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The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Tuesday, May 22, 2018

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

Prayers.

SENATORS' STATEMENTS

HUMBOLDT BRONCOS

Hon. Pamela Wallin: Last Friday, two teachers and eight young people lost their lives in a school shooting in Santa Fe, Texas. I couldn't help but think about the parents and the families there, and then that brought to mind those here at home.

Following the tragic bus crash that stole so many young lives and left holes in the hearts of families and friends of the Humboldt Broncos hockey team, we all made a promise that "once the cameras are gone and the hockey season comes to an end," we will be there for you, thinking and praying and being a friend.

Too often following tragic events our focus quickly shifts, given our short attention spans and sound-bite-driven lives. But these families still need our support.

The Broncos, since the April 6 crash, have been adjusting to a new reality and recovering, both emotionally and physically.

Ryan Straschnitzki, paralyzed from the waist down, is in physiotherapy twice daily and is making remarkable progress. From learning how to move from his bed to his wheelchair to turning on his side, Ryan is working hard every day on his recovery. His stated interest in playing sledge hockey once recovered is still a goal. Ryan, we are cheering you on.

Kaleb Dahlgren survived a brain injury that fewer than one in ten ever survive. Incredibly, doctors have not found any lasting damage. Since the accident Kaleb has been back to Humboldt, has visited the Grade 5 students he volunteered with and is continuing his work as an ambassador for the Juvenile Diabetes Research Foundation. Recently, he signed to play with the York University Lions hockey team this fall, depending on his recovery. Kaleb, we are cheering you on.

Jacob Wasserman was paralyzed from the waist down. A Humboldt native, Jacob was a nominee for the Canadian Junior Hockey League rookie of the year award. Jacob is currently doing his physiotherapy sessions as well and also hopes to play sledge hockey once he has recovered. Jacob, we are cheering you on.

Honourable senators, let's continue to remember, support and cheer on these young men in their recoveries and be friends and allies to the Broncos' community and families. Even though the cameras are gone and the hockey season has come to an end, I want to say to the families: We are still here, we are still praying for you and thinking of you, and we will continue to cheer you all on.

And one final thought: Brody Hinz, a gifted statistician for the Broncos, living as he did with Asperger's, predicted the Vegas Golden Knights would make it to the Stanley Cup playoffs this year. Your prediction was right, Brody. Your gift for numbers will live on, and we'll be cheering on the Vegas Golden Knights with all those Canadian players.

DARKNESS INTO LIGHT

SUICIDE AWARENESS AND PREVENTION

Hon. Jane Cordy: Honourable senators, I rise today to speak to you about an event that took place here in Ottawa, a little over a week ago.

May 12, 2018, was the third annual Darkness Into Light event for suicide awareness and prevention. This five-kilometre walk takes place all over the world and in several Canadian locations, including Vancouver, Calgary and Ottawa, just before the dawn breaks.

In Ottawa, participants gathered at the Ron Kolbus Lakeside Centre at 4:45 a.m. for a 5 a.m. departure. People of all ages, and even a few dogs, gathered for a photo around the message "Hope Ottawa" and then set off carrying tea lights and flashlights to light the way before the sun rose over Britannia Park and Beach.

Darkness Into Light symbolizes a journey for those who suffer with depression and mental crisis. By walking together in darkness, with the support of many, eventually it is possible to see the light, and a new day will break.

This year's Ottawa event saw the participation of just over 170 people. Among them were Irish Ambassador Jim Kelly and Mayor Jim Watson, who spoke at the post-walk gathering where all joined for tea and coffee and to sing "Lean On Me" accompanied on the guitar by singer-songwriter Graeme Weeks.

The walk began and is in support of Pieta House in Dublin, Ireland. Each location picks a local charity to support. In Ottawa, money raised goes in support of the Youth Services Bureau. The Youth Services Bureau is an important organization that offers many services to youth in need. Mental health services are of particular note, and services for those dealing with youth in crisis.

Honourable senators, as Mental Health Week was May 7 to 13, I wanted to highlight this initiative. Should you find yourself in Ottawa for next year's walk, or you are able to find a walk in your area, I highly encourage you to participate. 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 representatives from the Canadian Hemochromatosis Society: Mr. Ian Hilley, Mr. Paul Johnston and Ms. Kay Easun. They are the guests of the Honourable Senator Wells.

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

Hon. Senators: Hear, hear!

HEMOCHROMATOSIS AWARENESS MONTH

Hon. David M. Wells: Honourable senators, you may be aware, or you will be aware now, that May is Hemochromatosis Awareness Month across Canada. Hemochromatosis is an iron-overload disorder that can lead to severe health complications and even premature death.

Colleagues, hemochromatosis can sneak up on you if you're unaware that you have it. The iron builds up in your blood and builds up further in your organs. People with hemochromatosis, if they're unaware they have it and don't do any mitigation strategies, can develop dementia, liver disease, heart disease, kidney disease — all things that will eventually lead to premature death.

Colleagues, it's estimated that over 80,000 Canadians are living with hereditary hemochromatosis. Many of them don't know they have it. In fact, most of them don't know they have it.

• (1410)

I didn't realize I had it until I was 38 years old. Normal ferritin levels are around 30 to 50. My ferritin levels at the time I discovered I had it were over 1,200.

Colleagues, to mitigate, it's required that you have phlebotomies. You undergo a process of regular bloodletting. The iron-rich blood is taken from your body, and your marrow makes fresh non-iron blood. That keeps your ferritin levels down.

The only cure for this is awareness. There's no other way to describe having it, because you don't know you have it until you start to undergo organ failure on a massive scale.

Colleagues, there's a reception sponsored by the Canadian Hemochromatosis Society today at 5 p.m. to 7 p.m. in Room S-256 Centre Block to learn more. I will be there speaking on it.

I'll continue to use this slot that I have. This is our fourth year in a row where we build up awareness in the Ottawa chapter. There are chapters across Canada that are supportive through fundraising efforts and raising awareness.

Colleagues, I hope to see you — especially if we're suspended for votes — in Room S-256 at five o'clock.

MS CARNATION CAMPAIGN

Hon. Michael Duffy: Honourable senators, I'm delighted to report that this past Mother's Day, May 13, volunteers in my home province of Prince Edward Island staged another successful MS Carnation Campaign.

This important work is carried out by a small but dedicated group of volunteers who sell carnations — symbols of hope — for people living with MS. The campaign raises approximately \$20,000 each year and is used to help fund research programs and services for approximately 1,000 Islanders living with MS.

Multiple sclerosis is a disease that knows no provincial boundaries. Across Atlantic Canada approximately 7,000 people are living with MS. That's high considering our region's population.

Canada has one of the highest rates of MS in the world. That's right; MS is the most common neurological condition among young people. Most are diagnosed between the ages of 15 and 40.

This chronic disease has no cure, and the cause is still unknown. MS impacts all Canadians, not only the individuals living with the disease but also their families, friends, workplaces and health care teams.

MS is unpredictable, and each person's journey is unique. Symptoms are often invisible, and the disease is episodic. That means people with this disability have periods when the disease is in remission and so are able to go back to work, but then, bam, the disease comes back. Because of this, people living with MS need flexibility and accommodations in the workplace to allow them to manage the disease.

We need to create a national support system that recognizes the changing dynamic of disability. We need better income and employment supports for people living with MS, better access to medicines, and accelerated research to find a cure.

Today, in honour MS Awareness Month, I'm wearing an MS pin to show solidarity with the entire MS community across the country.

Colleagues, I hope you will join me in saluting the many volunteers who have been working throughout May, MS Awareness Month, to help end this debilitating disease.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of representatives from the Ontario Association of Children's Aid Societies and Peel Children's Aid. They are the guests of the Honourable Senator Oh.

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

Hon. Senators: Hear, hear!

CHILD WELFARE IMMIGRATION CENTRE OF EXCELLENCE

Hon. Victor Oh: Honourable senators, I rise today to speak about the upcoming launch of the Child Welfare Immigration Centre of Excellence, established in partnership with the Ontario Association of Children's Aid Societies and Peel Children's Aid.

The centre of excellence will provide expert knowledge, guidance and services to children's aid societies across the province, serving children and youth in care who have immigration status issues and require support to become permanent residents and, ultimately, Canadian citizens.

Each year we welcome thousands of immigrants and refugee families, and some children and youth settling in our country come into care because they are in need of protection due to abuse, neglect and abandonment. Helping them obtain permanent residence and, ultimately, citizenship in a timely manner can significantly impact their lives, particularly by ensuring that they have access to services such as education and employment.

The failure to effectively respond to these cases will continue to prevent young persons in care of reaching their full potential and even jeopardize their ability to remain in Canada as adults.

As the first of its kind in Canada, the centre of excellence will help bridge this gap. It will serve as a model for jurisdictions across the country seeking to improve the safety and permanency of children and youth with unresolved immigration issues. I strongly hope that all governments at all levels will come together to support the long-term sustainability of the centre of excellence, which is currently funded until the end of March 2019.

Colleagues, we have a collective duty to give primary consideration to the best interests of children and youth in care, especially those from refugee and immigrant backgrounds. The centre of excellence will play a unique role in upholding the rights of this population and ensuring that we, as a society, fulfill our obligation to act in their best interests.

[Translation]

LA LIBERTÉ

ONE HUNDRED AND FIFTH ANNIVERSARY

Hon. Raymonde Gagné: Honourable senators, two days ago, on May 20, *La Liberté*, the only French-language newspaper in Manitoba, celebrated its 105th anniversary. That is quite the accomplishment, considering that almost all western media outlets are currently facing major challenges. Here in Canada, we were all shocked by *La Presse*'s decision to separate from Power Corporation and become a not-for-profit organization. It goes without saying that, large or small, francophone or anglophone, media outlets are facing tough times and, in most cases, they have not found a model that ensures profitability.

That challenge is magnified a hundredfold for minority francophone media outlets. Their audience is an official language minority community that is already in survival mode, and they will obviously have a much smaller customer base. They play a role in helping communities develop and they constitute a public space that helps promote the French language. It has been shown that the more French-language media francophones have in their environment, the more they speak French. There is no doubt that francophone media outlets provide a presence and connections that are essential to francophone identity and to the building of francophone identity in Manitoba.

La Liberté is not a luxury. It showcases Manitoba's francophonie and its diversity. It gives a voice to Manitoba's francophone and francophile communities. It features francophones who help highlight the stories, accents, and colours of the francophonie.

It goes without saying that when *La Liberté* was founded back in 1913, the newspaper played a key role in helping this community flourish. Today, it is indispensable to the community.

ROUTINE PROCEEDINGS

SCRUTINY OF REGULATIONS

FOURTH REPORT OF JOINT COMMITTEE PRESENTED

Hon. Joseph A. Day (Leader of the Senate Liberals), Joint Chair of the Standing Joint Committee for the Scrutiny of Regulations, presented the following report:

Tuesday, May 22, 2018

The Standing Joint Committee for the Scrutiny of Regulations has the honour to present its

FOURTH REPORT

Further to the Government Response to the Joint Committee's second report, presented in the Senate on Wednesday, October 25, 2017, your Committee now presents its fourth report entitled *Report No. 92 — Accessibility of Documents Incorporated by Reference in Federal Regulations — Reply to the Government Response to Report No. 90.*

Pursuant to Rule 12-24(1), the Senate requests a complete and detailed response from the Government to this report, with the Minister of Justice being identified as minister responsible for responding to the report.

Respectfully submitted,

JOSEPH A. DAY
Joint Chair

(For text of report, see today's Journals of the Senate, Appendix, p. 3370.)

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

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

• (1420)

BILL TO CHANGE THE NAME OF THE ELECTORAL DISTRICT OF CHÂTEAUGUAY—LACOLLE

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-377, An Act to change the name of the electoral district of Châteauguay—Lacolle.

(Bill read first time.)

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

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

[*English*]

THE SENATE

NOTICE OF MOTION TO ENCOURAGE THE GOVERNMENT TO INSTITUTE A NATIONAL SILVER ALERT STRATEGY AND NETWORK

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

That the Senate encourage the Government of Canada to work with provincial and territorial governments and other stakeholders to institute a national Silver Alert strategy and network, modeled after those of the provinces of Alberta and Manitoba, to facilitate the location of cognitively impaired adults who become lost; and

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

LEGAL AND CONSTITUTIONAL AFFAIRS

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

Hon. Serge Joyal: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I give notice that, later this day, I will move:

That the Standing Senate Committee on Legal and Constitutional Affairs have the power to meet on Wednesday, May 23, 2018, at 3:15 p.m., even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

[The Hon. the Speaker]

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

Hon. Senators: Agreed.

The Hon. the Speaker: Accordingly, it's ordered that this motion be placed on the Orders of the Day for later this day.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to the motion adopted in this chamber on Thursday, May 10, 2018, Question Period will take place at 3:30 p.m.

ORDERS OF THE DAY

FOOD AND DRUGS ACT

BILL TO AMEND—THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Stewart Olsen, seconded by the Honourable Senator White, for the third reading of Bill S-214, An Act to amend the Food and Drugs Act (cruelty-free cosmetics), as amended.

Hon. Lillian Eva Dyck: Honourable senators, I rise today to speak as critic at third reading of Bill S-214, An Act to amend the Food and Drugs Act (cruelty-free cosmetics).

I would like to thank the witnesses that appeared before the Standing Senate Committee on Social Affairs, Science and Technology and for the committee for welcoming me at their meetings on this bill.

The intentions of the bill are to ban the sale of any cosmetics containing ingredients that have been tested for efficacy or safety using animal tests four years after the bill comes into force, to ban all animal testing done for any ingredients to be used in cosmetics and to ban the use of the results of any animal studies conducted for other purposes on any ingredients to be used in cosmetics four years after the bill comes into force. The bill also includes a provision for ministerial intervention to allow the Minister of Health to override the new prohibitions when there is no alternative to animal testing of common cosmetics or ingredients for which there are no acceptable substitutions.

From the outset I would like to mention an amendment initiated by the sponsor passed at the committee stage. The amendment dealt with a concern I noted in my second reading speech, where I worried that the absence of a delayed implementation clause would render products currently on the shelves in Canadian stores unsellable.

The bill now includes a four-year phase-in period after Royal Assent. At committee we heard that this was the approach used by the European Union when they first introduced their testing ban in 2009. The sales and marketing ban came into force four years later, in 2013.

While I commend my colleague Senator Stewart Olsen, the sponsor of the bill, for initiating this piece of legislation and going through the legislative process in the Senate, the overarching question and concern I still have is whether legislation is in fact needed in Canada at this point in time. There seems to be no real need for this bill.

I think this for three reasons: one, the current Canadian cosmetic market; two, market forces, which are already changing the industry; and three, the role of Health Canada as the main regulator.

First, colleagues, we must understand where Canada currently sits in the cosmetic industry. Canada conducts only 1 per cent of cosmetic product animal testing. The question, colleagues, is whether legislation is needed to address a very small Canadian contribution to animal testing.

Most cosmetic testing is done in other jurisdictions. As Mr. Darren Praznik, President and CEO of Cosmetics Alliance, stated, the reality is that 99.9 per cent plus of all cosmetics in Canada and the U.S.A. do not involve animal testing. That is, virtually no animal testing is being done.

As has been recognized by the Bill's sponsor, Senator Stewart Olsen, the reality today is that the use of animal testing with respect to cosmetics is virtually non-existent in Canada, as well as most of the world. The vast majority of safety testing in the cosmetics industry — more than 99% — does not use animal testing. There is no animal testing required to develop cosmetic products, nor is there any regulatory requirement or scientific necessity for animal testing on finished cosmetic products.

He further stated:

• (1430)

We have a lot of ingredients to work with or reformulate, so there's no need for any new animal testing. That's why we can say 99.9 per cent-plus, because where it is on those rare opportunities or circumstances where you have a new ingredient or a new use for an existing ingredient whose safety you have to now prove for that use, for the toxicological end points that the regulators will require, there may be no alternative to animal testing to do it.

In addition, currently, Canada is mainly an importer of cosmetic products. We import 69 per cent of the cosmetics on our shelves, and of that percentage, we import most cosmetics, 79 per cent, from the United States. Naturally, our first question would be to see whether the U.S. has moved in any significant way to adopt a similar ban.

The sponsor indicated that a similar piece of legislation is in the House of Representatives. That bill is the "Humane Cosmetics Act." It was first introduced in 2014 and again was

introduced in 2015 and 2017. The bill has not progressed beyond referral to the Committee on Energy and Commerce's Subcommittee on Health. There have been no hearings at this subcommittee on this bill. The bill had significant bipartisan support in the House of Representatives, and yet this bill has not progressed.

I bring this point up to highlight the importance that Bill S-214 or any other like ban should be enacted with consultation and agreement with our largest trading partner not only for this industry but a partner in our free trade union under NAFTA. To date, unfortunately, this piece of legislation in the States has not progressed at a rate that would indicate there is steadfast majority support from Congress and the United States government to actually enact such a ban.

If we go ahead with Bill S-214 and it becomes law but the U.S. has not passed a similar law, then cosmetics imported from the U.S. may be adversely affected. Senator Stewart Olsen said:

Yes, if it was manufactured in the United States four years from now and it contained an ingredient that had been tested on animals, then no, it could not be sold here without a ministerial approval.

But, as I noted earlier, very little animal testing is actually done in Canada or the U.S.

Colleagues, I also wanted to highlight another trading partner we must also consider in the context of Bill S-214: China. While we only import around 3 per cent of cosmetics from China, we must be mindful of China's global impact on the cosmetics industry. Many experts believe that China will soon become the world's largest cosmetics market. China currently requires that all cosmetics be tested on animals in their jurisdiction.

As stated by the sponsor, Bill S-214 is an opportunity for Canada to be a moral leader and pressure other markets, such as China, into following suit. However, I find that assertion questionable.

During the committee study, several senators asked questions about how Bill S-214 would actually prove to be a moral leader and thus force other countries and markets to adopt the ban on cosmetic animal testing. Under questioning from Senator Seidman, Mr. Seidle from Humane Society International confirmed that, under the bill, any product that currently is manufactured in Canada without animal testing and exported to China would require the Chinese government to perform their own animal testing before it would be authorized for sale in China. This effectively just moves animal testing off Canadian shores but still requires these products to be tested on animals in China. As Mr. Praznik said:

If this bill became law I would suggest there's probably virtually no animal in Canada whose numbers would change one bit. It certainly didn't in Europe, in the case of Great Britain, for example. I'm familiar with the numbers.

This was reinforced by Hilary Jones, Global Ethics Director, LUSH Fresh Handmade Cosmetics. She said:

But as regards products going out, absolutely. There are European cosmetics companies selling into China, and they are perfectly legally able to do that because it is the Chinese government that is doing the testing on their shores, not on ours.

In addition, we must be mindful that this bill, if passed, would effectively ban new ingredients that are derived from animal testing to be excluded from cosmetics. It does not ban the use of the already approved 11,000 or so ingredients currently in cosmetic formulations that were derived from animal testing.

My question is how effective can a cosmetic animal testing ban be if it is still required by the soon-to-be-largest cosmetics market in the world, China? Even after the European ban from 2013, this was not enough for China to move toward such a ban. The European Union, currently the world's largest cosmetics market, was not able to push China toward a cosmetic animal testing ban. I am skeptical with the assertion that one in Canada will.

Furthermore, as noted by Ms. Jones, the crux of the leadership role is on the marketing ban for countries wanting to sell in Canada. She said:

It's about the goods coming into Canada and into Europe from those animal-testing companies that this bill will hopefully, if you leave your marketing ban intact, provide the leadership on. Those countries then have to fall into line with you to sell to your nationals.

Colleagues, there still, however, remains uncertainty on how this ban would deal with cosmetics purchased over the Internet. This bill does not regulate e-commerce. Cosmetics from China are able to circumvent the ban and be sold to Canadian consumers. Mr. Seidle stated at committee:

E-commerce is not addressed in this bill, so that is an independent question for Health Canada in terms of how the department, which is responsible for the regulation of safe cosmetics within our borders, would address that.

Health Canada did not comment on how they would regulate this. I will come back to the role of Health Canada and this bill later in my remarks.

My second reason for questioning the need for Bill S-214 is whether the legislation is necessary, given that the market has already moved toward so-called cruelty-free cosmetics. As Mr. Praznik said:

In fact, in our industry, animal testing with respect to finished cosmetic products, which is what our companies produce, has virtually been eliminated.

The reality is that little or no animal tests are done, even for purposes such as drug development, particularly ones like the use of live rabbits for eye irritation tests. As stated in the Cosmetics Alliance Canada's brief:

For more than three decades, the cosmetics and personal care products industry internationally, including ingredient suppliers, have been leaders in the research and development of alternatives to animal testing and have made greater advances in their development and use than other sectors. To date, significant progress has been made in the development of cell and tissue cultures which has allowed industry to conduct safety tests for skin and eye irritation, dermal penetration and absorption, phototoxicity and genotoxicity without the use of animal testing.

So those terrible tests that we see pictures of are no longer in use.

• (1440)

To continue the quote by Mr. Praznik, he said:

Cosmetics Alliance Canada has always supported the development of alternative methods to animal testing and their adoption by regulatory authorities to meet regulatory requirements for human, environmental and workplace safety and health. We are proud of the reality that animal testing has been virtually eliminated in our sector. . . . Despite this reality, the public perception as it relates to cosmetics is often misleading; for example, the Draize test (eye irritation study) was developed in the 1940's using rabbits but has long been replaced by non-animal alternatives.

In her opening remarks at the committee study, Senator Stewart Olsen stated that:

The cruelty-free cosmetics market is growing. A recent report from Market Research Future indicates that the market share owned by cruelty-free manufacturers will expand by 6.1 per cent over the next five years. It is possible to be a strong Canadian manufacturer and retailer and compete in the global market without relying on animal testing.

The sponsor of the bill rightly stated the high poll numbers of Canadians that are in favour of cruelty-free cosmetics. The consumer demand has pushed the market to a point that virtually almost all cosmetics in Canada are already cruelty free, all without a legislated ban. Again, I am left with the question why this piece of legislation is needed when consumers have already shifted the market to so-called cruelty-free products.

Given that only 1 per cent of cosmetics testing is done in Canada — information gained from a meeting with a representative from the Humane Society — and given that the vast majority of Canadians oppose animal testing, given that companies which produce animal test-free cosmetics are highly profitable and competitive, and given that the market for such products is expanding, it seems that these are sufficient conditions for cosmetics companies to switch to animal test-free products without legislation to force them to do so.

Furthermore, colleagues, sometimes there is a valid reason for animal testing to be done, even on ingredients destined for a cosmetic. This animal testing would be justified as it would be for safety reasons to protect human health. The reality is that on rare occasions animal testing needs to be done to establish the safety of a new ingredient, especially for new preservatives.

There are some areas where science has just not been able to produce an alternative to animal testing that would be sufficient to prove the toxicological point. This is from Mr. Praznik again:

It is this area where you have a new ingredient and new use of an ingredient and there is no other way to prove safety to a regulator without that test. That is the area we are talking about. The ingredients we are particularly concerned about are things like preservatives

They are a key ingredient in cosmetics, which keeps them safe for use.

How do you as a committee say some day that we couldn't use a good preservative in a product because it required an animal testing component, so we used a lesser preservative that might not be as safe.

Furthermore, with this bill a new preservative which has been proved safe by animal testing could be used for pharmaceuticals but could not be used as an ingredient in a cosmetic.

On those rare occasions, the ministerial override will not work as intended. In answer to a question asked by Senator Raine about this, Mr. Praznik said, "The current wording we don't think would work." So the ministerial override he thinks won't work.

Lastly, perhaps most importantly, I have a strong concern about the role and responsibility of Health Canada as it relates to this bill. As I mentioned earlier, the witnesses stated that it would be up to Health Canada how they would regulate cosmetics over e-commerce. Another issue is that these cosmetic products could fall into one of three regulations under Health Canada, each with different penalties associated. As Mr. Praznik stated:

So one of the real practical problems is a lipstick. Depending on whether it has an SPF claim and the active ingredients, it could be covered by one of three sets of regulations, as could a shampoo, as could a toothpaste. It's not like we're easily going into the Food and Drugs Act to say we can pull out one particular group. I think the senator has tried to recognize that with some of this bill, but it does create some issues.

Each of those regulations has different requirements. For example, if this became law and it was breached today, the lipstick that was a drug would have a \$5 million penalty for that breach, but the natural health product or the cosmetic would have only a \$5,000 penalty for that breach.

During the committee study, we became aware that Health Canada is currently undergoing an overhaul of their self-care products framework to fix the issue with different regulations and classifications of self-care products. From the Cosmetics Alliance brief that was submitted to the committee, it states:

This complex legislative, regulatory, and administrative environment that is currently applicable to cosmetics and other personal care products . . . has resulted in a major effort by Health Canada to reform this entire area.

What is now referred to by Health Canada as the Self-Care Regulatory Framework, was initiated by former Health Minister Rona Ambrose and embraced by the new Government in 2015 with the assignment of a five-member team dedicated solely to this project. Since 2016 there have been numerous consultations and stakeholder sessions held across Canada which have received many stakeholder presentations on the regulation of cosmetics and other self-care products.

We understand that the framework is in the final stages of development and is expected to require legislative amendments to the *Food & Drugs Act*, and its regulations. Any provisions with respect to animal testing on a specific category of statutorily defined products will need to take into account the new legal and regulatory framework being developed as part of this major reform initiative.

For us to pass this bill without any knowledge of how this may fit into the new framework may lead to implementation and consequences down the road. Mr. Praznik stated:

. . . whatever will come out of this process has to fit within that self-care framework, because it is probably a once-in-a-lifetime reform in these products and we wouldn't want to have unintended consequences. We would suggest that needs to be incorporated into the thinking around this bill to see how it would fit.

According to Mr. Praznik, the bill lacks clarity, and he suggested working with Health Canada. Furthermore, though he had brought amendments, they were not considered at the committee. He said:

There is no pressing urgency that we will save animals today in Canada because I don't think there are any to save. What this will do is send a very symbolic message, so getting the details right and making sure we are not creating absurdities in our regulation is important.

In its submission, Cosmetics Alliance Canada stated:

Given the complexity of the current Canadian *Food & Drugs Act*, the interplay with Environmental and Workplace Health & Safety requirements, and the major reform of the "Self-Care Products Framework" currently underway, we believe that Bill S-214 and any amendments must have the engagement of Health Canada. To do otherwise would be to miss an opportunity to "get this right" and avoid a host of further inconsistencies and unintended consequences that are now part of the current regulatory framework for cosmetics.

And to quote Mr. Praznik again:

The one caveat I would put on it is the real key people who need to be in the room are Health Canada and the people working on the framework because they're the ones who have to make it work.

Colleagues, during the committee's study, it was unfortunate that we were not able to ask officials from Health Canada about how they see this bill in the context of their current overhaul of regulations. Health Canada officials were invited to the meeting and were in the room, however, they were only allowed to comment once we went into clause by clause. I think that was a missed opportunity to get a broader understanding of how this bill fits into Health Canada's longer-term vision. Without that vital testimony and understanding, I certainly have significant concerns in passing this legislation.

• (1450)

In closing, senators, there are still too many outstanding questions that have not been answered at this time for me to support this piece of legislation. I think it would be prudent to work with Health Canada in their overhaul of the framework on self-care products.

Furthermore, the changes being sought by this bill — elimination of animal testing in the cosmetic industry — are already being achieved by consumer demand and market mechanisms. And on the rare occasions Public Safety requires animal testing of new preservatives, a major and important health safety ingredient in cosmetics, it is apparent that Bill S-214 overlaps the government initiatives, and I suggest that Bill S-214 not proceed because of the lack of input of testimony from government officials and potential complications and/or duplications of efforts. I will not vote in favour of this bill.

Hon. Carolyn Stewart Olsen: Would the senator take a question?

Senator Dyck: Certainly.

Senator Stewart Olsen: Thank you very much for your very detailed critique of the bill. I do understand what you're saying. However, I would ask you, would you agree or not that Mr. Praznik has a lot of money in the game? You quoted extensively the cosmetics industry's argument against the bill, and that is precisely what the bill is trying to achieve.

The second part to my question is this: I question their facts that 99 per cent of cosmetics are now manufactured without animal testing, when CTV just did a documentary showing

animal testing labs within this country and showing the animal testing. I also think that perhaps you have not taken into consideration the fact that the cosmetic industry is a very wealthy industry. They should be putting money into non-animal testing developments that are coming to the fore. We have in Canada an institute in Windsor, which is doing precisely that.

While I appreciate your critique, I noticed that it was very contradictory. Would you help me out on those? Thank you.

Senator Dyck: Thank you for those questions.

On the first one about the Cosmetics Alliance having a vested interest, they do, but, on the other hand, they didn't criticize the bill saying that it shouldn't be passed. They said that it was symbolic. I'm the one saying it shouldn't be passed. They were being very careful and generous.

Part of that is because they don't want to be seen as animal haters. This is the type of bill that elicits a certain amount of emotion from people, so they were somewhat more neutral on their assessment of the bill. It's I who am saying there's no real need for the bill because of the level of animal testing.

With regard to the 99.9 per cent, you probably will find rogue labs anywhere on anything, even with the animal testing regulations that are done for research. You will find rogue labs doing things they're not supposed to do under the rules. I can't remember the name of the group that oversees scientific animal testing, but we would have that group come to our labs once a year to inspect and make sure we were doing things properly. There will always be rogue labs, but I don't think it would amount to a huge number. There will always be the odd few that will do that.

With regard to whether they should be putting money into non-animal testing, as I said in my second reading speech, tremendous gains have been made on alternatives to using whole animals: the cell culture, the tissue culture, the use of bovine eyes from the abattoir instead of using rabbit eyes. Major advances have been made. The kinds of tests you typically see when people talk about cruel animal tests, like the dripping of things into rabbits' eyes, those things are not done anymore.

I don't know whether the Cosmetics Alliance actually puts money into that. Perhaps they do. I can't answer that question.

(On motion of Senator Gagné, for Senator Sinclair, debate adjourned.)

TRANS MOUNTAIN PIPELINE PROJECT BILL

THIRD READING—DEBATE

Hon. Douglas Black moved third 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.

He said: Colleagues, I have the privilege this afternoon of rising on third reading of Bill S-245. The intent of the bill before this chamber is to declare Trans Mountain Pipeline to be for the general advantage of Canada.

There are two principal reasons for this bill. The first reason is that it provides a foundation for federal action. Second, it provides certainty that Kinder Morgan is requesting in order to allow them to continue their work in constructing the Trans Mountain Pipeline.

Before proceeding, I have a number of things I would like to offer. First, I'd like to thank Canadians, who in the thousands, if not the tens of thousands, have reached out to me and to other senators expressing their views. Second, and unusually, I also want to thank the media. The media is speaking with one voice on the necessity of ensuring that the Trans Mountain Pipeline be built. I will refer subsequently to a number of them. But I am appreciative of that because we all, as senators, whenever there's a message to be delivered, need that message to be amplified. Third, I wish to thank senators, particularly our colleague Senator Neufeld from British Columbia, who has seconded this bill.

Senator Neufeld, as I think we all know, was, before coming to this place, the Minister of Natural Resources in the province of British Columbia, and he has a fundamental understanding of the importance of this pipeline to his province. But I also wish to thank other senators, particularly those senators who have raised questions respecting this bill, because it has always been done in a careful, considered and sincere way, and I have appreciated every question and hopefully have been able to deal with those that have been raised.

Many Canadians have indicated to me that we are now doing the type of work that the Senate is supposed to do. We're supposed to tackle national issues. We're supposed to carefully and in a considered way review issues. And we are supposed to take leadership, all of which is being done in this circumstance.

The bill before us is extraordinarily straightforward. As I've indicated, the one operative clause is to simply declare the Trans Mountain Pipeline Project and related works to be for the general advantage of Canada.

There was at the Transport and Communications Committee a comprehensive debate on the issues, and certain amendments were proposed for consideration. Perhaps some of those amendments will be proposed in the chamber this afternoon. I'm not sure. But I would like to say in a general way that those of us in this chamber who have ever involved ourselves with legislation, or certainly those of us in this chamber who are lawyers, understand that the principle of drafting is you say what you need to say and you say no more. And that is precisely what the legislation does.

Now, specifically, in terms of the concept of amendments to the bill, we must keep in mind, as I think I've indicated already, that the purpose of the legislation is to provide a foundation for federal action to get the pipeline built in accordance with legitimate authority.

• (1500)

It is not for us to legislate or attempt to legislate our views on various matters respecting the pipeline. This has been dealt with by the NEB and by the British Columbia environmental assessment board. So while we may have views on the significance of the consultation with municipalities or while we may have views on pipeline safety or while we may have views on the demand for energy globally, these concepts do not appropriately find themselves into a piece of legislation sitting at the Senate, particularly, I would argue, honourable senators, when, in fact, these matters have been dealt with exhaustively by the panels that were entrusted to deal with them.

Honourable senators, I will have two components to my remarks this afternoon: First, a quick review of what it is we know. Second, I wish to address the various arguments that have been put forward in opposition to Bill S-245. To any of you who have served on committees with me, I will endeavour to do it in the same way that I operate in committees. I'll be short, and I'll be to the point.

What we do know is that, after seven years of consultation, Kinder Morgan, on behalf of the Trans Mountain expansion, has received, from both the National Energy Board and the British Columbia environmental board, all certificates required to allow them to advance with the project. They have acquired legally enforceable rights. As an aside, there was a question at the Transport Committee, I believe by Senator Tkachuk. I remind senators that they have acquired legally enforceable rights, and, if their ability to utilize those rights is interfered with, one can only assume that they acquire another set of rights, which, of course, will be to sue for damages. That is not our concern, but that is a reality.

We know that Trans Mountain has ceased work on the project as they cannot proceed to spend the money they're spending, given the uncertainty and the security concerns. We know that hundreds of people have been arrested for illegally endeavouring to interfere with the project. We know that officers have been injured. We know there are ongoing threats. We know that Burnaby is not paying overtime for police. We know that the Squamish band is the most aggressive in terms of their opposition — and that is fine. They're entitled to do that, but we know the comments that have been made there. The comments that were made by the Squamish were underlined by the chief of the Squamish, when he appeared before committee. He indicated to senators that, if the project advances, Canada will never see civil disobedience like we should prepare ourselves to see, and, indeed, they are prepared to lay down their lives to prevent the pipeline from being built.

Honourable senators, that is an offensive violation of the rule of law that simply cannot be tolerated in this country and that I have every confidence will not be.

We also know, honourable senators, that this situation that we're encountering now has done potentially irreparable harm to Canada as a place to do business. Our reputation as a place to do business once you have obtained legal authorities has been shredded. We've all seen, in the last two or three weeks, the comments of the CEO of RBC, who has indicated to Canadians that he's watching money leave Canada on a real-time basis.

The CEO of TransCanada, who is the proponent of the Energy East project, which enjoyed great favour amongst many constituents in Canada, when asked if he would resuscitate the Energy East project, indicated, "Why would I do that? I can build pipelines in the United States or Mexico." Encana, who has moved their CEO to Denver, Shell, Statoil, Imperial, all global firms who have exited Canada over the last number of months. We're all aware that Scotiabank — and others, but Scotiabank — has indicated that, because of our inability to build pipelines — the price differential that Canada is suffering amounts to \$15 billion a year. That is their estimate. We all know that that is, on an annual basis, 15 hospitals or 750 schools or 30,000 kilometres of paved highway a year that we are foregoing.

What we also know is that a majority of Canadians support the building of this pipeline. Nick Nanos and his firm released statistics, within the last 10 days, indicating that, 66 per cent of Canadians, including a majority of people in the province of British Columbia, support the building of this pipeline. Perhaps you read the lead editorial in *The Globe and Mail* of last Thursday, where it says:

... expanding Trans Mountain pipeline. ... is of national interest, it has been reviewed by the appropriate federal bodies and approved by cabinet, and the company has met or is in the process of meeting all the conditions imposed upon it.

As well, a strong majority of Canadians, British Columbians included, support it. The B.C. government itself approved the project in 2017. And the majority of Indigenous communities along the project's path have signed agreements with Kinder Morgan that will protect their territories and bring them much-needed income.

And yet a project that has been approved:

... is now at risk of being cancelled because of the interference of a provincial government.

That was *The Globe and Mail* last Thursday.

Similarly, last Thursday, the *Sun*, in its editorials which appeared in newspapers across Canada, similarly argued, and, indeed, urged the Prime Minister, to get behind the bill, which we are now discussing, which is currently in the Senate, and move this project forward.

The *Sun* editorial ended with the language:

If the Prime Minister is thinking along this line, i.e., supporting this legislation, Canada will owe him widespread support.

This, honourable senators, is part of the coalition that has come together to support the project.

Finally, honourable senators, I want to speak about the issue of First Nations consultation. There is a myth — and it is a myth — that First Nations groups do not support this project. This is not correct. Forty-three groups have signed agreements with Kinder Morgan, 33 of those in British Columbia. That represents 80 per cent of Indigenous groups along the pathway of the pipeline.

As I've indicated to you, the Squamish are part of the 20 per cent that has not agreed. I had the opportunity to question the chief of the Squamish when he was before our committee. He indicated to us — it's on the record — that consultation is not complete until we decide it's complete. Fine. I asked him how the consultation is going. Well, honourable senators, they participated in the National Energy Board hearings. Unfortunately, they lost. They have participated in no other processes, and the processes that they had the opportunity to, and, indeed, that others participated in, would have been the process before the British Columbia environmental board or the two special consultative committees set up by the Government of Canada to consult the First Nations people on these matters. They participated in none of the above. Furthermore, honourable senators, the record will show that they have also elected not to engage with Kinder Morgan at any level, respond to letters, respond to meetings, attend conferences, meet with people. I asked the chief, "How can you consult if you do not talk?" And that, honourable senators, is where we are in terms of this particular matter now.

• (1510)

Now, there are a couple of matters that I would like to address that need to be addressed in terms of arguments that have been raised as to why the pipeline should not be built. Some folks have suggested that pipelines are not needed because the demand for oil globally is diminishing; therefore, why should Canada invest money in a dying industry?

I would refer senators to the report — and I think I did this in second reading — of ExxonMobil. They do an annual report on the world view of energy each year. The review this year says they believe peak oil will be achieved in 2040, and until that point in time the world will continue to consume more oil.

Similarly, Shell confirms the same. Similarly, the International Energy Agency confirms the same. And those of you who follow these things may have seen an op-ed by Peter Tertzakian, who is Canada's leading energy economist, in the paper last week saying in fact the world is going to go through a threshold in the next month of consuming, whether we like it or not, 100 million barrels of oil a day.

There is no indication anywhere, from any credible source, that the demand for oil is decreasing over the next number of years. That is not to say that that is a good thing. That is not to say that that should be the case. But I'm sharing with honourable senators that that is the case.

I have heard suggestions that pipelines aren't safe. The facts will show that the safety record of pipelines in Canada is at 99.9 per cent. Those of you who attended the session that was put on by Senator Neufeld and other senators would have heard from the Pacific Pilotage Authority in Vancouver Harbour and the spill response teams who operate on the coast of British Columbia. They indicated that over the 60 years that Kinder Morgan has operated in Vancouver Harbour, there have been no instances of heavy oil spills or even shows in Vancouver Harbour.

We heard Senator Raine, who lives in Kamloops, when she was talking last week about this issue. She asked us to conceive of moving more oil by truck or by train, and she called up the image of the trestles high above the Kamloops River and what would happen if something happened there.

I would simply suggest to you, honourable senators, that I do not believe there are any credible sources who would argue that the transportation of oil by truck or by train is safer than by pipeline.

I would also point out that the Government of Canada, as recently as this year, has made significant financial investments to upgrade marine response capabilities on the Pacific Coast, all as was detailed in respect of the session that Senator Neufeld ran last week.

I also want, for the benefit of the record and, of course, for honourable senators, to point out that at the hearings of the Transport Committee, Chief Nathan Matthew of the Simpcw First Nation — which is along the pipeline route in British Columbia and which is, incidentally, the largest owner of land along the pipeline in British Columbia — was asked by one of the senators about the concern of oil spills on his land, recognizing that his land covers 30 per cent of the pipeline.

He said:

We have quite a large amount of territory that the line has run through for the last 50 or 60 years, and there have been no major spills or leaks. . . . We've been able to continue to enjoy access to the territory over which the pipeline has run in terms of hunting, fishing, gathering and those kinds of things.

Honourable senators, these are the people who live on the pipeline, and they do not share the concern that some senators have.

We have also heard a suggestion that perhaps this piece of legislation is a blunt instrument and that we should allow the principles of cooperative federalism to flourish in this instance. I'm the first person to say, honourable senators, that if you can work something out cooperatively, you should, and indeed Canada has had a track record for the last 30 years of doing exactly that. That's why this clause has not had to be used in the last three or four decades, because Canada got along. There was a consensus built that projects needed to be worked on for the benefit of the nation.

But to suggest that there is any possibility at this time of any kind of cooperative interplay between the Government of Canada, the Government of Alberta and the Government of British Columbia is simply not to be alert to the facts.

Within the last two weeks alone, Alberta has passed legislation — not mooted legislation, but passed legislation that allows Alberta to restrict the flow of oil and gas to British Columbia. There are press reports today, honourable senators, that Alberta intends to utilize that authority if there is no agreement by May 31 on the advancement of the pipeline.

To make matters worse, the Government of British Columbia is now commencing action in the courts of Alberta to declare the Alberta move unconstitutional. And, of course, B.C. itself is saying, "We're not going to allow bitumen to cross our province any longer, and indeed we're referring those questions to the Supreme Court of British Columbia."

We heard Minister Morneau last week aggressively attacked the Premier of British Columbia. Many commentators suggested this is the lowest point in federalism and the federation in decades.

And this morning, what do we hear from Edmonton? The Premier of Alberta is for the first time ever not attending the Western Premiers' Conference because she refuses to be in the same room with the Premier of British Columbia.

As senators from British Columbia and senators from Alberta can assure any of us in this chamber, there is no possibility that this matter can be resolved under the current environment, and that's why this bill hopefully won't need to be used but will instead helpfully provide a basis for action.

There has been a suggestion, certainly at committee, that First Nations not only have a right to be consulted in respect of the development of pipeline projects, or any project in Canada, they have a right to consent. As I've indicated, 80 per cent of the groups along the pipeline are on our side, and with respect to the concept of consent, I would simply inform honourable senators that that is simply not the law.

But don't take it from me. We should take it from Professor Dwight Newman, who is a Canada Research Chair in Indigenous Rights in Constitutional and International Law. He is considered Canada's leading legal expert on these matters, and he appeared before the Transport and Communications Committee. Let me summarize what he said with respect to 92.10(c), this act, and in terms of Aboriginal rights as I referred to.

First, he said that 92.10(c) is an available remedy and an appropriate remedy.

Second, he said that the Senate has often in the past been the place where this type of legislation has been an issue.

Third, he indicated, as has been indicated in this chamber before, that much reference has been made to section 35 of the Constitution, which deals with Aboriginal rights. What it simply does is it acknowledges Aboriginal rights. That's all that section 35 does, and Professor Newman confirmed that.

He indicated quite clearly that section 35, as interpreted by the Supreme Court of Canada, most recently in two cases last July — the *Clyde River* case from Labrador and the *Chippewas* case from Western Ontario — indicates the principles of consultation. The court sets out, in those two cases, one where consultation was adequate and one where it was not, what the principles of consultation are to be.

Consultation is not consent. Once a proponent has met the standards set out by the Supreme Court of Canada, consultation is complete. I would suggest to you that Kinder Morgan, with respect to the Trans Mountain pipeline, has done exactly that. I would also point out to you that Professor Newman made it very clear that the United Nations Declaration on Indigenous Peoples is not the law in Canada. It is an aspirational document and perhaps a fine aspirational document, but it is not the law in Canada. Any suggestion that it is or any effort to put it into this bill to try to buttress that position is flawed.

• (1520)

If it were the law, the Supreme Court of Canada in its two decisions of last July would have clearly referred to it, because of course it was pleaded before them. The Supreme Court of Canada didn't even acknowledge in the two decisions the United Nations declaration. Why? Because it has nothing to do with the law today. Honourable senators, we need to keep that very much in mind.

Honourable senators, I brought this legislation forward because the Trans Mountain project is in the national interest of us all. Of course it's of advantage to Alberta and to British Columbia, but it's of advantage to Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Ontario and Quebec.

We cannot allow a situation where the rule of law is flouted, and we do not want to allow a situation where our prosperity is at risk because we can't get projects built in this country.

Honourable senators, I urge you to support Bill S-245. I urge you to give the tools to the Government of Canada to allow them to move this project forward in Canadians' interests.

Thank you very much, honourable senators, for your attention.

Hon. André Pratte: Senator Black from Alberta — Senator Black from Ontario, also — is a friend. I envy his intelligence, his charm and his wit. I admire his dedication to public service and to his province.

The sponsor of Bill S-245 and I agree on the essential things. We agree that the Trans Mountain pipeline expansion is crucial to the economic future of Canada and that its construction is in the national interest.

We agree that if it is not built, Canadian oil will continue to be sold at a discount on the American market, which will cost our economy somewhere between \$4 billion and \$10 billion a year.

We agree that Canada's competitive position on the world stage is threatened when investors get the impression that nothing can be built here, which in recent years is increasingly the message they have received.

[Senator Black (Alberta)]

We agree that the rule of law is a founding block of any democratic society, that when demonstrators violate orders of the court, it is important that they live with the consequences. This is exactly what we have seen in the case of 187 protesters, including two MPs. They were criminally charged for contempt of court.

We agree that the Government of British Columbia's uncompromising stand on the issue is not reasonable considering that the province's previous government had already agreed to the project and that the National Energy Board has given a very cautious green light requiring the fulfillment of 157 conditions, several of which concern safety and the environment on B.C.'s land and coastal waters.

In short, Senator Black and I agree that the opponents of the Trans Mountain project are often mistaken on facts and wrong on tactics. We agree that the Trans Mountain pipeline expansion should be built. Where we disagree is on the means to achieve this end.

Senator Black believes that the solution lies in the federal government resorting to its declaratory power, that we should declare the Trans Mountain pipeline and all related works to be in the general advantage of Canada. In his view, this would prevent the provincial government and the municipalities from doing anything that would delay construction.

Senator Black is a distinguished lawyer. The closest I ever got to being a lawyer was when my father told me there was no future in journalism. Therefore, it is with the greatest of respect that I disagree with the senator's opinion that the use of the declaratory power would automatically and rapidly transfer all provincial powers over the concerned works to the federal government.

I would like to repeat here a quote I used in my speech at second reading from then Supreme Court Justice Iacobucci in the *Ontario Hydro* decision of 1993, the latest on the subject. Justice Iacobucci wrote:

In my view, the federal principle should be supported nonetheless. Parliament's jurisdiction over a declared work must be limited so as to respect the powers of the provincial legislatures but consistent with the appropriate recognition of the federal interests involved.

Senator Black dismisses this crucial assertion by noting that it is from the dissent. However, on this particular point, Justice Iacobucci had the support of the majority. Chief Justice Lamer, though he disagreed with Iacobucci's conclusion on the case, endorsed his opinion regarding the scope of the declaratory power, writing that it:

... must be carefully described to respect and give effect to the division of legislative authority.

In other words, provincial legislation regarding a work declared to be in the general advantage of Canada will be invalid only if it precludes the federal government from reaching its stated goals.

Consequently, the province could still legislate in its sphere of jurisdiction, including the environment. The precise limits of the provinces and of the federal government's authority would almost certainly have to be determined by the courts on a case-by-case basis.

There you have it. The use of the declaratory power would not settle the issue once and for all but in fact open a whole new avenue for litigation. This is one reason why I believe Bill S-245 is a futile exercise.

I understand from what I've heard during these debates that our friends from the Conservative Party support this bill; that is, they support the use of the declaratory power, which seeks to invalidate provincial authority over this pipeline, including over environmental issues, an area of shared jurisdiction between the federal and provincial governments.

I must say I find this stand difficult to square with the many pronouncements of the leader of the Conservative Party, Mr. Scheer, who has repeatedly stated, at least when addressing voters in my home province:

. . . we have the same objective: a federal state that is decentralized and respects the jurisdiction of provinces.

Those words are contained in an open letter to Quebecers from March 2018. However, the use of the declaratory power is a frontal assault on provincial jurisdictions.

[*Translation*]

Our Conservative friends should therefore explain how they can claim on the one hand to be defenders of a decentralized federalism and provincial jurisdictions, while on the other promoting the use of the federal government's declaratory power, which is one of the most centralist tools Ottawa has under the Constitution. What would the Conservatives say if we were talking about the Energy East pipeline and the government opposing it was that of the Province of Quebec? Would they still be in favour of using the declaratory power?

I am not pointing out this paradox out of a sense of partisanship, but simply to shed light on the underlying logic behind the Government of Canada's use of the declaratory power. This logic seems to run counter to one of the foundations of our federal system, namely the division of powers between the two levels of government. If we subscribe to this centralist logic in the case of Trans Mountain, if we admit that a central government can simply override a provincial government in one of its own areas of jurisdiction when it comes to a project, then does it follow that we should apply this logic to every national project? If so, what does that mean for the very delicate balance between the provinces and the federal government?

[*English*]

Because it is such a blunt tool, the declaratory power should only be used when there are absolutely no other alternatives.

• (1530)

Some argue that in the case of the Trans Mountain pipeline, we have reached this point. Senator Black has just said that this dispute cannot be settled cooperatively or through traditional methods. Respectfully, I disagree.

I believe that there is still room for convincing more British Columbians — and I'm not talking about the government — that this pipeline is necessary and that it can be run with little risk to the land and to the coastal waters of the province. The proof is that in recent months public opinion in B.C. has become more favourable to Trans Mountain. The provincial government's policy of obstruction does not seem to be popular with the majority of the province's population. However, there is still a substantial minority — around 40 per cent, according to the latest Nanos poll — that opposes the pipeline's expansion. Four people out of 10 is a minority that, in my view, is too significant to ignore.

Would resorting to the federal government's declaratory power convince these British Columbians to support the pipeline's expansion? I believe it would have at best no effect, and at worst, by pitting rights against the central government's authority, it would feed opposition to the project.

Some portray Bill S-245 as an exercise in leadership. Imposing one's views is not leadership. Leadership is listening and convincing the largest majority possible to follow your lead. This has not been sufficiently exercised in British Columbia regarding the Trans Mountain pipeline.

BUSINESS OF THE SENATE

The Hon. the Speaker: I'm sorry for interrupting, Senator Pratte, but Minister Hajdu has just arrived, and it's time for Question Period. Following Question Period, we will return to debate on Bill S-245 for the balance of your time.

QUESTION PERIOD

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, please join me in welcoming Minister Hajdu.

Pursuant to the order adopted by the Senate on December 10, 2015, to receive a Minister of the Crown, the Honourable Patricia Hajdu, Minister of Employment, Workforce Development and Labour, appeared before honourable senators during Question Period.

**MINISTRY OF EMPLOYMENT, WORKFORCE
DEVELOPMENT AND LABOUR**

CANNABIS BILL—REGULATIONS

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

The final report of your government's Task Force on Cannabis Legalization and Regulation stated:

Employer groups called for more guidance from federal, provincial and territorial governments about appropriate workplace drug use and drug testing policies.

A recent answer to my written question on this subject outlined a group led by your department, which is comprised of federal-jurisdiction employer and labour representatives. This committee was looking into workplace impairment, including the potential impacts of marijuana legalization.

However, in March, it was reported in the media that this committee is at an impasse on the matter of drug testing. As a result, no new federal rules on workplace impairment will be in place before marijuana is legalized.

Minister, my question is this: Is this an acceptable outcome for you? If not, what are you going to do to address it?

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, and thank you so much for inviting me to come to this honourable house to speak with all of you. It truly is an honour and a pleasure to be here.

To your question about cannabis, it's an excellent question. In my past, I worked extensively in drug policy, and I also ran an organization where substance use was an issue, both by people we served and by employees. So addressing substance use has been a passion of mine for a very long time.

We do have an effective tripartite relationship with FETCO, federally regulated employers, and also with the Canadian Labour Congress and many other organized labour groups. We have been working with that tripartite relationship to make sure we stress the importance of having strong workplace policy around substance use at work.

The legalization of cannabis, quite frankly, is a bit of a red herring. Cannabis is not a new substance. It's not a new substance to use in the workplace. In fact, it's an opportunity for employers to look at their workplace impairment policies and processes as they stand now and to question whether they're strong enough for all substances. In fact, we have substance use that's legitimate, and we have illegal substance use. Both can impair employees and create safety risks every single day in every single workplace.

This has been an opportunity for all of the partners to come together and talk about what a robust workplace impairment policy looks like. It starts with everybody knowing what the regulations are and also having a robust system for employers to deal with the issues of addiction and of substance use in general.

Those conversations are ongoing. I'm very pleased with the conversations, because they are quite robust and are using the element of the legalization of cannabis to actually springboard a conversation about a broader and more robust approach to workplace impairment. Thank you.

Senator Smith: Thank you very much for the answer. The FETCO group visited us probably two months ago. Their concern was that they did not see any form of a policy they could utilize before the actual legalization takes place. I'm just wondering about specifics. Do you have specifics in terms of policy that can be implemented so that the members of the FETCO group — and there were eight people at the table, representing thousands of workers, but the consistent concern was that nothing is in place.

Could you help us understand what direction it will go, so that employers will have some degree of certainty and, more important, some degree of — I'm not going to say "comfort" — but knowledge that they'll be able to monitor and ensure no significant occurrences happen in the workforce?

Ms. Hajdu: Thank you, senator. That's exactly what we're doing: We're working with employers and labour groups to talk about the importance of people working safely, and that includes free of impairment, regardless of whether it's fatigue or substance use. None of this is acceptable.

I can tell you that most employers already have robust policies around impairment at work. In fact, it is their responsibility to do so. There are also often provincial frameworks as well, along with federal frameworks around impairment.

We want to make sure we utilize some of those best employers and the experiences they've had around dealing with impairment at work, whether it be through fatigue, substance use, alcohol or any other kind of impairment, and use that to help propel the conversation to have a more robust framework for all employers. Thank you.

Hon. Paul E. McIntyre: Welcome to the Senate, minister. My question is a follow-up to Senator Smith's question regarding the impact of marijuana legalization on the workplace.

I have the privilege to sit on the Standing Senate Committee on Legal and Constitutional Affairs. Recently, several witnesses who have appeared before the committee have raised concerns regarding the impact of marijuana legalization on the workplace, including the Toronto Transit Commission and the Transportation Safety Board of Canada. You've just mentioned FETCO. Here's what FETCO had to tell us:

With the introduction of Bill C-46 and its companion bill, Bill C-45, the Government of Canada has failed to address the impact of recreational marijuana on the workplace. This is a serious oversight with potentially catastrophic consequences for workers, employers and the public at large.

Minister, how do you respond to calls from FETCO and others for your government to provide guidance on workplace safety matters, such as drug impairment testing, in tandem with moving forward on Bill C-45 and Bill C-46?

Ms. Hajdu: Thank you very much, senator. First of all, part of the conversations we're having is around what kinds of gaps exist in the tools available for employers and how we can actually support federally regulated employers to address those gaps, whether it be training, awareness or a process to manage substance use in the workplace, and take action as employers.

• (1540)

In terms of testing for alcohol and drug use in a federally regulated workplace, this is governed by a body of decisions from labour arbitrators, human rights tribunals and courts. At the heart of this jurisprudence is the very delicate balance between individuals, human and privacy rights with rights for safety for all employees in the public.

We believe in working with employers to make sure they have a robust prevention policy in place. There is clear support for employers in terms of creating a framework being the right way to go and we will continue those conversations. Thank you, senator.

ALTERNATIVE EMPLOYMENT DURING PERIODS OF DISRUPTION

Hon. Joseph A. Day (Leader of the Senate Liberals): Minister, thank you very much for being here. My question today relates to seasonal workers in my home province of New Brunswick and the neighbouring province of Quebec.

As you know, the Department of Fisheries and Oceans, and the minister from New Brunswick, Dominic LeBlanc, temporarily closed several fishing areas on the east coast of New Brunswick and Quebec. That was done after two North Atlantic right whales were spotted in the Gulf of St. Lawrence. The closure will affect a good number of fisheries, including snow crab, rock crab and the lobster fishery.

While measures to protect these endangered whales are highly supported by the people in New Brunswick and Quebec, there is collateral damage that will result in closing the fisheries, and that is in relation to seasonal workers. We are already hearing concerns being expressed by seasonal fishers, by deckhands and by factory workers that they will not be able to find alternate employment and they may not, therefore, be able to qualify for Employment Insurance.

As Minister of Employment, Workforce Development and Labour, you know as well as anyone that it is very difficult to find alternate employment in some of those remote areas where the fishery is located. Can you tell us and can you reassure those individuals who are caught in this unintended consequence of closing the fishery, however temporarily, what measures your department and your government will take to reassure those workers that they will be protected?

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, senator, for the question. At this point, Employment Insurance rests with the responsibility of Minister Duclos, but I can tell you that the department takes all issues of labour disruption seriously and we will be working closely with those who are affected and supporting them through any transitions that might be necessary.

This year, we've also introduced a new program for older workers who have been out of school for a long time. This might not be the right choice for every person, but we wanted to make sure that older workers, who have been out of school for at least 10 years, have additional supports through Canada student grants and loans that will actually allow those older workers to return to school either in a part-time or a full-time capacity, if they wish to upgrade their skills, which may be a solution for some of the folks affected.

In the short term, though, I would say the department stands by ready to assist anyone experiencing workforce disruption. Our hearts go out to those struggling because, as you pointed out, this is a very difficult time for families.

Senator Day: I have a supplementary question. You send the older workers back to school, but what do you do with the younger workers? This is a difficult situation. We support the government's efforts to protect the whales, but the workers need some immediate help.

Ms. Hajdu: Thank you very much, senator. You give me an opportunity to talk about one of the strong pillars of Budget 2018, which is increasing our ability to support workers of different ages, including young work workers, with increasing their skills and their access to skills development, the enhanced labour market development agreements that will transfer money into the provinces have the added benefit of adaptability.

Provinces and territories will have complete autonomy over how they deliver those services in their own regions. The only thing we're asking from the provinces and territories is to have some shared outcome measures so we know those investments pay off in the long term for Canadians and that Canadians can expect that the skills development resources they need are there when they need them.

Generally speaking, provinces would then be able to design programs that address the specific needs and realities of their own economies, their own workers and their own populations.

[Translation]

PROTECTION OF WORKERS

Hon. Marilou McPhedran: Thank you, minister, for being here this afternoon. My question has to do with the complaints process and the planned measures for survivors addressed in Bill C-65 before us.

[English]

In her testimony to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, Chief Commissioner Marie-Claude Landry recommended that Bill C-65 ensure that survivors have the choice to seek the redress they want and not delay or prevent their access to the Canadian Human Rights Commission as an option.

Will you respect the agency of survivors by an amendment that ensures claimants are not barred from seeking recourse at the Canadian Human Rights Commission at any point of the internal complaint process, thus allowing survivors to choose the path to justice they think best under their circumstances?

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, senator, and thank you for your lifelong passion on the issue of harassment and violence in the workplace. You and I have had many conversations about this. In fact, I'm very excited about Bill C-65 and I thank the Senate for the work it is doing right now to review the legislation and to propose amendments. We'll be reviewing all of those amendments very carefully, as you know.

This is pivotal and transformational legislation. If I achieve nothing else before I leave Parliament, I'll be very proud of the fact that for the very first time in the history of this place, political staff and all staff who serve us will be protected under legislation that ensures we have a climate that reduces harassment and sexual violence. Of course, the stated goal is to end harassment and sexual violence, but we know that in fact will not be done through legislation alone. This is really about a cultural shift. This is about changing the way we do business as a society.

Legislation, though, plays an important piece. It sends a signal that this is not acceptable in any Canadian workplace, least of all this place of honour, so thank you very much for the question.

Hon. Nancy J. Hartling: Welcome, minister. I am glad to see you again. I have two questions. One is relating to Bill C-65 and the other one is around pay equity.

Recently, we received the bill at the Senate, I spoke on second reading and I'm very excited about that. As you just said, it will include Hill staff, which is very exciting to a lot of us here that our staff will be protected.

Can you expand a little bit about the pillars that this will include?

Ms. Hajdu: Thank you very much, senator. You're right. This legislation is built around three pillars. In fact, it echoes the three pillars of the gender-based violence strategy that I had the privilege of working on as the Minister of Status of Women.

First of all, the legislation aims to prevent the issue of harassment and sexual violence in the workplace by compelling employers to have a regime, a policy in place that is clearly understood by everyone in the workplace. It also ensures that there are training and materials available, which will be

supported by the labour department, and ensures that federally regulated employers have the resources they need to have such a policy.

Second, it compels employers to respond and that when there is a complaint, there is action taken. One of the things that we heard frequently during consultations with people across this country was that they often did complain, but when they did complain, nothing happened. They were expected to manage the situation on their own or, in some cases, the situation was dramatically minimized in terms of the impact on their day-to-day lives in the workplace. This strategy will ensure that employers have not only the obligation but also the support to respond to those issues in the workplace.

Finally, the third pillar is to support people who have experienced sexual harassment, harassment of any kind and violence of any kind in the workplace. This is really about ensuring that employers have the tools to support those folks and that there is a process that, at any time, if a person feels they are not being taken seriously, or that the process is not being followed, they can bring their complaint to the labour department which allows them to ensure their employer is held responsible to those three pillars.

• (1550)

SUMMER JOBS ATTESTATION

Hon. Donald Neil Plett: Minister, just over a week ago, Prime Minister Trudeau spoke at NYU, offering some very interesting protestations. Let me quote: "... let yourself be vulnerable to another point of view," suggesting that we must not, and again I quote, "... cocoon ourselves in an ideological, social or intellectual bubble ..." or "... engage with people with whom we already agree," but instead "fight our tribal mind-set" — "identity politics."

Minister, I fully share these sentiments. However, in his most important role, which is to govern Canadians right here at home, I see no evidence that he takes these sentiments seriously.

As you will remember, minister, I sent you a letter in January and have still not received a response. In that letter, I highlighted my disgust with the discrimination demonstrated in the summer grants application attestation requirement. In the letter, I outlined to you that about half of Canadians do not support our current absence of a law on abortion, and that does not make them anti-women, backwards or fanatical. I also pointed out that abortion is not an enshrined right, whereas freedom of expression and freedom of religion are enshrined rights.

Given the Prime Minister's comments about the importance of accepting and embracing diverse opinions, can you confirm, minister, that next year's summer grants application process will not be discriminatory toward organizations of faith, or organizations that have different beliefs from your government, for that matter? Minister, I would appreciate a direct answer on this. Thank you.

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, honourable senator. First of all, let me apologize. If my office has not responded to you, I will follow up and find out why because I believe that's unacceptable.

In terms of the Canada Summer Jobs program, I can tell you in no way does this violate people's rights to believing something different. This is about job description and core activities of an organization. It is not about values and beliefs. It is about making sure that the public funds that go toward ensuring double the number of Canadian students each summer have access to quality work experience with an organization that won't ask them to undermine the rights of Canadians is upheld. It is about making sure that parents who are sending these kids off to these jobs are certain that their children will not be asked to undermine the rights that Canadian women have won around reproductive freedom in this country.

It's also about ensuring that their very own rights won't be discriminated against, that members of the LGBTQ community won't be discriminated against holding a position or attending any kind of program. This is really at the fundamental core of the Canada Summer Jobs program — ensuring that the rights of Canadians, the freedom to exist in a space where you are not discriminated against because of your sexual identity, is upheld. Thank you, honourable senator.

RECOGNITION OF EDUCATIONAL CREDENTIALS OF IMMIGRANTS

Hon. Victor Oh: Thank you for being here, minister. Canada is recognized worldwide for welcoming talented immigrants, but our country often fails to benefit from their qualifications once they arrive. There's a joke in Toronto that the best place to have a heart attack is in a cab because there will be a doctor driving the cab.

In 2015 the Conference Board of Canada estimated that if we better recognized immigrant skills, there would be a boost of an additional \$10 billion to \$12 billion annually to our GDP. Highly educated immigrants such as university graduates and PhDs are more than four times and two times more likely to be unemployed than their Canadian counterparts with similar credentials respectively.

In 2014 the previous government introduced a new system for selecting skilled immigrants with pre-arrival service to better match immigrants' qualifications.

Minister, what is the current employment situation for recent immigrants with university degrees in general and in regulated professions in particular?

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, honourable senator. You point out one of the greatest tragedies that when someone comes to our country as a newcomer with incredible skills and talents that they are not able

to use them in a way that benefits both them and their families but also Canadians at large. That's why our government has been focused on ensuring that when internationally trained newcomers arrive, we help them to find and keep good, well-paying jobs and to recognize their credentials in a much more expeditious way.

Part of our targeted employment strategy for newcomers is ensuring that newcomers get better pre-arrival support so they understand before they leave their country what is required to practise in their profession before they get here. That often gives them a leg up. Sometimes they can conduct a study before they arrive in Canada, giving them a leg up when they arrive.

Also we have a small loan program, but it's so powerful. This loan program provides small amounts of money to newcomers who are working to pursue their accreditation, working to pursue acquiring their certificate in Canada so that it's in alliance with Canadian regulations. We have a fantastic repayment on these loan programs — somewhere in the range of 98 per cent. It's a really great risk for Canada in that we provide these small loans, newcomers use them, whether to pay for tuition, books, certification tests or child care, and they repay Canada in a fantastic way, not just in the money they owe, but often by filling many positions we are in a great shortage of.

SUMMER JOBS ATTESTATION

Hon. Pamela Wallin: Welcome, minister. Thank you for being with us today. My question is with regard to the Canada Jobs attestation. This attestation has been widely criticized as unfair, unconstitutional, discriminatory, and as a direct target on faith-based groups.

In my small community in Saskatchewan, it has directly impacted the ability to provide summer jobs for youth at a camp. The requirement of employers to sign an attestation confirming their commitment to upholding the Charter, or at least some select parts of the Charter, seems highly questionable. It's entirely legal for people to disagree with the law while abiding by it, but the attestation directly affects Canadians' constitutional rights to freedom of speech and belief.

I agree with you that organizations should not use public funds to exclude LGBT kids for camp or to teach only pro-life values. But, minister, that isn't what they do at camp. Their core activities are swimming and canoeing.

More shocking for me and for many is that there are anti-pipeline groups receiving tax dollars to work directly and publicly against the Trans Mountain pipeline, which your government claims it supports. There is a serious problem with the constitutionality and effectiveness of this attestation.

Can you tell us whether you have completed the Charter statement on this attestation? If not, will you commit to putting it through a Charter test? Will you agree to fully dropping this attestation for next year's program unless this is completely clarified? Thank you.

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, honourable senator. I appreciate the question.

When our government took office, we committed to doubling the Canada Summer Jobs program. That's, in fact, what we've done. Roughly 70,000 kids every summer get great-paying jobs through this program. That is critical to the next steps in their career.

Part of the joy of my job is visiting many of these organizations across the country and speaking to students about their experiences, and also speaking to organizations about their experience of having students on staff. That's what I was doing last week when I was out West. I was able to visit many different organizations, some of them faith-based. In fact, we had a large number of faith-based organizations apply and receive money because they understood that this was about activities and job descriptions, not about beliefs and values.

• (1600)

We're going to continue to make sure that the Canada Summer Jobs program delivers on its main goal, which is that there are great quality jobs for kids each summer and that kids use that experience in a way that furthers their career.

One final note: I am always amazed at how many times I visit a non-profit organization where the executive director or other staff members started with that organization as a Canada Summer Jobs student. These are jobs that actually help young people direct, sometimes, their careers. So it's a very exciting program. It has been wonderful to visit the many organizations, including faith-based organizations, across the country, and I'm looking forward to visiting more this summer.

FUNDING FOR LITERACY PROGRAMS

Hon. Diane F. Griffin: Welcome, minister.

As you know, the PEI Literacy Alliance was in crisis last year as the federal funding structure had changed from a core funding base or model to a project-based model. This is one that doesn't work well in smaller regions, especially in Atlantic Canada. The PEI Literacy Alliance only survived because of an eleventh-hour intervention by the provincial government.

Since literacy is core to active citizenship and to building an innovative economy with good, sustainable jobs, I'm wondering if you can update us on the progress that has been made in discussion with provinces in Atlantic Canada in labour agreements for funding for the literacy coalitions.

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, senator. I share your passion for adult literacy, in particular, but literacy in general, as that was one of the very first jobs I ever held as a young person, working for my local literacy organization.

You're absolutely right. Without those fundamentals of reading, writing and mathematics, in fact it's very difficult for people to move forward in skills development. That's why these renegotiated labour market development agreements, or LMDAs, are going to be incredibly helpful for provinces and territories to set their own priorities.

This is something that I'm particularly proud of with our government. We understand that when you empower, whether it's Indigenous groups, whether it's provinces and territories, to set their own priorities and to address the needs of their own specific population, sometimes the results are all that much stronger. So organizations can work with provinces and territories to ensure that those basic skills are taught.

It's ideally acquired as a young person. As you know, senator, it's a much more difficult path as an adult to acquire literacy skills, but so much of the work we do with the various grants that we provide through our department actually deals with those very basic skills because, in fact, as you point out, people cannot actually acquire greater skills if they don't have those fundamental literacy skills.

SUMMER JOBS ATTESTATION

Hon. Yonah Martin (Deputy Leader of the Opposition): Minister, I listened carefully to your responses to my colleagues about the Canada Summer Jobs program, the pride you expressed in our youth, as we all share in those sentiments, and the fact that these jobs can empower students to then look forward to a career in a field that is of great interest to them. My question goes back to this topic.

Earlier this month, an answer to a question tabled in the House of Commons stated that 1,559 applications for funding under the Canada Summer Jobs program were rejected, specifically due to issues over the attestation. You, minister, back in March, indicated that you are willing to make changes to the attestation, not for this year but next year.

So there are students who will not be able to get the experience this summer. In light of these numbers, the concerns being expressed, and given what you said earlier about you believing in this program, would you consider reviewing it for this year? Minister, 1,559 students rejected is not a small number; it's quite a large number.

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, senator. It does give me an opportunity to clarify that the grants are not provided to the students. The grants are provided to the employers. That's a very important distinction. This is not about grants that are provided directly to students. In fact, we will still double the number of jobs.

We had plenty of employers apply this year. We were very confident that we'll reach our goal of 70,000 students again this summer having great experiences through the Canada Summer Jobs program.

In terms of changes to the attestation, what we heard back from some of the faith-based groups was that the language was unclear. We provided clarification on the website. That's why some faith-based groups went forward and applied and felt comfortable, given the clarification, that this is about core activities and job description, not about values and beliefs.

Any clarification that I make to the attestation will be to clarify exactly what we mean when we talk about the Charter and reproductive rights, that it is about activities and job description, not values and beliefs.

PAY EQUITY

Hon. Nancy J. Hartling: I would like to ask a question about pay equity. We've heard that you will be introducing legislation on pay equity. I want to know more about that. It's one of my passions. Who will it impact and who will it cover? What will it cover, and how will it contribute to gender equity?

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, senator. The issue of pay equity is near and dear to my heart as the former Minister of Status of Women. In fact, to find out that we have a gender wage gap in this country of 28 cents on the dollar is something that should shock all Canadians. Canadian women, on average, are paid far less than their male counterparts for doing exactly the same work. Fundamentally, we believe that it's a human right to be paid equally for work of equal value. That's why we're moving forward with federally regulated pay equity for the federally regulated sectors. This will affect women in the federally regulated workplaces.

Pay equity is a complicated process, as I'm sure you are aware, senator. We want to make sure the legislation we introduce achieves the balance right of ensuring that employers have the supports they need to undertake this difficult work but that it doesn't unnecessarily get tied up in all kinds of disputes.

I have personally gone through the experience of pay equity in an organization that I led, so I'm acutely aware of the fact that it has to be easy to use and something that will result in the goal of women receiving equal pay for work of equal value.

You did touch on the gender wage gap. Pay equity is really only one part of the gender wage gap. Even if all women, in all jurisdictions, had equal pay for work of equal value, we would still have something in the range of a 15 per cent unexplained gap. That really is the systemic sexism that continues to exist in our societies today and that we are all responsible for changing. Many different components will go into that change, including legislation around harassment and sexual violence in the workplace, for example.

PROTECTION OF WORKERS

Hon. Marilou McPhedran: Thank you for your response to my question, Madam Minister, but, with all due respect, I don't think you actually answered my question. So, if I may, could you clarify, please, the willingness to actually change Bill C-65 so

that claimants, survivors, are not barred from seeking recourse at the Canadian Human Rights Commission at any point of the internal complaint process?

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, senator. As I said, I'm prepared to look at all amendments, but I cannot comment, at this point, on which amendments we would accept.

We do know that Bill C-65 uses very effective legislative and policy levers to help to put an end to workplace harassment and sexual violence and the consequences we see every single day in this workplace and many other workplaces across the country. Again, I don't believe legislation is the sole fix for this pervasive problem that we see. But it is definitely a fundamental and foundational piece, and I believe that it's going to take all of us to work together.

SUMMER JOBS ATTESTATION

Hon. Serge Joyal: Madam Minister, with greatest respect, you have not answered the request of Senator Wallin on the Charter analysis of the criteria that the government has imposed on the summer jobs program. Could you commit yourself to table, in this chamber, the legal opinion on the constitutionality of the criteria that the government has imposed on the summer jobs program so that every senator will have an opportunity to make up their mind on this important issue?

Hon. Patricia A. Hajdu, P.C., M.P., Minister of Employment, Workforce Development and Labour: Thank you very much, senator. I appreciate the question and the irony in asking for a Charter analysis on upholding the Charter, but I do believe that the approach we've taken ensures that Canadian young people have great quality experiences through the Canada Summer Jobs program in a way that respects the Charter rights and freedoms of Canadians and other fundamental rights that have been won by Canadians, in particular, Canadian women in the country.

• (1610)

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, the time for Question Period has expired. I'm sure all senators would like to join me in thanking Minister Hajdu for being with us.

ORDERS OF THE DAY

TRANS MOUNTAIN PIPELINE PROJECT BILL

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Black (*Alberta*), seconded by the Honourable Senator Mitchell, for the third 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. André Pratte: We were talking about Bill S-245, remember? I was talking about strong leadership, which I believe would have increased support for the pipeline and convinced more people that it is not only good for Canada but good for British Columbia, that it can be run safely for the land and for the coastal waters of the province.

Strong leadership would have isolated the provincial minority government and allied demonstrators and opened the way for the pipeline's construction. Maybe if that had been done earlier, the federal government would not find itself today in a situation where it has to offer the pipeline's promoter what it calls an insurance against political risks.

Proponents of Bill S-245 will argue that we don't have the time now for anything but emergency legislation. They are right that time is short, but resorting to the declaratory power will neither save time nor substitute for leadership. The governments of Canada and B.C. will fight it out in court, and this will take years. It will not convince one additional British Columbian that the project is worthwhile.

I argue that the Government of Canada would better spend the next months using the soft powers of campaigning and diplomacy rather than trying to strong-arm the provincial government into obedience.

Some will say that I'm naive. I plead guilty. My crime is believing in the power of reason and argument rather than that of threats and fire. My crime is believing in the virtues of negotiation, compromise and patience.

We might wish things to be simple, as simple as passing Bill S-245 for the complex issues raised by this project to go away. This is an illusion. Bill S-245 will not prevent Kinder Morgan from walking away if it thinks that's where its corporate interests lie. Neither will Bill S-245 persuade reluctant First Nations to consent.

On that particular point, I'd like to quote Chief Nathan Matthew, already quoted by Senator Black earlier, of the Simpcw Nation, who is favourable to the pipeline and who signed an agreement with Kinder Morgan but who disagrees with this bill. He says:

Is that what you're going to do any other time you're dealing with natural resources within the country where it's seen to be a national interest, that the Parliament of Canada says,

"We'll take this on, and all it will take is a vote by ourselves in favour of it to give a green or red light on projects?" That, to me, isn't sufficient to meet any kind of test with regard to nation-to-nation relationships

If the Trans Mountain pipeline expansion is to be built, it will be built not despite British Columbians but with the support — maybe the reluctant support, but the support nonetheless — of the government of the province and of the people of the province. It will be built after what courts will deem to be proper consultation with the Indigenous peoples, not what the peoples themselves think but certainly not what we think.

It is the most efficient way to get it built and, most important of all, it is the Canadian way to get it built. Thank you.

The Hon. the Speaker: Senator Black, do you have a question?

Hon. Douglas Black: I do have a question, if the senator will take a question.

Senator Pratte: Of course.

Senator D. Black: Senator, thank you very much for that and for the comments. As always you have done a tremendous job of research and presentation.

I do want a couple of confirmations, if we can, please, just so the record is accurate. You did acknowledge, and I appreciated it, that when you were referring in your second reading speech to the *Ontario Hydro* case, you were relying on the minority comments, not the majority, the minority. I appreciated your being frank on that.

I do want to read to you the key take-away from that case. I'm quoting the case on page 330. I would like you to acknowledge this. On 330, the court says:

The declaratory power should not be narrowly construed to conform to theoretical principles of federalism. The Constitution must be read as it is, and it expressly provides for the transfer of provincial powers to the federal Parliament over works declared to be for the general advantage of Canada.

Which of course is the opposite of what you have represented today. Would you simply concur that that is what the court said in that decision?

Senator Pratte: Do you want me to requote what I said earlier?

Senator D. Black: If it's from the majority.

Senator Pratte: No, but on this specific point, it is clearly the majority point of view. What I said is it's clearly the majority point of view.

Senator D. Black: Thank you.

Hon. David Tkachuk: When you were talking about the majority of British Columbians — I think it's around 60 per cent — agreeing with the Kinder Morgan pipeline —

The Hon. the Speaker: Are you asking for time to answer Senator Tkachuk?

Senator Pratte: Yes, please.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Tkachuk: Agreeing with the Kinder Morgan pipeline, the majority, not only in the province of British Columbia but in the city of Vancouver, the majority agreeing with the pipeline, but then you said, well, maybe that's not enough, so we should go out there and campaign and really get the numbers up.

So how high should the numbers be before a majority — before the pipeline should be built? How high should the numbers of support be?

Senator Pratte: Senator, I will not give you a number, but I think if you have a substantial minority, plus you have Indigenous peoples, plus you have the government of the province, I think that's substantial enough to take that into consideration, and rather than try to bulldoze them, try to have a more substantial majority than simply a majority of the people but not the government and Indigenous nations. I think you have to try to get better than that.

Senator Tkachuk: So 60 per cent of the people of Quebec want to leave confederation; is that number good enough, or should it be 70 or 80 per cent?

Senator Pratte: I'm sorry. I don't see how that's related.

Hon. Lillian Eva Dyck: Honourable senators, I rise today to speak at third reading on Bill S-245, An Act to declare the Trans Mountain Pipeline Project and related works to be for the general advantage of Canada, on behalf of Senator Sinclair.

I will now read into the record remarks from Senator Sinclair and move his amendments at the conclusion of these remarks.

Honourable senators, I rise today 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.

Canada is founded on the rule of law, and we are bound to respect it. As many of you know, extensive litigation has been filed in opposition to the Trans Mountain pipeline expansion project. Seven First Nations have filed 10 legal challenges which assert, among other things, that the National Energy Board process was inadequate in its review of each nation's interests in the impact of this project on their rights and title and that the required consultation was inadequate.

This case is currently pending before the Federal Court of Appeal in *Tsleil-Waututh Nation v. Canada*. The central issue of this case from the First Nation's perspective is whether Canada adequately discharged its legal duty to consult the First Nations people affected by this project. The central issue this project as a whole has brought to the surface not only for this government but for all Canadians is the future of its relationship with First Nations.

The government has laid the foundation for reshaping its relationship with First Nations. It recognizes and supports Aboriginal rights to self-governance by enacting legislation such as the Cree self-governance legislation and by adopting international standards for the just and fair treatment of Indigenous peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples, without qualification. The government has reiterated its commitment to forging a new relationship with the Indigenous peoples of this country and has articulated policy principles by which this relationship is to be fostered.

• (1620)

Canada has the tools it needs to move diligently toward reconciliation. The question now becomes: When will Canada begin in earnest to craft this new relationship with purposeful action? Is it only after the Trans Mountain pipeline is built? Is it only after this Senate approves a bill, the purpose of which, at best, is to provide political capital to this project? Is this how we are to use our responsibility as senators?

Colleagues, section 35 of the Constitution recognizes and affirms the Aboriginal and treaty rights of Aboriginal people. The Supreme Court of Canada declared that the Crown had not only a duty of honour but also a fiduciary duty to consult with Aboriginal people before approving projects such as the Trans Mountain Expansion Project. Fulfilling this duty should not be treated as a matter of convenience for this government; rather, it should be recognized for what it is: an affirmative and necessary obligation on the part of this government to act with honour, integrity, good faith and fairness in all of its dealings with Indigenous peoples. Other project approvals have been quashed by judicial decisions for failure to consult the Indigenous peoples impacted, and now the rule of law requires us to respect the judicial process currently pending.

The sponsor of this bill and pipeline proponents have repeatedly claimed that 80 per cent of Aboriginal communities affected by this pipeline have signed mutual benefit agreements with Kinder Morgan/Trans Mountain. They tout these confidential agreements as evidence that Aboriginal peoples have consented to the construction and operation of the pipeline through their territories. But First Nations leaders have this to say about these agreements:

Entering into these agreements was not consent. We felt this pipeline was going to get built whether we liked it or not, and entering into this agreement was presented to us as the only way to have a say; to ensure we could protect the environment and, by extension, our way of life; the only way to at least acquire revenue for us to become less dependent on the government.

Some First Nations were offered a signing bonus if they entered into one of these agreements, a signing bonus offered by the project proponent. Let that sink in for a moment. Does that sound like meaningful Crown consultation, and is that what we envisioned when the Supreme Court of Canada enunciated the consultation standards of Haida, Gitxaala and Tsilhqot'in?

Other First Nations describe these agreements as “just another divide-and-conquer tactic that’s been used on our people over and over again.”

A member of the Kamloops First Nation reminds us that:

The Government of Canada made our people so desperate. We have a housing crisis, a poverty crisis and they’ve made our people so desperate that they feel like they’re obligated to sign these agreements because they think that’s all they’re going to get.

A Ditidaht First Nation chief expressed a similar sentiment on behalf of his community, which also signed an agreement, stating:

We came to the determination, as a group, that [the project] was going to go ahead anyway. . . if we opposed it, we would have no way of addressing spills, because we would be disqualified from funding from Trans Mountain.

A Seabird Indian Band councillor said:

We’re not saying we agree with it. We’re just preparing for the worst.

Colleagues, the language of the sentiments expressed is not the language of a fairly negotiated and bargained-for exchange between equals. This is “the language of the powerless, of people with no leverage or bargaining power.” The First Nations communities impacted are the people for whom Canada has a fiduciary duty.

The sponsor points to the National Energy Board’s record of Kinder Morgan’s consultation with First Nations as evidence that they were consulted, insinuating the Crown has discharged its duty. We don’t know the explicit content of these mutual benefit agreements — just bits and pieces gleaned from the news reports — but we are to take the word of the project proponent that the agreements amount to adequate consultation and consent of First Nations, yet these confidential agreements are not subject to review or scrutiny?

Again, whether the duty to consult was adequately discharged is the exact question that is pending before the courts. This bill is not going to change the fact that we are bound by the rule of law, which requires deference to the court process.

In his testimony before the Senate Transportation Committee, the sponsor of this bill referred to two decisions of the Supreme Court of Canada — namely, the *Clyde River* and the *Chippewas of the Thames* cases — with a proposition that:

They confirm that there must be open, honest and fulsome disclosure, and there must be meaningful consultations — we all agree on that — but at the end of the process, if there is not an agreement, there also is not a veto given to First Nations’ groups.

The sponsor’s characterization of these two cases only tells part of the story. In *Clyde River*, there is no mention of the word “veto.” In fact, the *Clyde* court actually says:

Where the Crown’s duty to consult [an affected Indigenous group with respect to a project under the Canada Oil and Gas Operations Act] remains unfulfilled, the NEB must withhold project approval. Where the NEB fails to do so, its approval decision should be quashed on judicial review.

— since the duty to consult must be fulfilled prior to the action that could adversely affect the rights in question.

But the court in *Thames* did state that “. . . the duty to consult does not provide Indigenous groups with a “veto” over final Crown decisions” The *Thames* court also recognized that:

[t]he constitutional dimension of the duty to consult gives rise to a special public interest” which surpasses economic concerns (para. 70). A decision to authorize a project cannot be in the public interest if the Crown’s duty to consult has not been met (*Clyde River*, at para. 40; *Carrier Sekani*, at para. 70).

First Nations impacted by this project are entitled to meaningful consultation by this government and have raised the issue of the inadequacy of that consultation in the pending legislation. They are following the rule of law and availing themselves of the very processes established precisely for this purpose: to provide a check on the balance of power and to ensure that no one is above the law.

This bill asserts that the government needs to intervene in order to ensure that this project is not “frustrated or delayed.” Let’s look at what the exercise of Canada’s declaratory power can do.

In the words of my honourable colleague Senator Pratte:

We should only pass Bill S-245 if we think it will improve the chances of the pipeline being built and help governments and stakeholders find a lasting solution to this crisis.

He stated further that he would vote against Bill S-245, because he was “convinced it would not help resolve the impasse. On the contrary, I think passing the bill would exacerbate tensions between opponents and proponents of the project.”

• (1630)

The declaratory power, which is what is contemplated by this bill, has been called the nuclear bomb in the federal arsenal. It has been used many times over the years but has not been used in decades. Why is that? The declaratory power represents the ability of one level of government to unilaterally usurp powers given to the other level, and this conflicts with the principles of federalism.

For this reason, there is no similar or analogous power in either the American or Australian federal constitutions. It also explains why this declaratory power has been used only twice in the last 50 years.

So why, then, are we being asked to pass this bill? Federal courts have already ruled that pipelines are subject to federal jurisdiction. See *Campbell-Bennett v. Comstock* and *Burnaby (City) v. Trans Mountain Pipeline ULC*.

Passing this bill will not absolve this government of its obligations to the Indigenous people impacted by this pipeline project. That is what the rule of law requires.

This government appears to place the blame for any project delays at the feet of B.C. Premier Horgan, but it is not that simple. Blaming Horgan does not blind people from the entirety of this situation, both as to the environmental impacts and as to the interests of First Nations.

Should my honourable colleagues choose to pass this bill — and I acknowledge that it is this body's right to do so — I ask that the following amendments be made to ensure this bill reflects the entirety of this matter, to ensure that our obligations to First Nations and to the rule of law are reflected and to reflect our conscious consideration of the issues this bill raises.

MOTION IN AMENDMENT NEGATIVED

Hon. Lillian Eva Dyck: Therefore, honourable senators, in amendment, I move:

That Bill S-245 be not now read a third time, but that it be amended

(a) in the preamble, on page 1,

(i) by replacing line 8 with the following:

“Whereas, for greater certainty regarding jurisdiction,” and

(ii) by adding the following after line 13:

“Whereas parts of the Trans Mountain Pipeline Project traverse Aboriginal land;

Whereas there are currently legal actions by Aboriginal peoples asserting, among other things, that they have neither been properly consulted nor given their required consent in respect of those parts of the Trans Mountain Pipeline Project affecting Aboriginal land;

And whereas this declaration regarding the jurisdiction of the Parliament of Canada over the Trans Mountain Pipeline Project should not be read as abrogating or derogating from existing rights of the Aboriginal peoples of Canada;” and

(b) on page 2,

(i) in clause 3,

(A) by replacing lines 5 and 6 with the following:

“that are carried out in accordance with the Constitution of Canada, federal legislation and the Certificate of Public Convenience and Ne-”, and

(B) by replacing line 8 with the following:

“December 1, 2016, are not unduly frustrated or delayed.”, and

(ii) by adding the following after line 11:

“Aboriginal Rights

5 For greater certainty, this Act is not to be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the Aboriginal peoples of Canada by the recognition and affirmation of these rights in section 35 of the *Constitution Act, 1982*, including the right to be properly consulted and to provide their free, prior and informed consent when required.”.

The Hon. the Speaker: It was moved by the Honourable Senator Dyck that Bill S-245 be not now read a third time but that it be amended — may I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: On debate?

Hon. Marilou McPhedran: Honourable senators, I move adjournment in Senator Sinclair's name.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do we have agreement on a bell?

Senator Mitchell: Thirty minutes.

The Hon. the Speaker: The vote will take place at 5:05. Call in the senators.

• (1700)

The Hon. the Speaker: Honourable senators, the question is as follows: It was moved by the Honourable Senator McPhedran, seconded by the Honourable Senator Bovey, that further debate be adjourned to the next sitting of the Senate in the name of Senator Sinclair.

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Bellemare	Hartling
Black (<i>Ontario</i>)	Joyal
Boniface	McCallum
Bovey	McPhedran
Boyer	Mégie
Cordy	Mercer
Coyle	Moncion
Dawson	Munson
Day	Omidvar
Dyck	Pate
Eggleton	Petitclerc
Gagné	Pratte
Galvez	Saint-Germain
Gold	Woo—29
Harder	

NAYS
THE HONOURABLE SENATORS

Ataullahjan	McCoy
Batters	McInnis
Beyak	McIntyre
Black (<i>Alberta</i>)	Mitchell
Boisvenu	Mockler
Campbell	Ngo
Carignan	Oh
Dagenais	Plett
Doyle	Poirier
Duffy	Seidman
Eaton	Smith
Frum	Stewart Olsen
Greene	Tannas
Griffin	Tkachuk
Housakos	Unger
MacDonald	Verner
Manning	Wallin
Marshall	Wells
Martin	Wetston—39
Massicotte	

ABSTENTIONS
THE HONOURABLE SENATORS

Bernard	Marwah—3
Maltais	

• (1710)

The Hon. the Speaker: Resuming debate on the motion in amendment.

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable colleagues, I'd like to say a few words in relation to this bill and the proposed amendments.

As others before me have said, this is a simple bill, just four clauses, and it does one thing: It declares the Trans Mountain pipeline project and all related works, which is a bit of a concern, to be works for the general advantage of Canada. I'd like to congratulate Senator Black for bringing this issue before us in the form of a bill.

Senator Black has laid out his rationale for bringing this legislation forward. He noted that Kinder Morgan has been pushing this project and advocating for it for more than six years, meeting every requirement made of them during the approval process.

As Perrin Beatty, President and CEO of the Canadian Chamber of Commerce, put it in a recent special piece in the *Financial Post*:

Trans Mountain received federal approval after an extensive, rigorous, scientifically valid review with input from thousands of stakeholders. At the end of that process, Kinder Morgan accepted the numerous federal and provincial conditions imposed on the project.

But it seems that all the work to date has been for naught, and the uncertainty surrounding this project, though it has been approved to proceed, has caused Kinder Morgan to suspend non-essential activities and related spending on its pipeline expansion project. They are uncertain. Their shareholders are uncertain, and nothing that is occurring right now is allaying that uncertainty.

As we have heard, the bill would declare that the Trans Mountain pipeline project and related works are works to the general advantage of Canada. In his speech on this bill, Senator Black said:

... the competitive position is being eroded in Canada, and in large part it's being eroded in Canada because there is a sense which has developed that Canada is the country where projects come to die.

More than ever, this seems to be the case. I think it is particularly fitting now, in the shadow of the Kinder Morgan Trans Mountain situation, that we have a frank discussion about the need for pipelines in this country.

Senator Mockler: That's right.

Senator Day: Canada is the fourth-largest producer of oil in the world, and there can be no doubt that transportation of oil is becoming an issue in this country.

As I have said in this chamber before, we face real challenges in moving Alberta oil, whether going westward over the mountains through a pipeline or eastward, being carried by rail cars or otherwise. If we are to take advantage of our own natural resources, we will need to find ways, both economically and environmentally sound ways, to move it.

While the Kinder Morgan controversy rages in the West, it is clear that a lack of pipelines is having an effect in the East as well. Eastern Canada is currently importing more than 750,000 barrels of oil per day from the United States and other countries around the world, oil that could be coming from Alberta. That is why I was so disappointed at the cancellation of the Energy East pipeline project. It would have carried 1.1 million barrels of Alberta oil to Atlantic Canada every day. It would have had a great economic impact on New Brunswick, creating jobs and opportunity in the province, and I am certain those benefits would have been felt in the rest of Canada as well.

Senator Mockler: Absolutely.

Senator Day: My colleagues from New Brunswick, Senator Percy Mockler in particular, said in an op-ed piece last fall:

Canada is a nation with an abundance of natural resources, but due to our outdated infrastructure for transporting oil, we're stuck with all our eggs in one basket.

Senator Mockler: That's right.

Senator Day: Senator Mockler continued:

Energy East promised the opportunity to diversify our export markets by getting oil to tidewater, as a result slashing the discount at which we're forced to sell to the United States due to a lack of other options.

There was much support for Energy East among the businesses in the region as well. During a committee hearing in Saint John, New Brunswick, Dick Daigle, then chairman of the Saint John Region Chamber of Commerce, testified:

Support for Energy East pipeline has been identified as the top issue for our membership, and support has been consistent, in excess of 90 per cent over the last three years. Our membership is supportive because they recognize and understand the benefits that can come to a country and our region because of this pipeline.

Mr. Daigle went on to say that Energy East would have resulted in a nearly \$16 billion investment, which could have been the equivalent of \$55 billion in gross domestic product growth for Canada and \$6.5 billion for New Brunswick over 20 years. It could have meant more than \$850 million in tax revenue for the province of New Brunswick, but we all know what happened.

• (1720)

In August of last year, the National Energy Board announced an expanded focus for the Energy East project, including the consideration of greenhouse gas emissions, an impact of reduction targets.

In September, TransCanada suspended its project application so that it could conduct a thorough review of these changes announced by the National Energy Board partway through the process.

In the end, given the new assessment criteria announced by the National Energy Board, TransCanada terminated the project altogether.

Honourable colleagues, we didn't hear the federal government coming forward and offering to help with the financing on that particular project at that time, nor did it stop the change in criteria halfway through the project after TransCanada had spent millions of dollars over many years during the process.

In light of what happened, the Senate Transport Committee's report on pipelines seems prescient. It reads:

Many witnesses suggested that the regulatory process needs to be fair, based upon the best-available evidence, informative and transparent. As noted above, investors also need to be confident that the regulatory process will not change partway through a review, and that they can proceed with a project once they have obtained the required regulatory licences.

This is what happened with Energy East. The National Energy Board chose to greatly expand the assessment criteria in the middle of the assessment process and TransCanada felt it was no longer in their best interest to continue the project.

As senators will know, I have asked the Honourable Jim Carr, Minister of Natural Resources, about the failure of Energy East. Most recently I asked if the federal government supported in principle a pipeline eastward, bringing Alberta oil to Atlantic Canada. But the minister dismissed even the idea of a pipeline running east despite the obvious economic and environmental benefits.

I'm glad that our forebears, honourable colleagues, had greater nation-building vision, for the railways might never have been built in Canada.

Honourable senators, the fact remains that Canada already has an extensive network of pipelines, about 840,000 kilometres of them, that carry crude to domestic and U.S. refineries. The economic benefits to expanding that network within the confines of our regulatory system would be significant.

Senator Pratte in his remarks at second reading earlier this month — not today — noted his concern that the bill will accomplish little but further entrench the sides for and against. On the other hand, it's difficult to see a resolution that will satisfy opinion holders on both sides of this debate.

But as Mr. Beatty said, investors are right to question the worth of Canada's regulatory regime if at the end of the process a province can obstruct and overturn a federal decision because it disagrees with that federal decision.

This is something of which we must take heed. The success of our federation relies on the rule of law and confidence in the decisions made by our policy-makers. We must do what we can to consider all options and find solutions, and this bill makes it clear that our federal government has an important constitutional role to play in this process.

The question that we have before us is: Do these amendments help this bill? Do we need the bill now that the federal government has already indicated that this project is in the interest of Canada?

Hon. Percy Mockler: On debate, there's no doubt you know my position on pipelines and how seldom we have nation-building projects like Trans Mountain and Energy East — never.

If we look at how Canada was created by our forefathers and the successive prime ministers since 1867, there's no doubt in my mind that each and every one contributed to make Canada a better place to live, a better place to work, a better place to raise our children and a better place to reach out to the most vulnerable.

However, for this debate, I want to add my voice to that of the leader of the Liberal caucus about what Energy East meant. And where was the government on Energy East? My friends, parliamentarians, they were silent.

Senator Plett: Shame.

Senator Mockler: However, pipelines are, in my opinion, in our opinion, in the national interest of the country as landlocked Canadian crude loses tens of dollars per barrel every day. I want to share some statistics on this.

The price differential between Western Canada Select, WCS, and West Texas Intermediate, WTI, has been nearly \$15 per barrel every single day. Last year it went up to approximately \$30 per barrel. Every dollar of that differential is money that is not flowing into Canada.

Pipeline access would have supported — with the support of Energy East — the competitive position of West Coast producers and East Coast refiners, and the country would have benefited from coast to coast to coast.

Saint John, New Brunswick, is the home of the Irving Oil Refinery, Canada's largest refinery, with a daily throughput capacity of approximately 320,000 barrels. Irving Oil was not only supportive of the Energy East project but had taken on an additional role in a 50-50 joint venture with TransCanada to build and operate the required marine terminal.

Now I want to share with you some information about Irving Oil. It has been operating in Saint John, New Brunswick, since 1924. It has been refining in New Brunswick since 1960. It is the main energy supplier for Atlantic Canada, New England and Quebec.

People said, "We need to be mindful of the environment." I agree 100 per cent. We all agree as parliamentarians. But Irving also employs more than 3,400 people throughout Canada, the United States and now Ireland. TransCanada chose to work with Irving Oil based on the company's decades of marine and environmental safety and terminal expertise.

• (1730)

Irving Oil wasn't just a marine terminal partner. Canada's largest refiner had also subscribed to 50,000 barrels per day of crude from this pipeline coming from Western Canada.

Processing this volume in New Brunswick would have allowed for Canadian crude to be refined on Canada's East Coast and shipped to new markets or sold as crude on the open market worldwide. Refining and shipping finished Canadian petroleum products allows for more value added in Canada, while maintaining a direct crude export option for other crude volumes on the same line.

Today, Irving Oil is the sole remaining refiner in the Maritimes and the New England states. In recent decades, refiners across Canada have locked their gates. I want to share, honourable senators, that as margins tighten, only the most competitive businesses will remain. Refining is not an easy business. Canadians and North Americans know what it's all about. We have to remind ourselves that, most recently, Imperial Oil closed its Dartmouth, Nova Scotia, refinery and has since dismantled it.

The Energy East project, honourable senators, offered thousands of jobs and billions of dollars of investments funded 100 per cent through private means. So where was the government of the day when they said no to Energy East? Now I'm asking them a question that should be asked: What will be the cost to taxpayers?

We must move forward with Trans Mountain. We must; it's a must. It's who we are in the world as Canadians. The benefits of Energy East extended far beyond New Brunswick. The project would have, as Senator Day said, generated more than \$15 billion in private investment while delivering approximately 1.1 million barrels of Canadian crude per day to tidal water and world markets. The Port of Saint John is home to some of the deepest ice-free tidal water in the world and can easily handle the world's largest tankers.

The Energy East pipeline, starting at Hardisty, Alberta, and ending in Saint John, New Brunswick, had a solid business case with committed shippers and reputable operators. What it lacked was regulatory certainty. I know that Senator Black from Alberta knows what I mean when I say this, and that is why you're on the right track: We must look at projects that are nation building for all Canadians from coast to coast to coast.

Honourable senators, the Energy East pipeline would have allowed diversified markets for Canadian producers. Let us never shy away from who we are as Canadians in this world. Thank you.

The Hon. the Speaker: I remind honourable senators that while we have a fair amount of leeway in debate, at this time we are debating the amendment proposed by Senator Dyck.

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable senators, Senator Mockler and I have served on committees together over the years since we've been here, and on this issue we agree almost 100 per cent. This is about nation building. Why has this country been successful? There have been bold boosts to build railroads to build a country together, one part of the country supporting the other part of the country when the need arose, contributing to the overall growth of the country.

This is a good example of an opportunity for us to get our product to tidewater and to make sure we get the world market price, not the minimum of \$15 discount per barrel. That's a lot of money when you think that millions and millions of barrels of crude are moving, and we're leaving at least \$15 a barrel on the table and not putting that wealth into Alberta and Saskatchewan, and making that the wealth of the country. The oil patch in Alberta has been driving the economy of this country for a number of years, and when an opportunity came along for us to support them and make that economy grow, we've not been there for them.

One thing that Senator Mockler and my leader, Senator Day, forgot to mention is that while I support Energy East going to Saint John, New Brunswick, I didn't support it stopping in Saint John, New Brunswick. It was certainly important that it get to the largest refinery in Canada and get the product to the Irving refinery, which Senator Mockler and I have toured together.

But it was an opportunity to take that energy even to a safer location on the East Coast, which is the Strait of Canso, at Point Tupper. Many of you might not know this, but there was a large refinery at Point Tupper many years ago. But now at the location of that large refinery are huge storage tanks for crude oil. That's where the crude oil that comes in arrives in the country — at Point Tupper — and then it is shipped west from there. It's already there. So if you get the crude to Point Tupper, you've already got a place to store it.

You'd say, "But then you have to build a pipeline from Saint John, New Brunswick, from Point Tupper." You don't have to worry too much about that. There's already a gas pipeline going from the gas fields in the Sable Island area that goes down through New Brunswick into the United States where we ship our gas.

So you've already got the lines approved; you have all the regulatory business. You do need to build another pipeline, but you're already on the land, and you've already got the arrangements there.

The environmental aspect of this is also extremely important. Irving does have a good record for environmental protection, but there's also the risk in ending the pipeline at Saint John, New Brunswick, because that's into the Bay of Fundy, where the highest tides in the world come in and out every day.

There was a problem historically with ships colliding with right whales in the Bay of Fundy. The industrious people of Eastern Canada came up with a solution: "We'll move the shipping lines away from where the whales are." Logic. So they did; they moved them further east so the shipping lines are closer to Nova Scotia than to New Brunswick, and then they go to Saint John. It has cut down dramatically on collisions. You don't hear stories about collisions with whales in the Bay of Fundy. They're now up in the Northumberland Strait area.

One of the reasons I wanted to speak today is that these amendments as proposed —

Some Hon. Senators: Oh, oh!

Senator Mercer: — by my colleague on behalf of Senator Sinclair — it's important we take some time to study these amendments. I voted for the adjournment so we would sit down and have a talk about these, and look to see if they have any merit or enough merit for us to amend the bill.

It's an opportunity here, folks, to keep alive that issue of nation building, using pipelines going west and perhaps reintroducing the idea of pipelines going east. Obviously, I favour going east, as well as the one going west, but the one going west is — I almost said "easier" — but it's quicker, and there's already an infrastructure in place. We need to talk about that. If nothing else, we need to give the government the reassurance that we think this is a good idea, that we're behind them and if all the regulatory things are in place, then we're going to support that.

• (1740)

I, for one, will be there to do that and to tell the government that, as far as I can do it from my humble seat over here, I've got their back on this one.

Hon. Yuen Pau Woo: Honourable senators, I would like to add a few words to this debate. I will note that if you go far east and keep going, eventually you'll go to the west, which is where we should be focusing our debate. We are discussing the merits of a bill that purports to make it easier for a pipeline to be built going west. This is the crux of the matter. Many other things have been discussed in the course of this day and in the last 20 minutes that, in my humble opinion, do not get to the core question of whether this bill will help get the pipeline built.

For the record, again, I am for the pipeline being built, for all of the reasons that have been stated, including the discount that we have heard about many times; including the reputation of Canada as a country that has difficulty getting big projects done; including, of course, all of the economic benefits that will accrue not just to Alberta and B.C. but to the rest of the country.

I would add that an important reason for this pipeline to be built is because it is part of a bigger plan to transition our economy from fossil fuels to renewable energy — not tomorrow, not five years from now, not ten years from now, but it's part of a bigger plan that includes a carbon tax, measures to protect the environment and the coast of B.C. and tougher regulations around pipeline safety, all of which form part of the package that we should be proud of and not just the pipeline, per se.

It bears repeating that I support this pipeline wholeheartedly and hope that it will be built. However, honourable senators, recalling that the crux of the issue is whether this bill will lead to a greater chance of the pipeline being built, I have to say that I, first of all, cannot support the amendment, not because I am against more consultation, but because I think it will only compound the division in our society that the original bill, I fear, is likely to engender in the first place. That, of course, gives you a clue as to how I will vote on the bill itself.

It is largely for the reasons that Senator Pratte has articulated, but not just those reasons. And I want to stress that it is not about opposition to the pipeline; it is about whether this bill will, in fact, get the job done or if it will make it more difficult.

Colleagues, good intentions are not enough. I often find that in our work here we focus a lot on good intentions and a lot less on what can and should be done. It is not only that this bill may not help the progress of the pipeline, but it could even hinder it further because of the ruptures that it might create between provinces — as if they're not severe enough already — and also between Aboriginal peoples and the federal government.

I take my hat off to Senator Black and others for the intentions behind the bill. I believe the bill's fundamental purpose to assert the federal government's authority is already in place. A number of people have said that, and I think it bears repeating that I think the federal government knows it has that authority.

I also believe that the federal government could not make it clearer that they want the pipeline to be built. Virtually every statement that I have seen, whether from Minister Carr, Minister McKenna, Prime Minister Trudeau, or any of the other ministers who have a finger in this file, have been unequivocal about their determination to make it happen. I can only interpret that they believe they have the authority to make this happen, but they want to do so in a way that preserves the federation and which gets as much buy-in as possible.

They may be mistaken. It would be sad if we're now in a world where it's not possible to get accommodation in our society in order to get big projects done. But, unfortunately, I don't think this bill will solve that problem. It is, after all, as Senator Black has described, a declaratory bill.

There probably is a reason why declaratory bills have not been used for a number of decades. It probably has to do with the kind of society we live in now, where consultation is more important, where a central authority declaring a power is resisted for a variety of societal changes — resisted by provinces, interest groups, First Nations — and whether we like it or not, these are hard realities that we live in.

We do not have to accept that we will not overcome these problems, but if we are going to compound these problems by passing a bill that creates more division, I fear we will have gone backwards.

Honourable senators, to summarize, I very much hope this pipeline will be built. It is in the national interest. I believe there's determination on the part of the federal government to make it happen. I'm hoping that cooler heads will prevail. I wish

there were a magic solution so that we in the Senate could wave our wand through a bill or a motion, or some other gesture or action. If there is such a thing, I hope somebody will propose it. Unfortunately, honourable senators, I do not believe this bill is that action.

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I want to briefly intervene with respect to the amendment, as well as the main motion, having observed that there is a willingness in the Senate to move on to a division.

I simply want, as the government's representative, to reaffirm yet again the government's position that the completion of this project remains in the national interest, and the government will continue efforts to ensure that it is built, as I've stated in this chamber and as the Prime Minister and other ministers have stated outside.

The Minister of Finance announced on May 16 that the government is willing to indemnify the project against any financial loss that derives from attempts to delay or obstruct the project. By dealing with the exceptional risk presented by the Government of British Columbia, the Government of Canada is taking action in a way that allows a commercially viable project to move forward. The government is also considering potential legislative options to assert the Government of Canada's jurisdiction, a jurisdiction which it is of the view already exists in the Government of Canada's competency. Ultimately, it is the view of the government that the course being pursued will yield the project getting built and getting built in a timely fashion.

Because these initiatives are under way and for the reasons that I've stated, I will be abstaining on amendments and on the motion, as I continue to believe that these discussions that are being pursued by the Government of Canada are the appropriate vehicle for ensuring a resolution of this matter and that, ultimately, the goal of having this project completed is one that is actively being pursued and the objective of which is clear.

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

Hon. Senators: Question.

The Hon. the Speaker: I'm sorry, Senator McPhedran?

Senator McPhedran: On debate?

The Hon. the Speaker: Unfortunately no, Senator McPhedran.

I've spoken about this before. Senators will know that if a senator moves an adjournment motion and the house decides to negative it, then the senator no longer has a right to speak unless that he or she asks for the consent of the house.

Are you asking for consent?

Senator McPhedran: I am.

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

I hear a no.

Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Dyck, seconded by the Honourable Senator Wells, that Bill S-245 be not now read the third time but that it be amended — shall I dispense?

• (1750)

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the “nays” have it. The amendment is defeated.

(Motion in amendment of the Honourable Senator Dyck negated, on division.)

Hon. Senators: Question.

The Hon. the Speaker: Resuming debate on the motion. Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: It is moved by the Honourable Senator Black, seconded by the Honourable Senator Mitchell, that the bill be read the third time.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do we have an agreement on a bell?

Senator Plett: Thirty minutes.

The Hon. the Speaker: Thirty minutes. The vote will take place at 6:20 p.m.

Call in the senators.

• (1820)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Martin
Batters	Marwah
Bernard	Massicotte
Beyak	McCoy
Black (<i>Alberta</i>)	McInnis
Black (<i>Ontario</i>)	McIntyre
Boisvenu	Mercer
Boniface	Mitchell
Campbell	Mockler
Carignan	Munson
Cordy	Neufeld
Dagenais	Ngo
Dawson	Oh
Day	Omidvar
Downe	Plett
Doyle	Poirier
Duffy	Seidman
Eaton	Smith
Frum	Stewart Olsen
Gagné	Tannas
Greene	Tkachuk
Griffin	Unger
Housakos	Verner
MacDonald	Wallin
Maltais	Wells
Manning	Wetston
Marshall	White—54

NAYS
THE HONOURABLE SENATORS

Bellemare	Lankin
Boyer	McCallum

Coyle	McPhedran
Dyck	Pate
Eggleton	Petitclerc
Galvez	Pratte
Gold	Woo—15
Joyal	

ABSTENTIONS

THE HONOURABLE SENATORS

Bovey	Mégie
Harder	Moncion
Hartling	Saint-Germain—6

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it is now past 6 p.m. In order not to rise and return at 8 p.m., it is required that we have consent not to see the clock. Is it agreed, honourable senators?

Hon. Senators: Agreed.

[Translation]

TRANSPORTATION MODERNIZATION BILL

BILL TO AMEND—SECOND MESSAGE FROM COMMONS—
DISAGREEMENT WITH SENATE AMENDMENTS

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons which reads as follows:

Tuesday, May 22, 2018

ORDERED,—That a Message be sent to the Senate to acquaint Their Honours that this House respectfully disagrees with amendments 7(c) and 8 made by the Senate to Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts.

ATTEST

Charles Robert
The Clerk of the House of Commons

Honourable senators, when shall this message be taken into consideration?

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, pursuant to rule 5-7(h), I move that the message be taken into consideration now.

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

Hon Senators: Agreed.

[English]

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

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

That the Senate do not insist on its amendments 7(c) and 8, to which the House of Commons has disagreed; and

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

Hon. David Tkachuk: Honourable senators, I want to say a few words about the rejection of the two amendments to Bill C-49 by the present Liberal government. The seriousness with which they took the sober third thought of this place in proposing them was evident in their near-instant rejection of them.

Nevertheless, I want to thank all those who spoke in favour of and voted for the amendments in this chamber and those in the other chamber, from both the NDP and the Conservative caucuses, who took common cause with us.

I want to thank the Conservative transport critic, Kelly Block, from Saskatchewan, who spoke so well in support of the amendments. I want to thank Robert Aubin of the NDP, who also supported the Senate amendments.

I want to thank all those stakeholders who came before the committee, who not only testified but also suggested amendments. They convinced all the members of the committee of the validity of their cases and of the need for amendments to improve the bill and in spite of what the minister told us was a balanced piece of legislation.

I ask all senators to vote against this motion of the government leader so that then we can move a motion to have the house reconsider, but just in case the motion of the government leader is approved, I say shippers should take heart and so should the Maritime ports because in 2019, this government will be soundly defeated by Andrew Scheer and the Conservative Party, and these measures will be reintroduced.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do we have agreement on a bell?

Senator Mitchell: Thirty minutes.

The Hon. the Speaker: The vote will take place at 7:02 p.m.

Some Hon. Senators: Now.

Senator Plett: Okay, now.

The Hon. the Speaker: Is it agreed, honourable senators, that we vote now?

Hon. Senators: Agreed.

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Bellemare	Griffin
Bernard	Harder
Black (<i>Alberta</i>)	Hartling
Black (<i>Ontario</i>)	Joyal
Boniface	Lankin
Bovey	Marwah
Boyer	Massicotte
Campbell	McCallum
Cordy	McCoy
Coyle	McPhedran
Dawson	Mégie
Day	Mitchell
Downe	Moncion
Duffy	Munson
Dyck	Omidvar
Eggleton	Pate
Furey	Petitclerc
Gagné	Pratte
Galvez	Saint-Germain
Gold	Wetston
Greene	Woo—42

NAYS
THE HONOURABLE SENATORS

Ataullahjan	McIntyre
Batters	Mockler
Beyak	Neufeld
Boisvenu	Ngo

Carignan	Oh
Dagenais	Plett
Doyle	Poirier
Eaton	Seidman
Frum	Smith
Housakos	Stewart Olsen
MacDonald	Tannas
Maltais	Tkachuk
Manning	Unger
Marshall	Wells
Martin	White—31
McInnis	

ABSTENTIONS
THE HONOURABLE SENATORS

Verner	Wallin—2
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• (1840)

[*Translation*]

NATIONAL PHYSICIANS’ DAY BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Eggleton, P.C., seconded by the Honourable Senator Day, for the second reading of Bill S-248, An Act respecting National Physicians’ Day.

Hon. Ghislain Maltais: Honourable senators, first let me reassure my colleague that I am not the critic for Bill S-248. I rose today because I want to congratulate him on this Senate public bill for a National Physicians’ Day.

Honourable senators, who among us has never, directly or indirectly, had dealings with family doctors, specialists, surgeons or anaesthetists? We have all, at some point, put our lives in their hands. Who here remembers needing anaesthesia for an operation? Anyone who has found themselves on a gurney in an operating room has thought, “Oh my God! I’m putting my life in these people’s hands!” Those doctors are often responsible for the lives of ten people a day or more. Every day, hundreds of thousands — millions, even — of Canadians trust doctors with their lives.

Designating one day a year to thank them is the least we can do, but it is a big step forward. I hope it will silence the newspaper, radio and television people, especially in Quebec, who have such negative things to say about doctors’ salaries. Apparently they would like to see medical specialists on welfare. Apparently they would like specialists who studied for years and years to work for minimum wage. Apparently those radio and TV journalists want specialists to get paid the same as them.

No. Let's think a bit about this. What does it take to become a medical specialist in Canada? It takes many, many years of study, not to mention continuing education, since specialists are required to complete annual training to stay abreast of new technologies that will help them save even more lives.

Paying tribute to them with this bill is only a fraction of the debt we owe them. Honourable senators, my family and I had to call upon the services of these specialists when we were suffering. If not for them, I would not be here today. Indeed, many senators would not be here in this chamber if they had not had access to medical doctors. My three children had to consult specialists. Had they not been able to do so, they would all be dead today.

Thanks to specialists, their science, their research, and the communication between specialists from Vancouver to St. John's, more and more lives are being saved. The proof is that Canada has a super-aging population. Barely 50 years ago, Canadians had a much shorter life span than they do today.

I would like to reiterate one point that is extremely important to Canadians. We are lucky enough to live in a country that is relatively wealthy, assuming we develop our natural resources in a normal way. In a country like ours, it is important to learn to share, because we can't all win at once. I think that medical specialists, both female and male, have given a lot to Canadians and will continue to do so in the future.

However, we need to make things easier for them by letting them work and do research. Health care includes research. For instance, two great Canadians discovered insulin and saved the lives of millions of diabetics around the world. Let's give them the freedom to do research. Let's stop comparing these specialists and family doctors based on salary. I think such comparisons are disgraceful.

My colleague, Senator Mégie, a doctor by profession who has saved and continues to save many lives, will no doubt agree.

I also believe that we should acknowledge Senator Eggleton for having this idea that affects not only me, but also all senators and the vast majority of Canadians across the country. It is wonderful to recognize that we need others to continue to live well.

I want to thank Senator Eggleton and I hope that the bill will be passed as quickly as possible so that all of Canada will be able to celebrate National Physicians' Day.

(On motion of Senator Mégie, debate adjourned.)

[Senator Maltais]

[English]

ANTI-BLACK RACISM

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Bernard, calling the attention of the Senate to anti-black racism.

Hon. Marilou McPhedran: Honourable senators, today I rise to speak in support of the anti-Black racism inquiry put forward by Senator Bernard in March of this year.

[Translation]

I thank Senator Bernard for her leadership on this important inquiry.

[English]

Senator Bernard has stated that:

Understanding intersectionality of oppression is key to understanding privilege and power.

Why should we take this inquiry as a serious endeavour and an important opportunity to learn? Both Senator Bernard and I are educators and activists, and I salute her for proposing this inquiry because it is an ideal opportunity to increase understanding of the human dimensions of what is still largely an academic term — “intersectionality.” In particular, this inquiry will enable us to examine intersectionality within the context of our Parliament. We already know that Canadian institutions are often home to racism, sometimes in hate-fuelled and conscious action, sometimes in thoughtless acts and sometimes through systemic racism embedded inside institutions, grinding people down.

• (1850)

Only last week, in Edmonton, an elementary schoolteacher dressed in Blackface for a school performance, thinking this was funny. This is a wonderful opportunity to examine the relationship between intersectionality and racism at an institutional level.

As we already know from Senator Bernard's moving speech, our own institution is not immune. This truth guides us as we seek to enable all Canadians to live their rights, including those who often bear the brunt of racism — racialized women. In particular, this inquiry enables us to reach a deeper understanding of anti-Black racism in its many forms.

As a human rights lawyer, I am acutely aware of the extent to which the law is a place of power and privilege and also the extent to which laws promote or overlook institutional racism, but our legal system has also been most often the site of naming and countering institutional racism. This presents both a challenge and an opportunity.

Last month, on the criminal legal side of our system, in *R. v. Jackson*, the Ontario Superior Court applied the *Gladue* report principles, principles that can influence the sentencing of Indigenous peoples. In this case, they were applied to Jamaal Jackson, a Black man. This was a critical moment for the justice system as the legacy of slavery and intergenerational trauma was used to assess the appropriate sentence of an accused.

Several reports from the Office of the Correctional Investigator have confirmed that, federally, African Canadians now constitute 8.6 per cent of the total incarcerated populations, while representing 3 per cent of the total population in Canada. Black inmates have been identified as one of the fastest-growing subpopulations in federal corrections by the OCI's 2011-12 annual report, the OCI being the Office of the Correctional Investigator.

To put this into perspective within the framework of intersectionality, from 2003 to 2013, federally sentenced White inmates declined by 3 per cent, but African Canadian inmates increased each year by nearly 90 per cent. In 1995, the Commission on Systemic Racism in the Ontario Criminal Justice System noted that the degree of over-representation of Black people was even higher for Black women. Increasing representation of judges and lawyers is important to address some of the issues just identified.

In 2012, at a conference in Scotland, Chief Justice Beverley McLachlin, as she then was, noted that approximately 68 per cent of Canadian judges are men. She added those judges are from various religions and linguistic groups but that they remain "very largely Caucasian." She suggested further:

. . . women and minorities . . . may feel unwelcome and outnumbered in the courtroom — a space where no one should feel excluded on account of gender or background.

This was confirmed in a 2016 report by *Policy Options* magazine, where it was estimated that only 1 per cent of Canada's 2,160 judges in the provincial, superior and lower courts are Indigenous, while 3 per cent are racial minorities.

In Nova Scotia, approximately 90 per cent of judges are White. Of 104 judges across Nova Scotia, five judges identify as African Nova Scotian, three as Indigenous, one as Chinese Canadian and one as Sri Lankan Canadian. The Nova Scotia judiciary has launched a mentorship program for African Nova Scotian and Indigenous lawyers who want to become judges. This government is well-positioned to appoint highly qualified candidates who will change the profile of the legal system and thereby also help to change and stop systemic racism.

As an institution, the legal system is a pillar of Canadian constitutional democracy. Without an inquiry into anti-Black racism, we will continue to ignore those that are unsupported by this pillar, and we will continue to be comfortable in our ignorance of what the numbers actually tell us.

Canadian society will suffer most if this remains ignored. There is a great social cost if our institutions privilege some while marginalizing others.

In closing, I encourage us to keep in mind the impact that anti-Black racism can have on young racialized people and, in particular, young racialized women. Many of our institutions, including the legal system, have not been designed for them. It is imperative for us to ensure that all young Canadians can grow up without fearing the institutions that ought to protect them.

(On motion of Senator Mitchell, debate adjourned.)

[*Translation*]

THE SENATE

MOTION TO ENCOURAGE THE GOVERNMENT TO TAKE ACCOUNT OF THE UNITED NATIONS' SUSTAINABLE DEVELOPMENT GOALS AS IT DRAFTS LEGISLATION AND DEVELOPS POLICY RELATING TO SUSTAINABLE DEVELOPMENT—MOTION IN AMENDMENT—
DEBATE CONTINUED

Leave having been given to revert to Other Business, Motions, Order No. 215:

On the Order:

Resuming debate on the motion of the Honourable Senator Dawson, seconded by the Honourable Senator Munson:

That the Senate take note of *Agenda 2030* and the related sustainable development goals adopted by the United Nations on September 25, 2015, and encourage the Government of Canada to take account of them as it drafts legislation and develops policy relating to sustainable development.

And on the motion in amendment of the Honourable Senator Bellemare, seconded by the Honourable Senator Pettitclerc:

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

1. adding the words "Parliament and" after the word "encourage"; and
2. replacing, in the English version, the words "it drafts legislation and develops" by the words "they draft legislation and develop".

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I know that Senator Plett moved the adjournment in his name and I do not know if he wishes to move adjournment in his name again, but others may also wish to move the adjournment of this motion.

(On motion of Senator Plett, debate adjourned.)

[English]

the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET
DURING SITTING OF THE SENATE

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

Hon. Serge Joyal, pursuant to notice of earlier this day, moved:

Hon. Senators: Agreed.

That the Standing Senate Committee on Legal and Constitutional Affairs have the power to meet on Wednesday, May 23, 2018, at 3:15 p.m., even though

(Motion agreed to.)

(At 7 p.m., the Senate was continued until tomorrow at 2 p.m.)

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