators, I shall now cite Canada's defining constituting documents, the first of which was the Royal Proclamation, October 7, 1763, the Royal Prerogative instrument, given by the hand of Britain's Hanoverian King George III. Thereafter, in the next hundred years, the British Westminster Parliament chose statutes of parliament, rather than royal prerogative instruments, to express and deliver Canada's constitutions. Thereafter, the British Westminster Parliament enacted Canada's constitutions as imperial statutes. I shall cite Canada's constitutions, starting with King George III's 1763 Royal Proclamation, printed at page 1 of the *London Gazette*, Tuesday, October 4 to Saturday, October 8, 1763. This Royal Proclamation ordered:

> We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to our Governors of our Said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall with the Advice and Consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government; And We have also given Power to the said Governors, with the consent of our Said Council, and the Representatives of the People so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare and Good Government of our said colonies, ...

Honourable senators, our next defining nation-building constitutional moment was the constitutional statute of the short title the 1774 Quebec Act, whose architect was the aforementioned British soldier-general of the American Revolutionary War, Guy Carleton, later Lord Dorchester, who had served in British North America four times and had been Governor in Chief of Quebec. This act's long title was An Act for making more effectual Provision for the Government of the Province of Quebec in North America. I had noted earlier that, at the American Revolutionary War's end, Carleton, the able soldier-general, had charge of the safe passage and movement of British soldiers out of America, and the safe exit of British loyalists and freed African slaves who were fleeing the new American Republic, headed to British Canada to resettle there. This British statute, the Quebec Act, 1774, was a large constitutional advance for His Majesty's British, English-speaking subjects, and particularly for His Majesty's French-speaking subjects, to whom it granted expanded rights and freedoms. As I said before, the Quebec Act, 1774, had provided not for government by an assembly, as was later granted by the Canada Act, 1791, but for government by a governor and a council. A political and constitutional milestone, the Quebec Act was printed in the 1930 book *Documents of the Canadian Constitution 1759-1915*, selected and edited by Canada's great

scholar, University of Toronto Professor William Paul McClure Kennedy. The Quebec Act section XII, in Kennedy's book, said, at page 135:

> XII. And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of Quebec, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that Authority, for a certain Time, and under proper Restrictions, to Persons resident there: And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs and Successors, by Warrant under His or Their Signet or Sign Manuel, and with the Advice of the Privy Council to constitute and appoint a Council for the Affairs of the Province of Quebec, to consist of such Persons resident there, not exceeding Twenty-three, nor less than Seventeen, as His Majesty, His Heirs and Successors, shall be pleased to appoint; and upon the Death, Removal, or Absence of any Members of the said Council, in like Manner to constitute and appoint such and so many other Person or Persons as shall be necessary to supply the Vacancy or Vacancies; which Council, so appointed and nominated, or the major Part thereof, shall have Power and Authority to make Ordinances for the Peace, Welfare and Good Government, of the said Province, with the Consent of His Majesty's Governor, or, in his Absence, of the Lieutenant Governor or the Commander in Chief for the Time Being. . . .

Honourable senators, Canada's defining constitutional phrase was repeated again in our next constituting statute, the Canada Act 1791, also named the Constitutional Act 1791. Its long title was, An Act to repeal certain Parts of an Act passed in the Fourteenth Year of His Majesty's Reign, entitled An Act for making more effectual Provision for the Government of the Province of Quebec in North America; and to make further Provision for the Government of the said Province. This great British statute, the Canada Act 1791 was another great and large quantum constitutional leap forward. A consequence of the American Revolution and Britain's loss of the 13 colonies, this British statute's new social and political geography divided Quebec into two new provinces named Upper Canada and Lower Canada. It granted Britain's signature constitutional instruments, being representative government and parliamentary institutions, to its two new provinces, Upper and Lower Canada, and to both their English-speaking and French-speaking populations.

• (1830)

This statute's architect was the remarkable and great British Whig, William Wyndham Grenville, who was born of an old British Norman family. Grenville had been Prime Minister William Pitt the Younger's Home Secretary in 1789 and his Foreign Secretary in 1791. Called to the House of Lords in 1790, Lord Grenville was given the then new ministerial position named the Leader of the Government in the House of Lords. This was the precedent for the position of Senate Government Leader, as Senator Harder knows.

Colleagues, the 1791 Canada Act was driven by Secretary William Grenville's great intelligence, his vibrant love of humanity and his keen sense of justice and fairness. It was Grenville's initiative and brainchild, necessitated by the American Revolutionary War against Britain, and the apprehension of more wars, such as Britain's then looming 1793 war with France, and the looming and large War of 1812 with its United States hostilities against Britain, often expressed as hostilities against the Canadas.

I note the British North America file always had top priority in Grenville's office. His Canada Act established British parliamentary representative institutions in both Upper Canada and Lower Canada's legislatures, both consisting of upper and lower houses. I note that representative assemblies and institutions had been well known to the king's English-speaking subjects of New France, who were qualified voters — meaning property owners who held electoral franchises in property — but not so well known to the king's French-speaking subjects. The upper houses, the legislative councils, were composed of councillors appointed by commissions during life, called life tenure and life estate in office, which meant the legislative councillor's natural life. As proclaimed, the British North America Act, 1867, section 29 enacted life tenure for senators:

> A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

Honourable senators, I note that in 1960 and in 1965 respectively, life tenure and life estate in office for judges and senators was amended to mean tenure to age 75 years. The amended British North America Act, 1867, section 29, headed Tenure of Place in Senate, said:

> (1) Subject to subsection (2), a Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.
>
> (2) A Senator who is summoned to the Senate after the coming into force of this subsection shall, subject to this Act, hold his place in the Senate until he attains the age of seventy-five years.

Colleagues, Canadian senators' tenure is similar to the American Alexander Hamilton's tenure proposals for the United States' Senate. Canadian scholar William Bennett Munroe, in his 1929 book *American Influences on Canadian Government*, published by Macmillan Toronto, wrote at page 19:

> If Alexander Hamilton could have had his way at Philadelphia in 1787 he would have inserted in the Constitution of the United States four provisions which did not get into that document, to wit: (a) senators chosen for life; (b) federal appointment of state governors; (c) the right of the federal government to disallow state laws; and (d) a general grant of powers to the federal government carrying with it all residual powers.
>
> Here is the phraseology of Hamilton's plan on these four points:

> Art. III, 6. The Senators shall hold their places during good behaviour, removeable only on conviction on impeachment. . . .
>
> All these provisions, rejected by the Philadelphia Convention in spite of Hamilton's urging, went into the Quebec Resolutions at Sir John A. Macdonald's insistence. If Macdonald is entitled to be called the Father of the Canadian Constitution, it would appear that Alexander Hamilton has some claim to be designated as its grandfather.

Professor Munroe also wrote at pages 18-19:

> This striking similarity in the American and Canadian apportionment of powers is not a mere coincidence. On the contrary, we know that the framers of the Quebec Resolutions had the American proceedings of 1787 in front of them and were to a considerable extent guided thereby. Macdonald, for example, had carefully read Madison's *Debates in the Federal Convention of 1787*, including Alexander Hamilton's *Draft of a Constitution for the United States*, as incorporated by Madison in his book. Macdonald's personal copy of this volume is still extant with his own pencilled notations in its margins. In many instances these marked passages are the proposals of Hamilton in favour of making the central government strong.

Queen's University Professor Arthur Lower, in his 1958 book, *Evolving Canadian Federalism*, confirms Munroe's work. Lower, in the chapter he himself authored, headed "Theories of Canadian Federalism, Yesterday and Today," wrote at page 13:

> . . . The present writer was told of this many years ago by Professor W.B. Munroe, of Queen's and Harvard, into whose possession this personal copy had come: Munroe used this and referred to it in his *American Influences on Canadian Government*. . . .

Colleagues, Professor Munroe informs us that John A. Macdonald said, at page 21:

> In moving the adoption of these resolutions in the Legislative Assembly of Canada, for example, he paid this high tribute to the American Constitution:
>
> It is the fashion now to enlarge on the defects of the Constitution of the United States, but I am not one of those who look upon it as a failure. . . . We can now take advantage of the experience of the last seventy-eight years during which the constitution has existed, and I am strongly of the belief that we have, in a great measure, avoided in this system which we propose for the adoption of the people of Canada, the defects of which time and events have shown to exist in the American constitution.

Honourable senators, I end now by noting yet again Sir John A. Macdonald's undeniable genius. About this, Professor Munroe informs us, at page 20, that in 1864, John A. Macdonald had drafted 50 of the 72 Quebec Resolutions.

I thank senators for their attention. I hope senators have found this information as exciting as I have. I hope for senators to share some of my enthusiasm and affection on this subject.

Colleagues, it is important to know where we came from. We must understand that, when the Americans drafted their Declaration of Independence, it was poetic:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Canada never had such poetry in our Constitution. We had "peace, order, and good government," which we have had for 150 years.

Thank you, honourable senators.

The Hon. the Speaker: If no other senator wishes to speak, this matter is considered debated.

(Debate concluded.)

(*At 6:38 p.m., the Senate was continued until tomorrow at 2 p.m.*)

CONTENTS

Tuesday, April 24, 2018

CONTENTS

Tuesday, April 24, 2018