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OFFICIAL REPORT
(HANSARD)

Thursday, May 2, 2019

The Honourable GEORGE J. FUREY,
Speaker

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

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THE SENATE

Thursday, May 2, 2019

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

EARTH DAY

Hon. Rosa Galvez: Colleagues, I rise in the Senate today to mark Earth Day, which was celebrated on April 22. The theme for 2019 was the urgent need to protect our species.

People are rallying in Canada and around the world. A people-driven change is on the horizon. People want society to move away from the status quo of habitat destruction and water, air and soil pollution, which put living species on the path to extinction.

[*English*]

Young people are bravely asking: How could we think that humans can thrive in an ever-growing socio-economic system on a planet that does not grow? They believe historians will call this period the madness epoch and that today's politicians will be blamed for their lack of leadership, logic, courage and vision. Young people will not accept the inaction of governments. They will fight for intergenerational justice.

[*Translation*]

Earth Day started in 1970, when millions of people across the United States took to the streets to protest the harmful effects of pollution. Smog was becoming a deadly problem, and solid evidence had emerged showing that pollution causes developmental delays in children. Biodiversity was declining due to widespread use of pesticides and other pollutants. That year, the United States Congress created the Environmental Protection Agency, and the administration of Republican President Richard Nixon passed a series of environmental laws, including the Clean Water Act and the Endangered Species Act. After all, conservation is a Conservative value, isn't it?

The passage of the Endangered Species Act and the ban on DDT were major factors in rescuing certain species from the brink of extinction, like the emblematic bald eagle and the peregrine falcon. This conservation success story demonstrates that sound, effective legislation can help us achieve lofty goals. It is high time that we redoubled our efforts to ensure the survival of every species on the planet, including our own.

[*English*]

Under the UN Convention on Biological Diversity, Canada has committed to set aside 17 per cent of its land as protected by the end of 2020. This government has allocated $1.3 billion for conservation efforts, but now we must decide which areas should be protected. In each province and territory, there are areas rich in wildlife.

But conservation efforts must be increased. The world is facing major disruptive events. We have all seen them: climatic extremes, socio-economic crises, ecosystem destruction and species reduction and disappearances.

[*Translation*]

Biologists have started talking about the sixth mass extinction of species. Of the estimated eight million species on Earth, close to one million are already facing extinction. This week, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services is meeting in Paris to adopt the first ever global ecosystem assessment.

[*English*]

Senators, as legislators, we must move conservation forward. We can help by educating the public on endangered species, reducing consumption, growing native plants, avoiding pollution, reducing the use of plastic products and so much more. I encourage you to lead by example.

Thank you.

[*Translation*]

VISITOR IN THE GALLERY

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

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

Hon. Senators: Hear, hear!

THE LATE NICOLE MARTIN

Hon. Jean-Guy Dagenais: Honourable senators, I would like to take a few minutes today to pay special tribute to Quebec singer Nicole Martin, who passed away on February 19 at the age of 69.

Born in Donnacona, in the Quebec City region, Nicole Martin was only five years old when her parents noticed her musical talent for playing the piano. It wasn't long before she was accompanying her mother, who sang at the Château Frontenac in Quebec City. A star was born.

Ms. Martin's professional music career spanned over 50 years, with a number of timeless hits that left their mark on Canada's French-language music scene. I was particularly saddened by her unexpected death because she had one of the most beautiful

voices in Quebec and became popular at a time when I too was a musician. It is no secret that I used to dream of being with her on stage. That was in another life before I became a police officer, then a union leader and finally a senator. Yes, I used to earn a living by playing music, and I am very proud of that.

Throughout the 1970s, Nicole Martin could have imagined having an international career like Céline Dion's. In 1977, she won a prestigious award at the Yamaha Music Festival in Tokyo with a song entitled *Bonsoir Tristesse*. Some of Quebec's greatest songwriters, such as Stéphane Venne, Pierre Létourneau and Luc Plamondon, wrote songs for her. Thanks to her talent, she even rubbed shoulders with renowned artists like Francis Lai and Eddy Marnay in France, just to name a couple. Her studio success earned her many accolades, including a Genie Award for the original song *Il était une fois des gens heureux*, which became the theme song for the Canadian film *Les Plouffe*. Indeed, most of the songs performed by Nicole Martin were ballads that touched the hearts of many Quebecers and Canadians, with such titles as *Laisse-moi partir*, *L'hymne à l'amour*, *Tes yeux* and *La première nuit d'amour*.

Other than Robert Charlebois, she was the only Quebecer to perform at Montreal's legendary Esquire Show Bar. How's that for a career highlight? In the mid-70s, her recordings of two French songs, *L'hymne à l'amour* and *La fin du monde*, sold over a million albums in Russia. Over the years, more than 40 of Nicole Martin's songs charted in Quebec's top 10, which is a remarkable achievement. A few weeks ago, upon learning of her passing, Radio-Canada rebroadcast a one-hour special featuring highlights of her artistic career.

Nicole Martin loved singing, but she was also a television host and a prolific record producer with her partner of 35 years, Lee Abbott. Quebec has lost one of its most beautiful voices, taken from us by a ferocious illness. Until recently, we didn't even know she had left us; at her request, the announcement of her passing was delayed. She deserved more. She deserved a grand tribute, but that wasn't what she wanted. Still, I felt it was important to underscore her contribution the Canada's French music scene.

Nicole Martin is gone, but, fortunately for us, her music will live on.

[*English*]

• (1340)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a group of participants in the Parliamentary Officers' Study Program.

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

Hon. Senators: Hear, hear!

LIEUTENANT-GENERAL CHRISTINE WHITECROSS

CONGRATULATIONS ON VIMY AWARD

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable senators, today I would like to talk about an exceptional lady. With Vimy Ridge Day not far behind us, I would like to draw to your attention the most recent recipient of the Vimy Award from the Conference of Defence Associations Institute, Lieutenant-General Christine Whitecross.

She was a most fitting choice for this prestigious award, which recognizes Canadians who have made a lifelong commitment to our security and defence. Over the course of her career, Lt.-Gen. Whitecross has indeed made many important contributions in those areas of security and defence, as well as in promoting democratic values. Her achievements have been, in a word, exceptional.

Lt.-Gen. Whitecross joined the Canadian Forces while at university. She received her master's degree in defence studies from the Royal Military College of Canada. Ever the trailblazer, she has held a variety of leadership roles in the Canadian Armed Forces, having served in Germany, Bosnia and Afghanistan, and postings in almost every province and territory in Canada.

She has been awarded the medal of Commander of the Order of Military Merit, the U.S. Defense Meritorious Service Medal, and the Canadian Meritorious Service Medal. Her last Canadian posting was here in Ottawa as Commander of Military Personnel Command. She also headed up the Canadian Armed Forces Strategic Response Team on Sexual Misconduct. Most recently she was elected by NATO members as Commandant at the NATO Defence College in Rome. She is the first woman to ever hold this role, and only the third Canadian since its creation.

Lt.-Gen. Whitecross' sense of service is not confined, colleagues, to military matters. She was a member of the Rotary Club for many years. She worked with the Christmas hampers program, The Snowsuit Fund, and participated in city cleanups here in the Ottawa region.

Along with raising her own family, she and her husband, Ian, have been foster parents for more than 30 children. Thirty children.

Honourable senators, at home and abroad, Lt.-Gen. Whitecross has served with dedication and distinction. She is a role model for all Canadians. Please join me in congratulating her on receiving the Vimy Award and wishing her continued success as one of the country's leading officers in the Canadian Armed Forces.

Hon. Senators: Hear, hear.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Dr. Pam Palmater and her son, Mitch. They are the guests of the Honourable Senator Pate.

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

Hon. Senators: Hear, hear!

RECONCILIATION THROUGH THE ARTS

Hon. Murray Sinclair: Honourable senators, I want to acknowledge the young artists who were involved and have been involved now for some time in a musical project called *N'We Jinan*, whereby Indigenous youth across Canada have been able to express themselves through song. To say their talents are amazing would be an understatement. More importantly, it is reflective of not just their talent but their sense of pride in culture and commitment to change that is at the heart of reconciliation. It emphasizes the point that reconciliation is about mutual respect, but that it must also follow self-respect. The artists who make up this project make all Indigenous people feel that pride and self-respect through their music.

All across the globe, senators, the arts have provided a creative pathway to breaking silences for all people, for transforming conflicts and for mending the damaged relationships of violence, for healing, for overcoming oppression and exclusion.

Metis leader and the founder of Manitoba, Louis Riel, said:

> My people will sleep for one hundred years, but when they awake, it will be the artists who give them their spirit back.

In recognition of the strong relationship between the arts, civic engagement, education and reconciliation as a vehicle that can challenge and change the way society views itself, the Truth and Reconciliation Commission of Canada knew it was essential to include the arts in processes. Several major art exhibits, concerts, plays and film screenings ran concurrently at our national events. As well, the commission received a significant number of survivor statements in a variety of artistic formats.

In 2017, to support the principle of reconciliation outlined in the TRC report and responding to one of the calls to action to establish a funding priority and strategy to undertake collaborative projects that contribute to reconciliation, the Canada Council for the Arts launched a funding program called Creating, Knowing and Sharing: The Arts and Cultures of First Nations, Inuit and Metis Peoples.

There is a growing number of artistic initiatives taking place all over Canada pursuant to that fund that I encourage you and all other Canadians to take part in when the opportunity arises. Currently, for example, the Museum of Vancouver has an exhibition displaying rare art works by children who attended residential schools. This week, the National Arts Centre launched a season of Indigenous theatre. The film *Indian Horse* is still playing in some theatres, books are being launched and there are videos currently available on YouTube, including some of those that I referenced.

The role of media has been an invaluable source to connect audiences to the incredible talent that is providing an opportunity to help us learn about the Indian Residential School system in a compassionate and non-combative way. If you don't know where to begin to find these initiatives, start with the news.

Thank you.

ROUTINE PROCEEDINGS

CANADA-ISRAEL FREE TRADE AGREEMENT IMPLEMENTATION ACT

TWENTY-THIRD REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE PRESENTED

Hon. A. Raynell Andreychuk, Chair of the Standing Senate Committee on Foreign Affairs and International Trade, presented the following report:

Thursday, May 2, 2019

The Standing Senate Committee on Foreign Affairs and International Trade has the honour to present its

TWENTY-THIRD REPORT

Your committee, to which was referred Bill C-85, An Act to amend the Canada-Israel Free Trade Agreement Implementation Act and to make related amendments to other Acts, has, in obedience to the order of reference of April 4, 2019, examined the said bill and now reports the same without amendment.

Respectfully submitted,

A. RAYNELL ANDREYCHUK
Chair

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

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

• (1350)

CANADA REVENUE AGENCY ACT

BILL TO AMEND—MESSAGE TO COMMONS—NOTICE OF MOTION REQUESTING PASSAGE OF BILL

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

> That, in the opinion of the Senate, Bill S-243, An Act to amend the Canada Revenue Agency Act (reporting on unpaid income tax), is a critical piece of legislation to fight overseas tax evasion and was duly passed by the Senate and has been in possession of Members of the House of Commons for many months, and the bill should be passed into law at the earliest opportunity; and
>
> That a message be sent to the House of Commons to acquaint that house accordingly.

Colleagues, you will recall that two weeks ago the House of Commons sent us a message suggesting we take action on legislation. In that spirit of cooperation, I give this notice.

Hon. Senators: Hear, hear!

QUESTION PERIOD

ENVIRONMENT AND CLIMATE CHANGE

LOBLAWS FUNDING AGREEMENT

Hon. Donald Neil Plett: Honourable senators, my question today again is for the Leader of the Government in the Senate.

Leader, Canadians were rightly outraged last month when the Liberal government announced a grant of $12 million of taxpayers' money to be given to Loblaws to help pay for new refrigerators for its grocery stories. I bought my own refrigerator last week. I didn't get any subsidy.

Last night it was reported that two lobbyists for Loblaws who have given thousands of dollars to the Liberal Party in recent years met with Minister McKenna and her officials two weeks after this grant program opened last March. These lobbyists also attended a Liberal Party donor appreciation event last June, attended by the Prime Minister and members of Minister McKenna's staff.

Senator Harder, why does your government think it is appropriate to pay for refrigerators for Loblaws, and how do you justify this to middle-class citizens, taxpayers such as myself, who have to buy their own refrigerators?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. Let me say that I look forward to the leader returning next week, and we can get into the habit of Senator Smith asking me questions.

The honourable senator will recall that Senator Smith, in fact, asked the very same question the day after the announcement was made with respect to Loblaws. I will remind him of my answer, which is that the Senate, along with, obviously, the House of Commons and Parliament, passed a budget that provided for accelerated transition measures to reduce our carbon footprint, and programs were put in place for which applications could be received to save the carbon footprint.

Loblaws is a large and distinguished Canadian company that wished to contribute to the reduction of its carbon footprint. It is investing a significant amount of money in this effort. As a result of the effort that has been agreed to and the contribution from the Government of Canada, the equivalent of, I believe, 50,000 cars are being taken off the road in terms of the carbon footprint. I dare say, senator, your refrigerator doesn't compare.

Senator Plett: Well, neither does my income compare.

Yesterday, Loblaws reported revenue of over $10.66 billion for the first three months of 2019. Indeed, they are a large company; you are right. That was the only correct part of your answer.

Loblaws could easily replace its refrigerators without money from middle-class taxpayers — a middle class which, by the way, includes customers that this company cheated through a price-fixing scheme over bread during the course of 14 years.

Middle-class taxpayers don't have well-connected lobbyists to advocate on their behalf. They need a government that respects their tax dollars and keeps their interests in mind, first and foremost.

Again, Senator Harder, why does it always seem that this Liberal government is willing to help its friends at the expense of the middle class and those working hard to join it?

Senator Harder: Again, I thank the senator for his question. Honourable senators may remember that when Senator Smith asked this series of questions, this was, in fact, a supplementary as well — although it's been embellished with a certain style and flair, which I admire in the honourable senator.

Let me say again that Canada has put in place a series of measures to accelerate decarbonization, or at least a reduced carbon footprint. These measures should not be restricted to whether you are a profitable company or not a profitable company, but to whether or not you meet the criteria that have been established by Parliament and through regulation. Therefore, I certainly support and defend this decision.

DEMOCRATIC INSTITUTIONS

POLITICAL PARTY FUNDRAISING

Hon. Yonah Martin (Acting Leader of the Opposition): Honourable senators, my question is also for the Leader of the Government in the Senate.

I think what has happened since the previous questions and answers, Senator Harder, is that there has been further media coverage regarding this topic. I, too, have a related question.

In addition to the story concerning Loblaws, it was recently reported that an American CEO of a marijuana technology company attended a Liberal Party fundraiser in April, where the tickets cost $1,600 each.

The CEO later issued a press release describing his conversation with the Prime Minister at this event and claimed this opened the door for an introduction to the Minister of Innovation. As all honourable senators are aware, only individuals who are Canadians citizens or permanent residents of Canada can contribute to a registered party. In addition, the ticket was gifted to this individual, which is also against the rules.

Senator, the question relating to cash-for-access fundraising is this: How can your government claim to have provided greater transparency to fundraising events when it doesn't even follow the rules already in place?

Hon. Peter Harder (Government Representative in the Senate): Again, all honourable senators will know that this government has put in place a series of measures to enhance transparency of donations to political parties. It has put those measures in place both on a voluntary basis and as a practice through the laws that have been put in place. The government is intent on ensuring adherence to that so that we remain amongst those countries that have a severe and strict regime of party donations and transparency with respect to those who support political parties.

Senator Martin: We know the laws have been put in place, but our question is related to whether or not the government is following these very rules they have put in place.

In February of 2017, when Minister Gould appeared during Senate Question Period, I asked her about cash-for-access fundraising. She said at the time that the rules are clear, but that doesn't mean we can't do better.

Two years later, it seems that little has changed with this government. The rules are still not being followed.

Senator, could you please make inquiries and let us know whether Minister Bains did indeed meet with the CEO of an American marijuana company after the April 5 Liberal Party fundraiser?

Senator Harder: I would be happy to do so.

[*Translation*]

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUSINESS OF COMMITTEE

Hon. Claude Carignan: My question for the Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, Senator Galvez, relates to the translation of documents.

Every senator has the constitutional right to obtain documents in both official languages, but sometimes for practical reasons we tolerate receiving the documents in English only knowing that a French translation will be provided soon after.

My team is trying to prepare amendments to a bill but it doesn't have the transcripts for certain meetings or the translation of certain documents. The documents from the April 10, 11, 12, 23, 24, 25, 26, 29 and 30 meetings and those from this morning's meeting are not yet available in both official languages.

• (1400)

Furthermore, most of the time the evidence or the briefs are tabled in English accompanied by a note indicating that the French will follow. The documents we received in French over the past few days are briefs from witnesses who appeared at the April 4, 11, and 12 meetings.

Could the chair of the committee tell us when my constitutional right to receive documents in French will be respected and whether I will be given enough time to prepare amendments so that they can be properly tabled?

Hon. Rosa Galvez: I hope that Senator Carignan understands that I don't have control over translation delays.

[*English*]

I am trying to do my best possible. I have asked for support, but I cannot ensure when, exactly.

However, because Senator Carignan is asking me a question —

[*Translation*]

I do want to say that he swore at me this morning in Québécois, which was rather hurtful. He said that he was "en tabarnak." That was quite crude, and I ask him to apologize.

Senator Carignan: I don't always use that expression appropriately, so I apologize.

However, I reiterate my demand, and I will not be waiving my constitutional right to have the documents in both official languages. I don't want to know why these documents haven't

been tabled. I want to know when I will get them in both official languages and how much time I'll then have to properly prepare my amendments, like any other committee member.

Senator Galvez: As soon as possible.

[*English*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

BUSINESS OF COMMITTEE

Hon. Marilou McPhedran: Honourable senators, my question is to the Chair of the Standing Senate Committee on Internal Economy, Budgets and Administration. It is a question asking for an answer to a question I posed on March 21 to which I received a delayed answer on May 1.

My question is about whether the committee has or will undertake any kind of review in the context of the new harassment policy. I would be reading the same question, but I'm asking it again because the answer I got back from the chair in the committee to that question was:

> The intent of a new impairment policy is to look at complaints through a different lens, including fairness, transparency and timelines.

That is excellent and to be encouraged, I'm sure, by all of us, but it doesn't answer my question.

My question is whether CIBA has or will undertake any kind of review of the new harassment policy. In particular, will it look at the impact of the way in which CIBA currently responds, both to questions about but also to complaints about and to cases of harassment, and the impact on the complainants, using a different lens than a focus primarily on the Senate, Senate officials and senators?

To be clear, I'm asking whether there's any kind of a review that is being planned. If I could have an answer to that question, I would be most grateful.

Hon. Sabi Marwah: Thank you, senator, for the question. As I mentioned to you earlier, I've referred your question to the chair of the subcommittee, Senators Saint-Germain and Tannas, with a specific request for that item be looked into. They assured me that as part of the review of the new policy that is being done right now, that it will be taken into account.

HEALTH

CANNABIS REGULATIONS

Hon. Judith G. Seidman: Honourable senators, my question is for the government leader in the Senate. As you may recall, I rose in the chamber on October 17 and asked whether Health Canada has taken enforceable action against licensed marijuana producers who have endorsed questionable promotion events and advertising campaigns.

On February 19, in a delay response to my question of October 17, it was stated that:

> . . . Health Canada communicated specific concerns to federally licensed producers undertaking promotional activities. In all instances, licensees addressed these concerns after being contacted by the Department.

In a *Globe and Mail* article published on March 6, 2019, it was reported that Health Canada is investigating whether two marijuana companies, Canopy Growth Corporation and Halo Labs, violated advertising laws when they sponsored the Kids, Cops & Computers charity fundraising event on October 23.

Senator Harder, is Health Canada's investigation ongoing? When does the department expect it to conclude? If the investigation has concluded, has Health Canada determined that there has been a contravention of the Cannabis Act?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question. I will obviously have to make inquiries and report back. I will do so.

Senator Seidman: Thank you for that.

The rapid commercialization of the cannabis industry should give us pause when considering the Cannabis Act's discretionary powers with respect to advertising. We know cannabis companies will make every effort to circumvent restrictions on product promotion, which is why five public health organizations in Canada, including the chief medical officers of health, the Canadian Public Health Association, the Canadian Medical Association, the Canadian Paediatric Association and the Centre for Addiction and Mental Health all recommend a complete ban on advertising.

This is yet another example of a government that claims it is taking a public health approach, ignoring the advice of every leading public health organization in the country.

Senator Harder, when will the government listen to the advice of every leading public health organization in Canada and align all marketing of cannabis with that of tobacco, effectively making it prohibited?

Senator Stewart Olsen: Good question.

Senator Harder: Again, I thank the honourable senator for her question. She will know, because the senator was very active in the debate that we had in this chamber, that Parliament as a whole came to a different conclusion with respect to the prohibitions on and the regulation of advertising. You will recall that the ministers responsible at the time made a public policy decision and explained that balance between appropriate levels of advertising to ensure that the black market could be addressed and shrunk.

That is a challenging process. It's one that ministers at the time acknowledged — that implementation of this bill was a process, not an event. The government and the ministers responsible continue to monitor and evaluate the implementation, taking into account the concerns the honourable senator has raised.

[*Translation*]

OFFICIAL LANGUAGES

SUPPORT FOR REGIONAL NEWSPAPERS

Hon. Percy Mockler: My question is for the Leader of the Government in the Senate. Last year the government announced a $350-million investment in print media companies, but there are few details available. This program still will not address the challenges facing Canadian journalism, especially in Acadia.

• (1410)

In June, New Brunswick's *Acadie Nouvelle* will celebrate its thirty-fifth anniversary. The history of print media in New Brunswick is marked by constant struggle and resilience. We cannot allow our newspaper to close its doors as the *Évangéline* did in 1982. There is no doubt in my mind, Senator Harder, that francophone senators like Senator McIntyre, Senator Poirier, Senator Ringuette and, of course, Senator Cormier understand the important role played by *Acadie Nouvelle*, which we in New Brunswick like to call "our newspaper."

This newspaper, which covers the news across New Brunswick, employs 65 people. *Acadie Nouvelle* is the only daily French-language newspaper east of Quebec, and it has over 60,000 readers and 20,000 subscribers, 30 per cent of whom subscribe to the digital version. It delivers relevant information to our people, New Brunswick's francophone population. *Acadie Nouvelle* is an important and indispensable voice for New Brunswick's francophone and Acadian populations. It is important that the federal government take the time to listen to us and to work with those who have to contend with the many challenges facing print media on a daily basis.

Government Representative, will you make a commitment to New Brunswick's Acadians that you will make sure that the government appoints an Acadian representative as a member of the committee tasked with examining the future of print media in Canada? Will you draw the federal government's attention to the need to appoint an Acadian to represent that community's interests on any projects or in the management office of the new federal program?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. In a previous life, I recall visiting *Évangéline* headquarters and conducting interviews there. As the honourable senator has suggested, it is an important news outlet for francophone communities, the Acadian people of New Brunswick.

The action plan that was launched, as the honourable senator refers, I believe provides for $10 million a year for five years. L'Association de la presse francophone, mandated by the Consortium des médias communautaires, was asked to undertake an assessment in relation to the disbursement of these funds, with the first projects be allocated in 2019.

The allocation of the fund itself and the representation of Acadian interests is a subject I would be happy to bring to the attention of Minister Joly and report back to the honourable senator.

DEMOCRATIC INSTITUTIONS

SENATE APPOINTMENTS

Hon. Denise Batters: Senator Harder, I have asked you three times which organizations nominated the most recently appointed senators and which provinces declined to name Senate advisory appointment panellists. Your delayed so-called answer took more than five months and provided no answer at all.

The Trudeau government refused to answer, citing the Privacy Act and confidentiality as an excuse. Sounds like more fake Trudeau transparency and now we're seeing why. The last report of the Senate advisory committee outlined the 1,700 plus organizations that have sponsored candidates for Senate appointments under the Trudeau government process. They include Bayer, the Aga Khan Foundation, the David Suzuki Foundation, Tides Canada and multiple big banks. Some of these organizations have obvious agendas. Canadians should be able to know which groups have nominated 16 senators, now legislating in this chamber, who could be in a potential conflict of interest.

Senator Harder, why won't you tell us?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question. The answer that has been provided is, in fact, respective of the Privacy Act. If the honourable senator is interested as to whether there is a conflict of interest, surely that is a matter for our Ethics Officer.

I can assure you that the senators who have been appointed are individuals of distinction. They are appointed through, as I've said several times in this chamber, an arm's-length process.

When the honourable senator asked me which organization proposed my nomination, I was very forthcoming as an individual. Perhaps you should get to know some of the senators and ask them.

Senator Batters: Senator Harder, you are here to answer for the Government of Canada and its new Senate appointment process. The Trudeau government calls its Senate appointment process independent and, as you just said again, arm's-length. We've already seen that it isn't. The Province of Saskatchewan declined to participate in naming independent panellists as did the previous B.C. and Manitoba governments. That means those boards were filled 100 per cent by the PMO. The Quebec Senate appointment advisory board has sat vacant for the last 18 months yet two senators from Quebec have been appointed. The last two reports of the Senate appointment advisory board failed to give any explanation.

Now it's your turn to explain, Senator Harder. That Quebec provincial panel was empty, so who recommended those two senators?

Senator Harder: Again, it is difficult for me to speak on behalf of an arm's-length process. What I can say is that the choice to participate or not to participate in making nominations to the committee that is provincially based is entirely the decision of the governments that have been invited to submit to providing those individuals. If provinces and premiers choose not to, it is important, obviously, from the view of the government, to have representation from that province in particular consider the nominations that are forthcoming. That is what the government has done. That is the arm's-length process that is led by distinguished Canadian Huguette Labelle, and it is one that she and the process itself are transparent in providing information on.

[*Translation*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

BUSINESS OF COMMITTEE

Hon. Claude Carignan: My question is for the Chair of the Standing Committee on Internal Economy, Budgets and Administration.

You heard the question I asked the Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources with respect to delays in receiving documents in both official languages. She told me that she would do her best, but her best depends on the Senate administration.

Can you reassure me that the Senate has all the necessary resources to ensure that documents are available in both official languages before we start the clause-by-clause study of Bill C-69? Can he confirm that Senate services, especially the Law Clerk's office, also have the necessary resources to provide us with our proposed amendments in good order in both official languages right at the start of the clause-by-clause study of Bill C-69?

[*English*]

Hon. Sabi Marwah: Thank you, senator, for that question. In fact, it's interesting you raise this issue because we just had an update this morning at Internal Economy from translation services. There wasn't any mention that there were any issues. Given the fact that you have raised this issue, I shall take it under advisement and have a discussion with administration and translation services to make sure your issues are addressed.

ORDERS OF THE DAY

QUESTION OF PRIVILEGE

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, on April 9, 2019, Senator Plett raised a question of privilege concerning the leak of a confidential agreement that was the result of private negotiations among a number of senators in leadership positions. Several senators intervened in the debate on the matter at that time. Two days later, at Senator Plett's request, there was further consideration of the question of privilege. These two occasions provided ample opportunity for senators to express their understanding about what had happened and to share their concerns about the course of events.

Two related issues can be discerned in this question of privilege: the release of the agreement to senators outside those present during the negotiations, and the release of the agreement to the media. The release to the media meant that the agreement quickly became available to the general public.

In listening to interventions on the question of privilege, it soon became apparent that certain matters related to the agreement — in particular how it would be communicated, if at all, and to whom — had not been understood in the same way by all senators present at the discussions. Senator Woo confirmed that he had shared the agreement with his colleagues in the Independent Senators Group, but stated that he did so in good faith. Senator Plett, on the other hand, had left the discussions with the understanding that the agreement was "strictly confidential and [was] not to be shared outside of the most immediate advisers of each leader".

Honourable senators know that private discussions about matters of concern to the Senate are invaluable to the proper functioning of this place. These exchanges may involve the Government, representatives of the various caucuses, or individual senators. Ours is a very human institution, and these informal consultations help create shared understandings as to the expected course of Senate business. They also provide clarity that may otherwise be lacking.

Inevitably, however, such human relations sometimes give rise to misunderstandings. That seems to have been the case in the current situation. I would therefore encourage senators to express as fully as possible the conditions of the agreements they reach. Quite often this is best done in writing. When — as will sometimes happen — there is a misunderstanding, we must then focus on maintaining positive relationships, while trying to understand what happened and to resolve any problems in a collegial and productive way.

To turn to the specifics of the case at hand, the four criteria of rule 13-2(1) guide the Speaker when dealing with a question of privilege. All the criteria must be met for the

matter to proceed to the next step. There is little doubt that this question of privilege was raised at the earliest opportunity, thereby meeting the first criterion.

The same conclusion does not, however, hold when we turn to the second criterion. This requires that the question of privilege "be a matter that directly concerns the privileges of the Senate, any of its committees or any Senator". Privilege does not cover all activities in which senators engage. As explained by the Speaker of the other place on April 11, "the authority of the Speaker is limited to the internal affairs of the House, its own proceedings". It does not cover issues such as caucus matters, and neither would it cover agreements among parliamentarians operating outside the ambit of parliamentary proceedings. I would also note the statement, at page 74 of the 14th edition of *Odgers' Australian Senate Practice*, that privilege does not cover "the content of a document which has come into existence independently of proceedings in Parliament". Such limits are in line with the point, made in the 2015 report of the Rules Committee on privilege, that stated:

> In today's age of Twitter and social media it is also worth reiterating accepted Canadian law that communications made outside of parliamentary proceedings, for example tweets or blog posts, are not protected by parliamentary privilege.

Given the requirement that all the criteria of rule 13-2(1) must be met, a prima facie question of privilege cannot be established in this case. I do, however, trust that colleagues will seek to address the evident misunderstanding that gave rise to this unfortunate situation. It may also be timely for all senators to reflect on the need for prudence when using the powerful tools that social media place at our disposal, and which may have accelerated the course of events leading to the question of privilege. While these tools help us highlight the important work of the Senate, we should not ignore their potential pitfalls.

• (1420)

OCEANS ACT
CANADA PETROLEUM RESOURCES ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Bovey, seconded by the Honourable Senator Omidvar, for the third reading of Bill C-55, An Act to amend the Oceans Act and the Canada Petroleum Resources Act, as amended.

Hon. Dennis Glen Patterson: Honourable senators, I was quoting Carey Bonnell, Vice-President of Sustainability and Engagement for Ocean Choice International during his appearance before the committee on February 5. The last statement he made was:

> Ensuring that decisions are made through a scientific and socio-economic lens is imperative.

The report on the bill by the responsible committee in the other place reiterated this point. Their report states:

> Socio-economics of coastal communities that rely on the ocean should be transparently considered by DFO as a central element in its decision-making process relative to MPAs. This—

— the committee added —

> — is a major oversight in decision-making process because failing to incorporate social, economic and Indigenous cultural considerations into the MPA establishment process can lead to significant conflict, loss of trust and the creation of MPAs that may not be as effective as they could possibly be.

For me, the key takeaway from that statement is the need to ensure transparency so that industry intervenors, community members and Indigenous participants feel heard.

Ms. Burridge of the Seafood Alliance also described her frustration with the current consultation system:

> We have been disappointed by the level of consultation or the effectiveness of the consultation process to date, and we are troubled by some of the science. We definitely want to see better scientific analysis, and we need the socio-economic analysis to go in tandem with the scientific analysis.

She added:

> The purpose of the Oceans Act, and therefore MPAs, is not to eliminate commercial fishing but to protect what needs to be protected while still allowing sustainable use.

This need to balance economic interest with environmental protection was a common theme. Paul Lansbergen, president of the Fisheries Council of Canada, during an exchange with Senator Petitclerc, who asked Mr. Lansbergen to elaborate on his thoughts about the precautionary approach that this bill adopts, responded that:

> Fisheries management incorporates a precautionary approach, so we are used to that approach. It's how it gets implemented or applied.
>
> When the department is identifying an area of interest and the science rationale is incomplete, we have to collectively debate the balance question on that. However, that may not necessarily dictate a certain path in protecting the attributes in question. It's still a question of whether an MPA . . . that would be the most appropriate tool or is it a fisheries management tool. I don't think it is a debate on which is necessarily precluded by fulsome science or a precautionary approach.

This concern regarding the lack of an appropriate level of consultation and the potential dismissal of other interests in the area was echoed by Nunavik Premier Joe Savikataaq. In a letter to the Prime Minister and Qikiqtani Inuit Association President, P.J. Akeeagok, dated October 1, 2018. Premier Savikataaq in that letter made clear that:

> The GN promotes informed decision-making and cannot support the creation of a new protected area, even as an interim measure, without public consultation, without a Mineral and Energy Resources Assessment and without our direct involvement as an equal participant in this process.

The premier reiterated his concerns during his February 26, 2019, appearance before the committee, during which he told members.

> I want to reiterate that we are not against the creation of protected areas, but rather we need to have a decision-making role in the process. We have expressed our concerns with the general failure of Canada to involve the Government of Nunavut in this decision-making process with respect to marine protected areas on a number of specific occasions.
>
> If Bill C-55 gets Royal Assent, it will further legitimatize the Government of Canada to make unilateral decisions on behalf of Nunavut, which will directly affect the future economic opportunities for future generations of Nunavummiut.
>
> Therefore, the Government of Nunavut calls upon the Government of Canada to amend the bill to require consent from bordering jurisdictions prior to the designation of a marine protected area, and prior to the prohibition of any activity within that proposed marine protected area in those jurisdictions. This commitment would strengthen and enhance the opportunity for collaboration and engagement in the establishment of marine protected areas within an adjacent to Nunavut territorial waters.

• (1430)

During his February 6, 2019, appearance, Duane Smith, Chair and Chief Executive Officer of the Inuvialuit Regional Corporation, also discussed his concerns with the unilateral power of the minister to declare an interim MPA.

He said:

> Inuvialuit are concerned that establishment of MPAs by ministerial order under the Oceans Act and the further limitation on development by prohibition order under the CPRA will reduce our meaningful participation in the future of our region and exacerbate these implementation problems we are already experiencing.

Senator Bovey did point out that an amendment was made in the other place that states such an order would be done ". . . in a manner that is not inconsistent with a land claims agreement . . ." in her third reading speech.

However, Mr. Smith explained, in a letter sent to my office on March 19, 2019, in support of my amendment that:

> As the Inuvialuit Final Agreement does not have the benefit of some of the key terms of more modern land claims agreements, and as a Ministerial order under section 35.1(2) of the bill could impose extensive impacts on our region, it is our position that this text is necessary to provide clear instructions to those responsible for implementing the Oceans Act over the long term. Non-derogation clauses, while essential, are not sufficient in this case.

I believe my amendment was necessary to address these concerns. I would point out that with nine yeas, zero nays and two abstentions, the entire committee pretty well agreed.

Senator Bovey raised the issue of a letter from the Qikiqtani Inuit Association. They, for those who have not read the letter, are concerned about the impact this amendment would have on their current negotiations surrounding a potential MPA in the High Arctic Basin of Nunavut, over a huge area.

I have spoken directly with QIA President P.J. Akeeagok and explained that this amendment, co-developed with the IRC and the Government of Nunavut, addresses concerns of parties that do not enjoy the benefit of protection under the current non-derogation clause. The QIA process flows from the Nunavut Land Claims Agreement and is protected under clause 5 of the bill.

I also wrote to QIA in a letter dated April 6, 2019, and tabled with the clerk of the committee that:

> While I understand that an MOU was signed between the Government of Canada, the QIA and the GN and publicly announced on April 12, 2010 with regard to the potential protection of the High Arctic Basin, or Tuvaijuittuq, all communications with the GN indicate their continued support for this amendment . . .
>
> I agree that it is important to further address the inequities between different Inuit land claims and that could very well lead to amendments to the land claims themselves, as Mr. Williamson Bathory of QIA suggests in his email. I am committed to continuing to raise and advocate for the resolution of this issue at every opportunity. However, that will not afford an immediate sense of certainty for the IRC, nor will it address the jurisdictional concerns expressed by the Premier.

In fact, I was copied on a letter to Minister Wilkinson, signed by all three territorial premiers, and dated April 25, 2019, that stated:

> As part of the Standing Senate Committee on Fisheries and Oceans review of Bill C-55, it is our understanding that modest amendments to the Bill have been proposed to clause 5 on page 4 to add line 35.11(1) with respect to engagement with the public and jurisdictions.
>
> This amendment addresses concerns raised by territorial government representatives during committee appearances and supports increased engagement both with our governments and with Territorial residents and organizations. We are supportive of it being accepted.

Three territorial premiers.

Finally, I would like to respond to a statement that Senator Bovey made during her speech on April 11. She told this chamber that:

> Again, even if somehow the government failed to cooperate or consult based on the explicit legal requirements in the Oceans Act itself, the interim protection order would need to go through the *Gazette* process and other processes required under the Statutory Instruments Act whereby anyone can submit their concerns and comments. This is obviously not the standard for consulting with communities and Indigenous peoples that we should deem as adequate. However, I am trying to illustrate to you that all of the mechanisms the amendment speaks to are already in place. I have to think the issue at the fore is due not to the present bill but to years of governments letting communities down with prior lack of consultative processes. I understand the concern and the desire to repair that concern.

Colleagues, I would have to respectfully disagree with the assertion that the interim protection order would go through the *Gazette* process.

Clause 5 amends the Oceans Act so that under section 35(2) the Minister may make an order. This is a unilateral and discriminatory power given to the Minister of Fisheries and Oceans to create an interim MPA. It is only after a maximum of five years that they must decide to either repeal the order or ask the Governor-in-Council to establish a permanent MPA. Only then is the *Gazette* process initiated, as per section 35.3(1).

My amendment would ensure that before an interim MPA could be declared by Ministerial order, the minister must post the intent on their website and ensure there is adequate opportunity for public consultation as asked for by representatives of the fisheries industry, the GN and IRC.

It also ensures that the government is open and transparent about how the public feedback was used in the decision-making process. It creates a mechanism for the IRC, and any other affected Indigenous government, agency or body created by a province or territory, as well a provincial or territorial government can request a formal consultation and be afforded accommodations where appropriate. This amendment also establishes clear timelines ensuring that consultations happen no later than 30 days after a request for consultation by a jurisdiction is received.

Honourable senators, this bill, as amended, is the perfect example of what this chamber exists to accomplish. We listen to regional and minority concerns. I worked with stakeholders to co-develop this amendment and have letters of support from three territorial premiers and the president of an Inuit land claim organization. We have given this bill sober second thought and made it stronger to ensure proper consultation is taking place and that there is transparency and accountability in the process.

I do not have adequate time to quote all the compelling testimony that I would like to here today, but those senators, from all parties and groups represented in the Senate, who sat through and listened to the arguments of witnesses at committee, agreed with me that this was the right thing to do, and no one voted against this amendment.

That is why I would respectfully urge you, colleagues, to vote for this bill as amended.

Thank you.

Hon. Elaine McCoy: Very well expressed, Senator Patterson.

I'm pleased to address Bill C-55, which is designed to give interim marine protected area powers to the Minister of Fisheries. I want to address four points. One is context; one is the number of legislative instruments that we already or are dealing with in this context; one is the precautionary principle; and, finally, one is the sense of timing.

Let me start with context. We are all aware that we, in Canada, have agreed that our goal should be to develop a world-class marine management regime. Although we have elements of that in some parts of Canada, it's not consistent. It certainly isn't consistent in all of our oceans.

There are three broad categories of that world-class regime. There are probably 26 sub-elements we have identified. One is that the broad themes are vessel traffic management, emergency response capacity and ecological protection. By way of context, this one would fall within the last broad theme.

A world-class marine management regime would ideally culminate in an internationally recognized particularly sensitive sea area known as a PSSA. Canada has none of these, not one PSSA. I think we can do better.

• (1440)

In terms of the legislation that we have passed recently or, in fact, is in front of us right now, there are five acts that you should be aware of.

Bill C-86 was a bill that we passed in December. It was the Budget Implementation Act, another omnibus bill, and it contained amendments to the Canada Shipping Act, and also to the Marine Liability Act. Then, of course, there is Bill C-68, which is the fisheries bill that is in committee; Bill C-48, which is the tanker ban that is in committee; Bill C-69, which is impact assessment and other acts that is in committee; and Bill C-97, which is the current BIA, which has reference to ongoing amendments, including the Pilotage Act.

Those are a few of the other bills that we will be or are considering, and that needs to be all put in context.

In terms of Bill C-86, the omnibus bill we passed in December, and changes to the Canada Shipping Act, it provided powers that could be used to enforce regulations similar to but much more expansive than Bill C-48. We should be aware of that as we are dealing with other pieces of legislation as well. We are getting very close to having redundant bills or acts, one of which, if we decide a question, may be out of order to decide another one.

Also in connection with Bill C-86, we need to take into account the fact that it failed to accommodate all of the interests and aspirations that Indigenous communities have. As an example, compensation for community fishing is interrupted because of marine activities.

Let me then turn to the precautionary principle. As most of you know, I used to be President of the Macleod Institute for Environmental Analysis at the University of Calgary campus. One of our main lines of endeavours was doing peer reviews, reports and studies, et cetera, of environmental assessments. We used to put together teams of scientists — scientific academics, biologists, et cetera — to conduct our reviews. We dealt with the precautionary principle.

One of things I learned leading a team with academic scientists was that they could not, with 100 per cent accuracy or certainty, tell me what the impacts were going to be. They could only deal in likelihood. They could give me a probability. They could say the green-headed booby might be affected, or there is a high or low probability, but they couldn't say 100 per cent that it would be, in most cases.

At first I was startled, because I grew up thinking that scientists gave you black and white answers, yes or no, but it was not the case in this area, and from that developed this precautionary principle. "If there is a high probability," the scientists would say, "act as if it could happen," and that was the origin of the precautionary principle.

A new definition has come into play, and it has been incorporated into Bill C-55, talking about scientific uncertainty is not a barrier to act. Fair enough, but this new definition is causing great uncertainty, which is not something that we want to encourage.

Let me quote to you from a learned article published in the *McGill Law Journal* in which the authors say:

> The precautionary principle . . . has itself become a source of a good deal of uncertainty. Debates are continuing about its status in various legal systems; its meaning, both in general and in particular contexts; and its implications for commerce, industry, trade, health, agriculture, and — with only slight exaggeration — virtually every area of human endeavour.

So the precautionary principle, as it is being implied, indeed itself invokes in all of us a call to be cautious in our decision making. It certainly does not mean you can make decisions without a scientific basis. You have to be prudent, but you do have to have science. You just don't have to have 100 per cent scientific certainty.

Finally, to continue that point, one further thing. Underlying that concern, and you have heard it expressed by others, we don't want to encourage decisions being made in this area that are arbitrary, unilateral or without notice.

We heard from Senator Christmas yesterday and Senator Patterson yesterday and today examples of some decisions in this area being made without notice, particularly egregiously with respect to Indigenous communities.

Another example — it occurred just last week, on April 25 — was an arbitrary and unilateral decision by the Minister of Fisheries, who suddenly announced that all marine protected areas would be subject to a full prohibition of oil and gas activity, mining activity, dumping waste and bottom-trawling fishery practices. That's a blanket prohibition.

We are used to a very careful approach to marine protected areas that are tailor-made for each particular element of the ecosystem being protected. There are buffer zones in the vertical and lateral column surrounding the waters, et cetera. They are designed to have ultimate protection plus accommodation for other interests in that area.

Make no mistake, these are big areas. The latest one announced is something like 12,000 square kilometres. That's bigger than the city of Ottawa.

Suddenly, without any further study or consultation, the minister gets up at an international conference and says, "Oh, by the way, we are banning all oil and gas activity, all mining activity, waste dumping and bottom trawling." That's arbitrary in itself. It's certainly unilateral.

My fourth point is: Why the rush; why the speed? I was alerted to this by an op-ed in the *Toronto Star* a week ago Monday, April 22, written by Hansjörg Wyss. He is identified as an American entrepreneur, businessman and philanthropist. He was congratulating Canada on its leadership with respect to protected areas. He mentioned that since 2015, in the last four years, we have managed to move from 1 per cent of our ocean responsibilities to 8 per cent. Our target for next year, internationally agreed to, is 10 per cent. But in four years we increased our protected areas by 800 per cent, and that is using the existing authority to create MPAs, notwithstanding that it might take up to nine years.

• (1450)

So if we can do that much in four years, why do we need to rush? Is it because in 18-months' time there is going to be another international conference? In 2020 they are going to revisit the target. This American businessman and philanthropist tells us in his op-ed that scientists now recommend that the international community protect 30 per cent of earth's lands and waters by 2030 — 30 per cent. A third of all land and a third of all water would become essentially eliminated from human activity if this trend continues.

Think about that, senators. Is it because there is only one year left that this government suddenly wants to use an interim measure, an interim MPA power, to create, without the necessary foundations in my view, protected areas in order to be seen to achieve a target? Which it presumably could have done over the last four years.

My conclusion, senators, is that we need to apply the precautionary principle to our own conclusions. When I first heard about the interim MPA creation, I thought it sounded like a good idea. I'm in support of protected areas, and I always have been a conservationist. But the more I dug into it, the more I began to worry. Are we not, because we are acting out of context, encouraging or at least facilitating arbitrary, unilateral activity here? Why the rush?

Thank you.

Hon. Thomas J. McInnis: Could I ask a question? I know I'm due to speak, but I would like to ask a question.

The Hon. the Speaker pro tempore: Senator McCoy, would you take a question?

Senator McCoy: Yes.

Senator McInnis: Senator McCoy, that was a very insightful address.

Let me ask you about the precautionary principle. Do you believe that this could be used as a crutch to enable the approval of an order in the regulations after five years? My worry has been whether they will actually concentrate on the five years — five years is a long period of time — to get the science completed. It doesn't say that it can go in the regulations if the science is 50 per cent done or if it's 75 per cent done. So is this something that could possibly let those involved in the science arbitrarily —

The Hon. the Speaker pro tempore: Senator McInnis, Senator McCoy's time is up.

Senator Plett: Five minutes.

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

Hon. Senators: Agreed.

Senator McInnis: To come to the point, look, science is important. Is this going to be misused by those who are anxious to get the interim order into a full order and regulations?

Senator McCoy: Thank you. The difficulty is, of course, predicting how it will be used, and I would not want to speculate or attribute motivations to individuals making decisions on this.

What I am concerned about, and I said it this way: Are we facilitating the opportunity to make ministerial orders that would then be converted into cabinet orders, orders-in-council, that are not sufficiently based in scientific evidence?

You are focusing on the five-year period and converting the interim order into an order-in-council, a full MPA. I'm concerned about making the first interim ministerial order without sufficient evidence, without sufficient science backing it up.

Someone says, "Oh, by the way, I think this would be a good place. Let's just stack an interim order on this." That's the difficulty I'm having.

I support the application of the precautionary principle the way I described it and the way the scientists at the University of Calgary taught me how they use it, which is if the scientists see a high probability of damage or likelihood of damage to a species or a place, then act as if that's going to happen. That's the precaution.

That would be based on a full scientific study, and it would be based on collection of evidence, which does take time because you can't just do it in six or nine months. Normally you need a timeline in order to study these effects in various ecosystems, which is why it takes time.

That's the appropriate and responsible approach, and I'm afraid that we've opened a door to hop, skip and jump into a decision that isn't well-founded.

Senator McInnis: Thank you very much. Yes, with regard to the interim orders, it appears to me that what happens when those are in place, it's like reverse onus: Here is your MPA; prove that you shouldn't have it. That's part of the problem. Anyway, thank you very much.

Honourable senators, thank you for this opportunity to say a few words on Bill C-55, An Act to amend the Oceans Act and the Canada Petroleum Resources Act. In addition, I will briefly speak to the amendment I moved at committee, which was endorsed by the majority of committee members.

First of all, I want to thank Senator Christmas for his kind remarks about me in some of the comments I had to make in committee. He is not looking for this, but I'll say it: I think the Senate became a better place when Senator Christmas was appointed.

Hon. Senators: Hear, hear!

Senator McInnis: I've known Senator Christmas and his colleagues in Membertou for a long time, and I can tell you with his leadership and others like him that what they have done for the economy of industrial Cape Breton through Membertou is nothing short of amazing. It's a model for all of us in Canada.

I also want to acknowledge Senator Bovey who was a guest to the committee, and she sponsored this bill. It's terribly difficult to be critical of Senator Bovey. She is such a nice person. She did a marvellous job, as did Senator Patterson, who was also a guest as the critic.

Marine protected areas are seemingly a wonderful way to preserve and protect our oceans. That is why our federal government, in 2010, signed on to an agreement with the United Nations convention to protect 10 per cent of our coastal and marine areas by the end of 2020.

Senators, if anyone knows the value and importance of taking care of the ocean it is Nova Scotians. We are home to Canada's largest centre for ocean research, the Bedford Institute of Oceanography. In addition, there are 300 ocean technology companies in Nova Scotia. We are a leader in ocean protection. For example, in recognition of the fishing grounds off Georges Bank, we extended the oil and gas exploration moratorium. It is because of this that Nova Scotians deserve the opportunity to continue to maximize, in a responsible way, the resources off our coast.

• (1500)

Permit me to identify some benefits we receive from the offshore. In 2017, our seafood exports reached $2 billion. In the last 20 years, Nova Scotians received $4 billion in revenue from petroleum projects, and $5 billion more has been spent on goods, services and work commitments.

Further to this, the offshore geoscience shows that Nova Scotia's offshore holds an estimated 8 billion untapped barrels of oil and 120 trillion cubic feet of undeveloped gas. Now, senators, the possibility of several MPAs off the coast of Nova Scotia creates an anxiety among those who earn their livelihood from the ocean and would-be investors.

So, you may ask: Where does the notion of several MPAs off Nova Scotia come from? I have here a map showing a broad, sweeping number of something like 18 potential MPAs off the coast of Nova Scotia. This report and map were developed by the Government of Canada in 2011. These are what are known as ecologically and biologically significant areas that warrant a greater-than-normal degree of risk aversion in the management of activities. Permit me to quote from the paper that was prepared:

> These areas will inform broader oceans planning processes and be considered in the design of bioregional MPA networks.

Senators, in March 2012, DFO Maritimes held a regional science advisory process to develop initial advice on the objectives, ecological data and methods that should be considered in designing a network of Marine Protected Areas. This was seven or eight years ago and included the proposed MPA on the eastern shore of Nova Scotia. That is when those fishers, residents, the Government of Nova Scotia and First Nations should have been informed and consulted about future MPAs off the shore of the province.

Imagine this: These potential MPAs run from the tip of Yarmouth to the tip of northern Cape Breton. Senators, with the exception of the eastern shore proposed MPA, I don't believe any of this information has been gazetted, published or communicated in any way to the residents of Nova Scotia. In my opinion, they have every right to know, and this legislation does nothing to help this. This is neither transparency nor consultation. Is it any wonder people are concerned?

Senator Bovey, with respect, you referenced the eastern shore proposed MPA that now can be viewed online and which was probably posted in 2018. The fact is, DFO could and should have informed the people of their potential plans and involved them as far back as 2011 or earlier. That is apparently when the map referenced above was drawn.

Actions by governments that directly affect the lives of citizens and the economic well-being of small coastal villages must be communicated to them in a meaningful way. The residents, including fishers, had heard rumours about a pending MPA for years and were worried about it.

Senators, the importance of early contact with citizens might refute the necessity for an MPA. DFO, the Ministry of the Environment and fishers all testified that the eastern shore coastal waters are pristine, with excellent fishing management, and this has been the case for hundreds of years. So how does an MPA improve this?

Of course, there's great opposition to the proposal. Part of the huge opposition stems from the widespread belief that DFO had decided there would be an MPA before the department announced last March that it would start consulting the communities about one, despite the Minister of Fisheries and Oceans' assurance that those who have fished these waters for the 12 months prior to the implementation of an MPA will continue to be able to fish. The challenge with this arrangement is that this government, or future governments, could simply amend this act, making it a no-take zone. The footprint of an MPA will always present that possibility.

In addition, some species that are not fished today may be in the future. Will this bill prevent this expansion? I believe it will. Now, Senator Bovey rightly points to the Financial Administration Act, which gives the statutory authority to post the details of the proposed MPA. This is in the *Canada Gazette*. So where is the harm of putting that requirement in this act as well? There is no harm. It is an assurance that it will be done. In fact, I would have liked to have gone further and make it mandatory to inform all affected citizens by general post of the impending plans for an MPA and to explain the consequences.

Most citizens in the rural areas have no access to Internet and no idea what the *Canada Gazette* is. Senators, you simply have to take every precaution to ensure that those who gain their living and enable their rural communities to survive through the fishery are informed early and at every step along the way.

My amendment is not redundant in the minds of those who are taken by surprise that their way of living is threatened, a living that they and their ancestors have honoured for hundreds of years. Rather, it is an assurance that notice will, indeed, be given, whatever the means may be.

Thank you very much.

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

Some Hon. Senators: Agreed.

Senator Housakos: On division.

(Motion agreed to and bill, as amended, read third time and passed, on division.)

[*Translation*]

ACCESS TO INFORMATION ACT
PRIVACY ACT

BILL TO AMEND—THIRD READING—
DEBATE

Hon. Pierrette Ringuette moved third reading of Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts, as amended.

She said: Honourable senators, I want to first express my gratitude to all who helped in the development of this bill. In particular, the amended legislation before us today has benefited from the thoughtful consideration of our colleagues on the Standing Senate Committee on Legal and Constitutional Affairs. The work that committees do is meaningful and valuable. They are places where, together, senators can contribute to good public policy and really make a difference in the lives of Canadians. Conversations with Canadians form an important part of public policy, and our committees provide an important avenue through which those conversations can happen.

The committee heard from, among others, the Information Commissioner and the Privacy Commissioner, who are to be commended for their efforts to improve this bill. I would also applaud the government for continuing to engage the commissioners on a regular basis after introducing this legislation. The committee heard from representatives of Indigenous organizations, who provided important insights into their need to access records of important historical and archival value. Legal experts and journalists also lent their voices to this conversation, sharing their unique experiences and explaining the importance to their work of this legislation.

The bill before us today reflects the hard work of so many, and it's important to remember that Bill C-58 is just the first phase of the government's reforms to access to information.

• (1510)

Bill C-58 would ensure that the Access to Information Act would never become outdated again. It would make five-year reviews mandatory. The first full review would begin within one year of the bill's Royal Assent.

[*English*]

Further, the government has committed to engaging Indigenous organizations and representatives about how the Access to Information Act needs to evolve to reflect Canada's relationship with Indigenous peoples, including how information and knowledge of Indigenous communities is both protected and made accessible. The government recognizes the importance of working closely with Indigenous organizations to ensure that access-to-information processes are responsive to their needs. This has been identified as one area of focus for the upcoming full review.

It is important to note, in regard to the issue of land claims and access to documents, that in the letter sent to the committee from the President of the Treasury Board, the government has committed to working with stakeholders. From the letter:

> . . . the Treasury Board of Canada Secretariat, in partnership with Crown-Indigenous Relations and Northern Affairs Canada, will consult with all stakeholders about the feasibility of transferring additional Crown-Indigenous Relations and Northern Affairs Canada records that are of historical and archival value to archival institutions. The findings will be reported to Parliament in the context of the first full review of the Act that will follow coming-into-force of Bill C-58.

Honourable senators, I would now like to speak to the government's position on the amendments adopted by the committee as they relate to balancing access rights and the protection of personal information; the coming into force of the Information Commissioner's order-making power; and the proposed new requirements to indicate specific subject matter, type of report, date or date range in a request.

I would also like to speak to the proposed new Part 2 of the Access to Information Act, new proactive publication requirements that put into practice the idea that the government is open by default.

First of all, we heard the Information Commissioner's and Privacy Commissioner's recommendations regarding changing some aspects of Bill C-58 to ensure that the privacy of personal information would continue to be protected in the context of the Information Commissioner's important new power to order the release of government information. The commissioners recommended that it be mandatory for the Information Commissioner to consult with the Privacy Commissioner before the Information Commissioner makes an order for the release of personal information. The commissioners also recommended that the Information Commissioner be provided with the discretion to

consult the Privacy Commissioner when investigating a complaint regarding the application of the personal information exemption.

The committee made these changes, as well as a series of related changes sought by the commissioners, and I thank them.

The effect of these amendments would serve to strengthen the protection of personal information and would further safeguard Canadians' privacy rights. For these reasons, the government supports these amendments, and thanks the commissioners and the committee for their contributions to strengthening these provisions.

The committee also amended the bill so that the Information Commissioner's order-making power would come into force upon Royal Assent of Bill C-58. Originally, coming into force would have occurred one year after Royal Assent. This delay was intended to allow time for the Information Commissioner to make any necessary structural or other changes to her office to prepare for her new oversight powers. However, the Information Commissioner asked that her order-making power come into force at Royal Assent rather than one year later. In a letter to the government and in her testimony before the Standing Senate Committee on Legal and Constitutional Affairs, she said that this would be a less complicated transition to the new regime.

The government greatly values her perspective on this and supports the amendment made by the Senate committee.

I would like to say a few words about the importance of the order-making power for the Information Commissioner. The proposed order-making power would transform the commissioner's role from that of an ombudsperson who makes recommendations to that of an authority with the legislated ability to make binding orders regarding the processing of requests, including the release of records. The Information Commissioner would also be able to publish her orders, establishing a body of precedents to guide institutions as well as users of the system. These are major steps forward.

In the letter from the President of the Treasury Board to the committee, the President backs up the government's commitment to access to information by pledging increased funding and address the backlog on requests with $3.6 million in Budget 2018 to support the Information Commissioner and made available funding of up to $5.1 million from 2019-20 to 2021-22, and $1.7 million ongoing.

Let me now turn to the proposal that requesters would need to indicate a specific subject matter, type of record and time period. The intent of these provisions was to ensure that requests provided enough information to generate quick responses.

Indigenous groups and the Information Commissioner raised concerns about the potential misuse of these requirements, and the committee amended the bill to delete the requirements to provide these details. The government has heard concerns about these provisions and supports the amendment made by the committee.

An issue that sparked a lot of interest among senators on the committee and beyond was that of the role of the Speaker in the Senate. Under the bill, the Speaker would determine if information to be published under proactive disclosure could constitute a breach of privilege and stop its disclosure. There were concerns that this implied — and I reiterate "implied" — that the Speaker had the power to determine the privilege of all senators and that it was not the Speaker's role to do so.

I believe the original language did not infringe upon this right. The Speakers of both Houses of Parliament are the guardians of our privilege. That is within the Parliament of Canada Act. However, I proposed an amendment to make it clear that the Speaker only determines if it may breach privilege, not that it does.

The reason the Speaker has this authority in the bill is that, at times, the Senate is not sitting but disclosure will continue to happen. So there needs to be a safeguard in place to ensure that it does not disclose privileged information while the Senate is not sitting.

• (1520)

In addition, my amendment added that the Speaker's decision is final only in relation to proactive disclosure. It was further amended to include that it respects the rules of both chambers. At the committee level, all senators were very happy with the end scenario.

I believe the amended bill is clear in the roles the Speaker plays and that the rights of the Senate are maintained. Should the Speaker decide that information may breach privilege, it is only for the proactive disclosure period.

Should the Senate, a committee or an individual wish to release that information through other means, such as in a motion, that right remains.

I want to quickly address one aspect of the bill that was amended in committee with my support, but not necessarily the support of the government, although I hope they take a good look at supporting it.

Senator Dalphond proposed an amendment to provide some aggregation in the publishing of judicial expenses. I think Senator Dalphond's amendment strikes a good balance that will mitigate some of the concerns in regards to judicial independence and the safety and security of judges. I hope the government gives it proper consideration.

Senator Pratte amended the bill to limit fees to only the application fee. The government has vowed to only charge the $5 application fee, but the bill originally left open the possibility for additional fees in the future.

I opposed this amendment because I believe that in the future there may be a need to apply fees in certain situations.

As I pointed out in committee, businesses often use access requests to gain information beneficial to their business, potentially even information on competitors. While I believe that limiting fees for Canadians is the right thing to do, I don't believe that Canadians should be paying the costs for business to

profit from. I could see a future where there may be fees to recover some of these costs. I believe having that option is prudent.

There was also discussion as to who reviews the system. I'm talking about the access to information system. The bill provides for a five-year review, starting after a one-year review by the Treasury Board president. This review would be tabled in both houses, and therefore, the committee would be able to study its findings.

There were concerns that this did not allow for a full review by both house committees. I disagree. Proposed amendments would have removed the minister's review and ordered committees to do the reviews. I disagree with doing that as well. Why would we not want the minister to review it first in addition to the committees afterwards?

I do not agree with Senator Pratte's amendment, which is contrary to other statutes that contain five-year review articles, like in the Bank Act.

It should also be noted that committees can instigate their own reviews anytime they want. I believe the provisions in this bill meet the needs.

Honourable senators, I'd like to now turn to the important proactive publication provisions of Bill C-58. This would create a new part of the Access to Information Act for proactive publication to put into practice the idea of government being open by default.

The proactive publication requirements would apply to about 265 departments, agencies and Crown corporations, as well as the Prime Minister's Office, ministers' offices, senators, members of Parliament, institutions that support Parliament and administrative institutions that support the courts. It would also enshrine in law the proactive publication of information of importance to Canadians, information that provides greater transparency and accountability in the use of public funds. Currently, there is no legislative requirement for any of this to be made public.

Proactive publication provides greater transparency and accountability in the use of public funds, such as travel and hospitality expenses; contracts over $10,000 and all contracts for MPs and senators; grants and contributions over $25,000; mandate letters and revised mandate letters; briefing packages for new ministers and deputy ministers; lists of briefing notes for ministers or deputy ministers; and briefing binders used for Question Period and parliamentary committee appearances.

Making such information automatically available to Canadians without someone having to make a request ensures that the government — and indeed, future governments — will be more open and transparent.

[*Translation*]

Honourable senators, in closing, allow me to once again thank the committee for its thoughtful and thorough review of the issues involved in improving Canada's access to information system.

The changes I have spoken to today further enhance efforts to reform our Access to Information Act, a law that has not been significantly updated in over three decades. I believe that, thanks to the hard work of the committee and many other stakeholders, we have the opportunity today to move ahead with an access to information law that will meet Canadians' needs for government information in the digital age.

I urge all of my colleagues to vote in favour of this transformative legislation. It is game-changing and a significant step forward for freedom of information in this country.

Thank you.

Hon. Pierre-Hugues Boisvenu: Honourable senators, I rise to speak at third reading of Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts. I would first like to thank Senator Joyal for presiding over the work of the committee throughout its study of Bill C-58. As deputy chair of the committee, I also want to acknowledge the efforts of my colleague and the other deputy chair, Senator Dupuis. I would be remiss if I did not acknowledge the full participation and active and sustained work of all senators who remained admirably composed before the very complex task at hand.

• (1530)

The testimony we heard as we studied Bill C-58 was extremely critical. Allow me to mention a few of the many comments we heard about how many parts and clauses of Bill C-58 are a complete failure from the standpoint of reforming access to information rights in Canada.

Stéphane Giroux, President of the Quebec Federation of Professional Journalists, appeared before us on behalf of his organization's 1,800 members. The federation is the largest journalists' association in Canada. In his testimony on Wednesday, October 31, 2018, he said:

> In a word, this bill is very disappointing. The Quebec Federation of Professional Journalists recommends that the bill be rejected in its entirely, that the Treasury Board Secretariat do its homework again and come up with a new bill for Canadians, a bill that is better aligned with its commitments.

The federation's brief is equally critical, stating:

> The FPJQ is very disappointed with this weak bill . . .

The brief goes on to say that Bill C-58 "in no way reflects the spirit of the commitments," or as I would call them, promises, "made by the Liberal Party of Canada and its leader, Justin Trudeau, Prime Minister of Canada."

I remind senators that before we received Bill C-58 from the other place, the former Information Commissioner, Suzanne Legault, was just as critical in her comments on Bill C-58. On November 1, 2017, she said the following:

> . . . if Bill C-58 is not amended in a significant manner, I would much prefer to keep the status quo.

The former Information Commissioner also said the following on September 28, 2017:

> After studying the Bill, I have concluded that the proposed amendments to the *Access to Information Act* will not advance government transparency. The proposed Bill fails to deliver on the government's promises. If passed, it would result in a regression of existing rights.

If the federal government truly wanted to modernize the access to information regime, this bill is clearly a failure, based on what we heard from witnesses.

Honourable senators, access to information is vital to the functioning of our democracy. Without access to information, the official opposition cannot carry out its role of holding the government to account. Without a proper access to information regime, the various departments and governmental agencies have no real accountability. Without access to information, journalists cannot do their job. Without access to information, Canadians are kept in the dark about the actions and decisions of the federal government in Ottawa. That is why some senators, including myself, tabled certain amendments in committee. All my amendments were rejected except for the one concerning the use of codes that would thwart the application of the Access to Information Act. However, I would like to come back to the two proposals I tabled in committee. At the end of my speech, I would like to table a motion containing an amendment that concerns proactive disclosure.

Under Bill C-58, some hospitality and travel expenses will be made public, but Canadians want more transparency. In 2015, the Liberals promised truly transparent government, so I'm giving the government a chance to prove it. The Liberals' 2015 promise went much further. They promised that the prime minister's and ministers' offices would be subject to the Access to Information Act. This amendment amends the bill to make two things public. The first is employees' severance pay. Take the case of Gerald Butts, Prime Minister Trudeau's former principal secretary, who left his job amid the SNC-Lavalin affair and pocketed undisclosed severance pay in the process. We still don't know if he received severance pay. If he did, we don't know how much. Canadians have the right to know how much that cost them, because it's their money.

The amendment would see that information published within 30 days of the end of the first month in which a PMO adviser, a member of the political staff, receives severance pay. Proactive publication would include the name of the person receiving the payment, the date as of which the person was no longer an adviser or member of the political staff, such as a chief of staff, and the amount received.

As part of the study of the bill, Stéphane Giroux, president of the Fédération professionnelle des journalistes du Québec, quoted the Right Honourable Beverley McLachlin when she said, and I quote:

> The argument that access to information is essential to democracy is simply put.
>
> Informed voting depends on informed debate. Parliament and the executive branch derive their power from the people, who exercise that power by voting for or against particular people at the ballot box. For the people to effectively participate and vote, they must know and understand what the government is doing.

In his testimony before the Standing Committee on Access to Information, Privacy and Ethics, on October 25, 2017, Nick Taylor-Vaisey, president of the Canadian Association of Journalists, stated the following, and I quote:

> You'd be hard pressed to find a journalist who doesn't celebrate increased proactive disclosure.

In the brief he submitted to the committee, Ken Rubin, an investigative researcher, indicated the following on page 5, and I quote:

> Bill C-58 also does not seek to cover those receiving significant government funding costs (or public officials . . . . Nor does it want public officials expenses that include perks, some of a lifetime nature, fully disclosed, sometimes they are hidden behind remuneration ranges and aggregate anonymous figures.

That is why I think it is reasonable for those amounts to be published.

The second part of my amendment adds another type of information to the government's proactive disclosure obligations. It would require the disclosure of any reimbursement of expenses related to relocation for a ministerial adviser or member of ministerial staff, including policy advisers, ministers, and chiefs of staff of ministers' offices and the Prime Minister's Office. The disclosure would therefore occur when the person leaves their job and receives a payment. The disclosure would be done electronically, with the following information being made public: the name of the ministerial adviser or member of staff, such as a chief of staff; the date of the payment; the amount reimbursed and the moving allowance; and lastly, the reason for the payment or reimbursement that serves as the severance pay, or relocation expenses in this case. The Liberals promised that the act would apply to the Prime Minister's and ministers' offices, and that is what this amendment does. To quote from the report of the Information Commissioner of Canada:

> After studying the Bill, I have concluded that the proposed amendments to the *Access to Information Act* will not advance government transparency. The proposed Bill fails to deliver on the government's promises. If passed, it would result in . . . .

In its 2017 recommendations to improve Bill C-58, the access to information commission stated, and I quote:

> The government promised the bill would ensure the Act applies to the Prime Minister's and Ministers' Offices appropriately. It does not.

This amendment gives the government an opportunity to do the right thing and deliver on at least one small part of its promise to Canadians. Without an access to information regime, the official

opposition and all the opposition parties have no way of ensuring that power is being wielded with care and with respect for minorities and dissenting views.

MOTION IN AMENDMENT NEGATIVED

Hon. Pierre-Hugues Boisvenu: Therefore, honourable senators, in amendment, I move:

That Bill C-58, as amended, be not now read a third time, but that it be further amended in clause 37, on page 27, by adding the following after line 18:

"**75.1** Within 30 days after the end of the first month in which a ministerial adviser or a member of ministerial staff receives severance pay or any similar payment as a result of the end of his or her employment, the minister for whom the person was an adviser or member of ministerial staff — or, if that minister is no longer in office, the President of the Treasury Board — shall cause to be published in electronic form the following information:

(a) the name of the person;

(b) the date on which they ceased to serve as a ministerial adviser or member of ministerial staff; and

(c) the total amount of the payment.

75.2 Within 30 days after the end of the month in which a ministerial adviser or a member of ministerial staff receives a payment or reimbursement for expenses related to relocation, the minister for whom that person is an adviser or a member of ministerial staff — or, if that minister is no longer in office, the President of the Treasury Board — shall cause to be published in electronic form the following information:

(a) the name of the ministerial adviser or member of ministerial staff;

(b) the date of the payment or reimbursement;

(c) the amount of the payment or reimbursement; and

(d) the reason for the payment or reimbursement.".

• (1540)

The Hon. the Speaker pro tempore: In amendment, it was moved by the Honourable Senator Boisvenu, seconded by the Honourable Senator Saint-Germain, that Bill C-58, as amended, be not now read a third time, but that it be further amended in clause 37, on page 27, by adding the following after line 18 —

[*English*]

May I dispense?

Are honourable senators ready for the question?

Some Hon. Senators: Question!

Hon. Senators: Question.

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

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: All those against the motion please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: I think the nays have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: I see two senators rising. Is there agreement on a bell?

Senator Mitchell: Fifteen minutes.

The Hon. the Speaker pro tempore: Senators, we will see you back at four minutes to four.

Call in all the senators.

• (1550)

Motion in amendment of the Honourable Senator Boisvenu negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Ataullahjan	McIntyre
Batters	Mockler
Beyak	Ngo
Boisvenu	Oh
Dagenais	Patterson
Dalphond	Plett
Day	Poirier
Eaton	Richards
Frum	Seidman
Housakos	Simons
Joyal	Stewart Olsen
Martin	Tannas
Massicotte	Wells
McInnis	White—28

NAYS
THE HONOURABLE SENATORS

Anderson	Harder
Bellemare	Klyne
Black (*Alberta*)	LaBoucane-Benson
Boehm	Marwah
Boniface	McCoy

Bovey	McPhedran
Boyer	Mégie
Cordy	Mitchell
Cormier	Moncion
Coyle	Omidvar
Dawson	Petitclerc
Deacon (*Nova Scotia*)	Pratte
Dean	Ravalia
Duncan	Ringuette
Dyck	Saint-Germain
Forest-Niesing	Sinclair
Francis	Wetston
Greene	Woo—37
Griffin	

ABSTENTIONS
THE HONOURABLE SENATORS

Galvez	Moodie
Kutcher	Pate—5
Lankin	

• (1600)

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

On the Order:

> Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Day, for the third reading of Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts, as amended.

Hon. Elaine McCoy: Honourable senators, in speaking to this bill, first of all, let me give my compliments to the chair of the committee, the Honourable Senator Joyal, who was unfailingly gracious to me as a participant when I was not a member of the committee, and included me as if I were, and also very ably led the discussions. I was substituted in by one of our own senators — Senator Lankin. Thank you for asking me to sit in on your behalf for the clause-by-clause. I congratulate the chair on his very able and neutral way of leading us through a very complex process, which was very collegial. There was goodwill all around. There was a difference of opinion. We debated things very thoroughly. It was an example of the Senate at its best.

We did our clause-by-clause exercise in public, not in camera. We specifically did that because this is, after all, the Access to Information Act, and we felt that the Canadian public had a right to see what was being said and how the decisions were being made. Congratulations also to the sponsor of the bill, who has worked very diligently on the bill. It's a complex bill. It's a heavy load. Congratulations, Senator Ringuette, for your hard work on it.

Make no mistake, honourable senators, in second reading I said that this is probably the most important bill that we have dealt with this session. What we've done in Bill C-58 is a mere Band-Aid. It will keep the access-to-information system limping ahead for the next year or two until it can get a proper and thorough overhaul.

It is, as I said then, a quasi-constitutional bill, as we referenced in our observations. It's worthwhile reading the Supreme Court of Canada comments about why it's quasi-constitutional and important, especially in the 21st century.

I quote: "Access to information legislation embodies values that are fundamental to our democracy," said the judge in the *Canada v. Canada* decision in 2010-11.

> . . . access to information legislation creates and safeguards certain values — transparency, accountability and governance — that are essential to making democracy workable . . . . Before the advent of modern government, the mechanisms that embodied these values were subsumed in the doctrine of ministerial responsibility, according to which Ministers were accountable to Parliament for their actions. The sovereign Parliament —

That is to say the House of Commons and the Senate combined.

> — and only Parliament, was responsible for holding governments to account.

As one author observes, the growing complexity of modern government has entailed unprecedented delegation of parliamentary powers to the executive branch of government, which is to say the cabinet and the civil service. In this context, the complexity and variety of bodies involved in decision-making have contributed to a gap in our system of accountability.

In Canada, access-to-information legislation was enacted to respond to and deal with the rising power of administrative agencies. In a nutshell, that's why this bill is so important.

As Senators Ringuette and Joyal cited, I want to make reference to the follow-up that the President of the Treasury Board has given assurances that he or she will follow up in addressing a conflict of interest that was brought to our attention during the hearings. This is a conflict of interest between Indigenous peoples — in particular, First Nations — and the Government of Canada, especially in the department that we used to call Indian Affairs and Northern Canada. We were told that department holds something like 60 linear feet of archival, historic documents.

For First Nations to get the data, information and facts they need to support their claim, they are obliged to use access-to-information legislation, and, therefore, they are subject to receiving documents much delayed and redacted. Whereas if these historical documents were held in a neutral place, then the two competing interests — Canada and the First Nation — who are, of course, negotiating, so their interests are not the same, one has power over the other to an unnatural extent.

• (1610)

We were pleased that the minister has agreed to commit to consult with all the stakeholders.

Senator Ringuette read this out earlier, but I think it's worth repeating: To consult with all stakeholders about the feasibility of transferring additional Crown-Indigenous Relations and Northern Affairs Canada records that are of a historical or archival value to archival institutions.

Now, that's merely a commitment to consult or to engage. We need to be very cognizant of that commitment and push it further. I'm hoping that members of the Senate, through our various committees or as individuals, will take up this cause and push very hard to resolve this conflict of interest that we have identified.

The other point is that we added a new clause to the bill. It's now section 99.1. It calls for a one-year review of the bill by parliamentary committees, either of the house or of the Senate or combined, in addition to a ministerial review a year from now.

I know several of us had very strong feelings about this. This bill is so far out of date and so far from meeting international standards of excellence that I do not believe that we can delay or wait another five years before we get a review.

A ministerial review has value. It is hardly an arm's-length, third-party review. In large part, what the Access to Information Act does is put a minister and his or her department under the microscope. To ask somebody whose subject is being studied under the microscope to design a system that sharpens the focus on what they're doing, sounds to me like a bit of chicken and egg, or whatever metaphor you wish to use. It's a bit of a conflict in and of itself.

The difficulty with this particular revision of the Access to Information Act, for example, was, we were told by both the former Information Commissioner and the current Information Commissioner, that the office was not consulted. How can you write a modern piece of legislation without consulting the knowledge holders, but having the pen held by the very people who are going to be subjected to the requirements of the access to information bill?

We all know that there are international standards. We all know there is model legislation in this field. We all know that we come nowhere close to achieving that standard in Canada. Notwithstanding, we were one of the first ones to introduce legislation like this in 1983. We have fallen way behind in terms of legislation, not necessarily enforcement but legislative frameworks. We were very keen to set up a facility, an institutional capacity to get the modernization of the access to information system under review and thoroughly overhauled and to start that happening as soon as possible.

As we said in our observation on page 29, what we are advocating is that we bring the Access to Information Act in line with best practices as they are recognized internationally, and to ensure that human, financial and technological resources are sufficiently in place to guarantee the exercise of quasi-constitutional right of access to information.

Our aim is high. We look to you in the future, senators, to help us achieve that aim. Thank you very much.

(On motion of Senator Housakos, for Senator Carignan, debate adjourned.)

[*Translation*]

BILL TO AMEND CERTAIN ACTS AND REGULATIONS IN RELATION TO FIREARMS

TWENTY-FIRST REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Boniface, seconded by the Honourable Senator Bovey, for the adoption of the twenty-first report of the Standing Senate Committee on National Security and Defence (*Bill C-71, An Act to amend certain Acts and Regulations in relation to firearms, with amendments and observations*), presented in the Senate on April 10, 2019.

Hon. Josée Forest-Niesing: Honourable senators, today I'd like to talk about the report we received from the National Security and Defence Committee regarding its study of Bill C-71, An Act to amend certain Acts and Regulations in relation to firearms.

First of all, I want to say that I realize I was appointed to the Senate only recently, which means my comments will be influenced by my 30 years as a lawyer. As I learn about the various aspects of our work in this illustrious Red Chamber, my instinct is to compare the legislative stages to what I'm familiar with.

Notwithstanding the changes proposed by Bill C-75, I think that preliminary inquiries play an important role in the criminal justice process because they serve to determine whether there is sufficient evidence to justify a trial. Preliminary inquiries are an important and distinct step of the process of gathering and analyzing evidence. Similarly, the second reading debate of a bill in the Senate focuses on the principle of the bill and serves to determine whether the majority of senators agree that the bill should move on to the next stage, the committee study. That is also an important and distinct step of the in-depth study that will take place in committee. From what I understand, unless the bill is supported by a majority of senators at second reading, it does not go any further. A vote in favour of the bill at second reading confirms that senators agree with the principle of the bill, and that allows the bill to move on to the next stage.

What I take from that is that, by voting in favour of Bill C-71 at second reading, we approved the fundamental objective of the bill, which is to improve the public safety of Canadians by making it harder for violent or suicidal people to acquire guns and by further restricting the transportation of guns, and by recognizing that the police have an expertise that most politicians do not when it comes to firearms classification. That approval is, of course, subject to a more in-depth analysis of the bill in committee.

After taking note of the arguments for and against this bill since I arrived in the Senate, I personally believe that, although this bill provides welcome solutions to issues surrounding the acquisition, transportation and regulation of firearms, it definitely could have set out even stronger, more restrictive measures.

[*English*]

Don't get me wrong, I understand quite well that guns serve other less nefarious purposes, such as hunting. As the son my father never had, I was exposed very early in life to guns and hunting. I had shoulder bruises to prove to my friends that I had target shooting experience, and I myself have hunted many times. Believe it or not, my second date with the person who would later become my husband was a beautiful and romantic partridge hunting excursion. Be that as it may, guns exist for one purpose, despite being used properly or for illegal purposes: They kill.

• (1620)

[*Translation*]

We know unfortunately all too well that our beautiful country, which is full of people known for being peaceful and often too polite, is not immune to brutal, violent attacks. We don't have to look very far in the past to be reminded of that.

[*English*]

The most recent example in New Zealand demonstrates the desire and need for strict and urgent measures to control the killing that guns are built for.

I was therefore very surprised and, frankly, disappointed by the number and breadth of the amendments proposed to Bill C-71 in committee. Although I sincerely believe that all members of this committee have worked diligently and in accordance with the principles and values that are dear to them, I fear that, for some, the motivation behind the amendments might have been political rather than societal. In the result, Bill C-71, as passed at second reading, was completely disarmed, if you will allow me the play on words.

[*Translation*]

In my humble opinion, deleting clauses that encompassed some of the major components of the bill brought forward at committee stage runs contrary to the fundamental principles of the bill, principles that were previously adopted at second reading. On this argument alone, honourable colleagues, I submit that the committee report, as tabled in the Senate, should not be adopted. Furthermore, I would like to submit another equally important argument. As members of the Senate appointed to this place, our role is not to go against the elected government, especially when the bill in question was part of the election platform that got the government elected in the first place.

As members of the Senate, we must respect the will of the Canadian people. I do not believe that Bill C-71 as amended by the Senate committee reflects the position of Canadians on this matter.

[*English*]

The privilege of owning a firearm is an issue that is very controversial. People are usually for or against; they do not often advocate positions of compromise. The subject is highly emotional because we are talking about saving lives or protecting our own lives. I cannot think of a more visceral subject than the preservation of human life. This makes this legislation very controversial and conflictual.

In 2015, by their vote, a majority of Canadians opted for better control over the presence of firearms on their territory.

[*Translation*]

Canadians made it clear that they want us to tighten our gun laws. More specifically, the elected government promised to further restrict the acquisition and transportation of prohibited or restricted firearms without a permit and put decision-making back in the hands of police, not politicians.

[*English*]

At the risk of presenting something you already know very well, allow me as a rookie in this place to reiterate that the constitutional role of the Senate is clear: The Senate can propose, approve, reject or amend bills, provided the majority of its members vote in favour of the proposed changes.

Where it gets complicated is in everyday practice. Discussions about how the Senate should react and how far it should go, given that its members are not elected — unlike members of the other place — have been ongoing since 1867. There is nonetheless consensus that the Senate is the chamber of sober second thought. It exists to act as a complement to the other place, providing study and analysis, and to recommend improvements to the bills that come before it for consideration.

[*Translation*]

In this case, we are not talking about improving a government bill but about making it practically non-existent even though it was introduced by the elected majority to make good on an election promise.

When we received the committee report on Bill C-71 I wondered whether I should vote in favour of adopting the report. I had a number of questions including on the fundamental principles of our democracy. I wondered if voting against adopting the report would violate those principles. After giving the matter some consideration I came to the opposite conclusion. The valuable work done in committee paid off and remains extremely useful for those among us who want to come back to the key objectives of the bill in its original version. The problem lies in the content of the report and the way in which it was adopted. I fundamentally think that adopting this report goes against what the founders of Canada put in place to ensure that the voice of Canadians is heard and taken into consideration when we are called to vote as members of the Senate.

I will therefore vote against adopting the twenty-first report of the Standing Senate Committee on National Security and Defence in order to revert back to Bill C-71 as it was before it was studied at committee.

Honourable senators, I invite you to do the same.

Thank you for your attention.

[*English*]

Thank you. *Meegwetch*.

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

Senator Forest-Niesing: Of course.

Senator Plett: Thank you. Let me start off by saying that I respect entirely your right to vote on the report the way you see fit, ill-guided as that may be. I believe this is a democratic institution. The committee work was done democratically.

The only thing I am troubled by in your speech — other than maybe that I don't agree with it — is the comment you made that you feel that some of us in the committee may have been guided by political reasons and others weren't.

I would appreciate, senator, if you could tell me which one of us was guided politically and which one of us had the right attitude in this.

I am passionate about this bill. It has nothing to do with my being a Conservative. I do not support this bill. Certainly I am part of the loyal opposition and you are part of the government; I understand that. Your job is to pass government legislation and mine is to defeat it. However, that is not why I am opposed to this bill, because Andrew Scheer or Stephen Harper or the Conservative Party opposes this legislation. I think it's an inherently bad piece of legislation, which is why I am passionate about this bill.

Senator, I would like you to look at me and say, "Senator Plett, you did this because you are principled in your values" — they may not be the same as yours — or look me in the eye and say, "Senator Plett, I believe your only motivation was political," if that's what you believe. Is that what you believe, senator?

Senator Forest-Niesing: Senator Plett, it was certainly not my intention to offend anyone's delicate sensibilities. My words, if you will recall, were very specific. I did not say "I believe" and I did not state as a fact that motivations were political. I expressed it as a personal fear of mine. As a rookie here — and I'm quite humble in my statement to you — I am observing, learning and listening, and I am reading, as I carefully read all the deliberations that led to the report presented to us.

From my reading, a fear emerged. That fear was expressed in my speech — not as a fact, not as a belief. Regardless of whether it is a fact, a belief or a fear, the fact remains that we are dealing with a result. The result is a report that, in my view, eviscerates the content of a bill that had merit and was based upon the very tenets of an electoral platform that Canadians express their views on.

• (1630)

That is my response to you, sir.

Senator Plett: Senator, are you aware that during the passing and rejecting of amendments we had quite a range of how people voted? In fact, some of the amendments were passed with the help of Senator Richards, who is an independent, with the help of Senator Griffin, who is a member of the ISG, with the help of Senator Jaffer, who is independent Liberal. Some of the amendments that I made, some of my own colleagues voted against.

It was indeed across party lines and across Senate affiliation lines. You are aware that this was happening and could hardly be conceived as political?

Senator Forest-Niesing: I don't know that I would agree with the conclusion of your statement in the form of a question. However, your question to me was if I am aware. Yes, I am aware. As I indicated to you, I read, very carefully, every line written reporting the deliberations that occurred in committee when this bill was being considered clause by clause. I do not feel that my fears have been allayed by your statement, and I continue to have that concern.

[*Translation*]

The Hon. the Speaker: Senator, your time has expired, but another senator would like to ask you a question. Would you like five more minutes?

Senator Forest-Niesing: Although I would love to sit down, I will say yes.

Hon. Pierre-Hugues Boisvenu: Although I am losing my voice, I want to congratulate you, Senator Forest-Niesing, for your speech, but I'll take you at your word. If I understand correctly, you're saying that you cannot accept the committee's report because it violates one of Mr. Trudeau's election promises. Is that true?

Senator Forest-Niesing: Is that a question?

Senator Boisvenu: It's my first question. From what I understood, you will vote against this report because it goes against a promise made by a duly elected government. I'm trying to understand why you're using this argument today, but you voted against the amendment I proposed earlier to Bill C-58 that was along the same lines as a government promise.

Senator Forest-Niesing: Do you want an answer? I'm not sure that I understood the question, but if you're asking whether my whole argument is based on bringing everything in line with an election promise, the answer is no. I made two arguments that I think were both equally convincing.

(On motion of Senator Housakos, debate adjourned.)

[*English*]

CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Klyne, seconded by the Honourable Senator Miville-Dechêne, for the second reading of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act.

Hon. Yvonne Boyer: Honourable senators, I rise to speak to Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act.

Honourable senators, spending days locked in a cell the size of a small bathroom undoubtedly generates and heightens mental health issues. Hallucinations, paranoia, crippling anxiety and dissociation are just some of the psychological, neurological and physical damage that isolation and segregation engender.

Honourable senators, we must take the time to imagine, to place ourselves in the shoes of a segregated prisoner and to consider alternatives to these inhumane conditions. After all, the purpose of our corrections institution is to rehabilitate, not to punish, and certainly not to aggravate pre-existing mental health issues.

As Senator Klyne has noted, senators, like MPs and judges, have special rights of access to prisons pursuant to section 72 of the Corrections and Conditional Release Act. Those who have exercised these rights will know that federal prisons, and segregation units in particular, are filled with those who are most marginalized in our communities; namely, the poor, racialized, victimized and those with disabilities. They reflect minority groups that we as senators have a particular duty to represent: individuals who lack voice and representation within the democratic system.

This information about realities inside the prison system that reach the outside world is tightly controlled by Correctional Service Canada. We must guard against the risks of filling these informational gaps with preconceived notions and assumptions. In too many communities and contexts, prisons are the only service that cannot turn people away because of waiting lists, a lack of beds or resources. As a result, increasing numbers of people, particularly women, those who are poor, those who have previously been victimized, those who are typically Indigenous or Black and those with mental health issues are being abandoned to prison. For women in particular, often commencing with a negative reaction to being strip searched, reasonable responses to unreasonable situations can and do result in behaviour being characterized as criminal, including actions or behaviour that is symptomatic of psychiatric or mental health issues.

The arbitrariness with which individuals are labelled risks to public safety and end up segregated became self-evident during the inquest into Ashley Smith's death. I will spare you the details, as I am sure you are all familiar with the horrors of her story.

Lisa Neve, an Indigenous woman, experienced a similar fate. A member of the stolen generation, scooped from her community, she was one of a few women labelled a "dangerous offender." The Alberta Court of Appeal struck down the designation and indeterminate sentence after concluding she was designated as such on the basis of what she said and what she wrote, not on the basis of what she actually did.

It took six and a half years to overturn her sentence and designation as a dangerous offender. In those six and a half years, she spent all but six months in segregation. July 1 of this year will mark the twentieth anniversary of her release, yet the hundreds of interlaced scars on her body document the self-injury and suicide attempts that the horrors of segregation generated.

Putting individuals into segregation or isolation may seem an easy fix and a reasonable response to behaviour that is challenging, but we know it creates and exacerbates mental health issues. In fact, we find consensus of expert opinions across medical professions on the dangers and unconstitutionality of solitary confinement heard lately through Professor Allan Manson.

Today, about half of the women who are segregated have disabling mental health issues. In addition, about half are Indigenous. CSC's research, as well the Parole Board of Canada's, reveals that women, particularly Indigenous women with mental health issues, do not pose the greatest risk to public safety.

This bears repeating. Under the current system, discriminatory classification approaches mean that those who pose little to no threat to society are being segregated for extensive periods.

Further, section 81 agreements that allow Indigenous Peoples to serve their sentences in Indigenous communities would be far less costly than classifying them as higher security prisoners and segregating them. The Parliamentary Budget Officer confirmed that for women in particular, these agreements cost less than one tenth of the estimated costs of the system set out by SIUs. While costs should be no barrier to reconciliation with Indigenous peoples, economical alternatives that respect human rights and provide better outcomes for Indigenous prisoners and their community should be a primary goal of our corrections system.

Moreover, if we are to unjustly and too often incorrectly identify prisoners as gang members and label them part of a security threat group, we must also provide them with a means of removing that label when due rather than imposing segregation and virtually eliminating their opportunities to reduce their security classification and work towards community integration. For example, disaffiliation programming such as the Breakaway initiative, developed by non-governmental groups and affected individuals like Rick Sauvé, really should be implemented. The PBO recently confirmed that such a program, implemented nationally, would cost a mere $200,000 per year. Its success would offset the costs of keeping prisoners in segregation.

• (1640)

As international prison expert Andrew Coyle has said, the "need" for segregation is generated and reinforced by problematic conditions of confinement, without regard to humane alternatives. Corrections has invested in static security options such as restraints and segregation, rather than providing private family visiting units for those who seek solitude from overcrowding, or transfers to mental health units for those suffering from mental health issues.

These examples clearly demonstrate that we can do things differently. This was the thinking behind a proposal that the Canadian Association of Elizabeth Fry Societies made to CSC with the aim of ending segregation and isolation by any name, and in any form, for women. The Elizabeth Fry Society proposed to work with CSC and the Canadian Human Rights Commission and others to develop individualized alternatives to segregation for every woman CSC might consider isolating.

As noted by Senator McPhedran in her question to the sponsor of this bill, this proposal was never taken up by CSC. Following its study of Bill C-83, however, the committee in the other place issued a recommendation strongly encouraging:

> ... the Correctional Service of Canada to consider alternatives to segregation in women's institutions, such as the pilot program proposed in 2016 by the Canadian Association of Elizabeth Fry Societies.

A recent cost estimate by the PBO confirms that the EFry proposal would entail no significant incremental costs. The PBO identified the current cost to operate segregation units at $2.5 million per year per segregated unit. Bill C-83's price tag for SIUs is pegged at an additional $7.5 million per year per unit. Considering the most recent data provided by CSC that three women were in segregation throughout the country, the price tag for maintaining segregation for women will be a whopping $3.3 million per woman per year.

SIUs have been touted as a safety measure, but it appears they could represent a direct threat to the health and security of prisoners, particularly youth, women, Indigenous and racialized peoples and those with mental health issues. Continued isolation, by any name, will only create and augment health risks, which will inevitably result in increased costs to health care. Given the harm associated with separation and isolation, whether it is called "segregation" or "SIUs", and given that the costs of many alternatives would be only a small portion of both the resources currently allocated for the proposed SIUs as well as the additional health care costs continued isolation will generate, we should be asking why these alternatives have not been pursued, especially for those most marginalized and most severely affected by segregation.

Indeed, Bill C-83 risks extending the use of segregation. The Correctional Investigator notes that while there are currently a limited number of segregation cells in prisons, Bill C-83 gives CSC the power to designate other areas of the prison as SIUs, meaning that entire prisons could be run as an SIU or series of SIUs. In fact, as the Human Rights Committee has already observed, this is a trend maybe already in progress in all maximum-security prisons and units.

If we were to debate in this place a bill that purported to extend and normalize solitary confinement on nearly any other group of Canadians, we would expect our inboxes to be flooded with emails and our phones to be ringing off the hook. Yet for this bill, which targets the constitutional rights of some of the most marginalized and least able to make their voices heard, we have heard by and large a resounding silence. We have a duty on their behalf, honourable senators, to work together to uphold constitutional rights for all and to challenge the necessity of this bill.

Thank you. *Meegwetch*.

Hon. Jane Cordy: Senator, would you take a question?

Senator Boyer: Yes.

Senator Cordy: Thank you very much. I know that when the Human Rights Committee travelled and went to a number of prisons across the country it was an eye-opening experience for me. I had never been in a prison before. Not a lot of people take advantage of our positions in the Senate that we are able to do that. I would suggest to others who have never been that they might want to go.

We found out there were a high number of Blacks in prisons, a disproportionate percentage in Nova Scotia; there is an extremely high percentage of Indigenous peoples in the Prairie provinces; and unfortunately we saw a lot of people who had mental health challenges in the prison system.

You said in your speech that half the women in segregation have mental health issues.

If a prisoner has a mental health issue, and if they are put in segregation for long periods of time, what effect do you believe that will have on their mental health?

Senator Boyer: Thank you for the question.

Try to imagine what it would be like to be put in a room and not able to get out for a day, a week, a month, a year? How about two years? You can imagine what that would do to your mental health. I think it would cause a lot of anxiety and stress. People would definitely suffer greatly. Thank you.

Hon. Frances Lankin: Honourable senators, I had the opportunity a couple of days ago to speak to Bill C-375. I foreshadowed a number of comments that I have with respect to this bill, Bill C-83, in particular with respect to the both treatment of incarcerated individuals with mental health issues, and secondly, with respect to questions around constitutionality.

I wish to address those two issues in a more fulsome way, particularly the issues around constitutionality. If this bill is forwarded to committee from second reading, I would urge the committee seized with the study of the bill as a first order of business, to undertake an examination of the most recent court decisions and arrive at a determination on the probable constitutionality — or I would argue lack thereof — of this bill.

There were good intentions bringing this forward in a presentation Senator Boyer just referred to by Professor Allan Manson. He talked about if this bill had come forward a couple of years ago, it would have been a progressive step forward, it would have been not enough, but an important step. He outlined how it falls short today. I want to take you through the timeline because it's important to the committee's consideration.

Bill C-83 was introduced in the House of Commons in October of 2018. The House committee finished their report in December 2018, and third reading was concluded in March of 2019.

That's important for us to understand because during that period of time — remember this was written and introduced last year — a number of things have happened. In fact since third reading a number of things have happened.

First of all, there is a B.C. case, *BCCLA and JHSC vs. Attorney General of Canada*. The trial decision was released in January of 2018 and the Crown has appealed that. That decision found elements contained within the bill to violate a number of important constitutional rights.

That was appealed and heard, I believe in November 2018. We are awaiting the appeal decision to be released.

The highest court that has reviewed the provisions, not of this bill, but of these particular issues of segregation, was in Ontario. There that was a *CCLA vs. the Attorney General of Canada* case. The court trial decision was appealed again by the AG. The appeal upheld the original judicial ruling and decision.

• (1650)

That was heard in November 2018 and that decision was released March 28, 2019. So all of this, in terms of the democratic examination, happened before this decision was released. I will talk about some of the standards in the decision and the view of that court why provisions that are still contained within this would not meet a test of constitutionality.

The third case I would refer to is called *Brazeau v. the Attorney General*. I believe it was a class action suit, but the decision was released March 25, 2019.

All of this was recent, and while I say there may well have been good intent, I think many of us would feel it fell short even then. Now we have a much more serious issue to grapple with as a Senate, and that is the likely constitutionality of the bill.

I say to all of us that we talk often about electoral mandates, and one of our highest responsibilities is to ensure constitutional and Charter compliance. I want to speak to that, if you will bear with me, in a layperson's terms, because I am not a lawyer. I feel strongly that some of these elements are easily understood, particularly if you relate them to some of the cases we're aware of, like Ashley Smith. This bill is, in fact, in part a response to that and previous court decisions that have ruled on some of the issues around segregation, which was once called solitary confinement back in my day in the Ontario jail system. Then it was called segregated administration, and is now to be called structured intervention units. Upon reading the bill, I think the court decisions have revealed why it still falls short.

There are three areas in which I want to give these tests. These come from the court decisions. The first area of failure is with respect to isolation. The courts have pointed to the danger of any time spent in isolation, particularly for those with mental health issues. The Ontario Superior Court noted:

> The evidence establishes that the risk and the potential of psychiatric harm starts almost immediately after the doors are shut on the isolation cell, especially for those with pre-existing mental conditions.

The Ontario Court of Appeal concluded that:

> In principle . . . those with mental illness should not be placed in administrative segregation.

As you know, I have a particular interest in and a focus on mental health issues, but I would argue that, with respect to many vulnerable populations, the court decisions also reflect on that and find similarly.

The second area where this bill fails to meet the constitutional requirements per the courts is the issue of how long an inmate is held in a segregation cell. We see a move from 22 hours a day in isolation to a requirement that be reduced by two hours a day to 20 hours a day for indefinite periods of time.

There is no guarantee in those additional two hours that there is meaningful human contact, programming or supports. The courts have specifically ruled that what is current practice and what is enshrined in this bill — the mandatory visit of a health care professional once a day in the accompaniment of correctional officers — is not, in fact, meaningful human contact.

The third area of failure is that of the overall duration in solitary confinement, administrative segregation or, now, ISUs. Bill C-83 allows for 30 days while reviews are going on and while an individual is being considered to be moved. Delay in moving and finding a place can cause an extra five days. Then there is a window for the commissioner to review and there are terms in the bill like, "as soon as practicable."

The chance of a longer period of time exists and we have been told it can be more than 60 days. Remember, the court has found that the moment the door closes, the psychiatric harm begins.

Those decisions, which have all come since the consideration of this bill, make it important, I believe, for the committee to examine as a first order of business the Senate's view of the constitutionality of this. In fact, some of the courts, and the Ontario Court in particular, have actually commented, in another venue, that the provisions in Bill C-83 do not resolve the problems that have been identified.

I'm not going to take a long time to speak because there are other speakers, but to bring us back to Ashley Smith's case, as Senator Boyer stated, I won't go into the facts. We know the facts, but I want to remind us all that her only human contact during the period of time she was in isolation was composed of violent and invasive uses of force by staff of the institution.

Correctional officers were urged to write off the suffering that she experienced in segregation as attention-seeking behaviour. Ashley was videotaped dying as correctional officers observed, but failed to intervene to remove the last ligature she tied around her neck. She had every right to believe that the staff had a duty of care and a duty to save her life. I believe, and I think we all believe, she had the right to expect that.

Her story is a tragedy. A 19-year-old girl was videotaped dying as correctional officers observed but failed to intervene, as I said. Unfortunately, it's not an anomaly. I don't think many of us could understand the lengths of desperation required to take actions that could harm oneself or lead to one's death in order to resolve the craving for human contact that you have.

I have seen situations, and, in fact, I have a lasting moral injury from having observed and been a correctional officer in charge of a segregation unit for a period of time. I've seen situations that would be unthinkable for most of us to ever consider doing, but that people have done to get that human contact.

I believe that there is a moment here where we can rise to the examination of constitutionality without rejecting the good intent and purposes of the government's legislation. We can find it falls short, but now we are charged with a duty, I believe, to assess the likely constitutionality of this legislation, and it is one of most important jobs that we, as senators, can do.

If this bill is referred to committee, I urge, as a first order of business, that the committee undertake a review of the court decisions and an examination of the constitutionality.

Thank you very much.

Hon. Marty Klyne: Would the honourable senator take a question?

Senator Lankin: Yes, of course.

Senator Klyne: Thank you very much. Regarding your reference to the constitutionality of this bill, I wanted to get some clarity, if I may.

The B.C. court rendered its original decision in January 2018, and the Ontario court decision came in December 2017. Bill C-83 was tabled in the House of Commons in 2018, as you pointed out, after both of those original decisions. Do I understand correctly that you are suggesting the pursuant appeals, which came after, in some cases — and I'm not a lawyer either — supersede that so that it would not go back to the original decisions?

Senator Lankin: Thank you very much, senator. I neglected to thank you for your work as sponsor and bringing this bill forward for consideration.

The point I'm making in the B.C. case is that we have a written trial decision which, in and of itself, would suggest that this bill would not be constitutional. However, the Crown has appealed that, as is obviously within the rights of the Crown, and has not responded to that in this bill. The appeal has been heard but there has not been a decision rendered. In the Ontario CCLA case, we had the original decision. It found a set of findings that would lead us to understand that what's in this bill would not be constitutional.

• (1700)

The Crown appealed that. The decision of the appeal court was only released March 28 of this year, after this had been dealt with in the other place, so it was not taken into account. That's the highest court ruling we have.

I also mentioned the *Brazeau* case, which was March 25 of this year, and it also set out a number of these factors. When you examine the factors that I talked about — isolation, duration, length of daily confinement — and when you look at those issues that the appeal court and the trial decisions have rendered, you will see that this bill doesn't reflect the current state of court decisions.

Senator Klyne: Thank you for that, senator. At that point, I would agree with you. I would add that we probably need a white board to connect all the dots. That would be a task, probably job number one, for the committee when it gets there.

Senator Lankin: Senator, I agree with you. It's a very important task for the committee to undertake.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, I rise today at second reading of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act.

Unfortunately, this bill should have garnered much more public attention, because I believe it is a very important bill.

I want to start by telling you that over the past few years, I have visited all of Quebec's penitentiaries, and I am frequently in contact with the representatives of correctional officers. I can therefore say that I am quite familiar with the prison environment. I can also say that my view, or at least my criticisms of this bill, are related to my views about the victims who go unseen behind these incarcerated people.

Bill C-83 will have long-term negative consequences for offenders' safety in prison, their rehabilitation, the safety of correctional officers, and the safety of victims and Canadians in general.

I have never claimed to believe that there has never been any abuse in the prison system. We have heard examples of how excessive reliance on this measure can lead to abuse. A general ban on this measure, or at least a restriction on its use, may also have negative effects.

I therefore think it is important that we address some of the issues raised in the bill, because they represent an unrealistic approach regarding high-risk offenders, and this could jeopardize the safety of Canadians and, I must repeat, that of correctional officers.

While the mental health of federal inmates definitely needs to be taken into account when imposing segregation, it is also important that all decisions related to their detention or release be based on the fundamental priority that should be given to the safety and protection of prison guards, workers and other inmates.

Bill C-83 puts the concept of "least restrictive" measures back into the Corrections and Conditional Release Act. This means that high-risk offenders will be incarcerated at the lowest possible security level consistent with public safety. The concept of "least restrictive" measures had been removed from the legislation in 2010 with the passage of Bill C-10. At the time, victims welcomed that important change, as did corrections staff.

When he appeared before the Committee on Legal and Constitutional Affairs on February 24, 2012, Rob Sampson, the former minister of correctional services for the Government of Ontario and a former member of a working group on correctional reform, had this to say about removing the concept of "least restrictive" measures:

> It means that the security level that the inmate would be held to under the proposed legislation would be the security level that is appropriate to match with the correctional plan that has been established to help them get better and change their life around so when they get back to society they are ready to live a normal life and live in society. It does not mean it is a statutory-driven security level. It is the security level that is appropriate for the individual.
>
> Instead of trying to put everyone in the same box, you establish a security level that is appropriate for the individual.

That is just common sense.

Reintroducing that term into the act would definitely make it harder to keep offenders like those who murdered little Tori Stafford in a maximum-security institution. When the McClintic controversy erupted, Minister Goodale stated that the government was sensitive to the concerns of people who objected to lowering that offender's security classification.

So I was surprised by the reintroduction of the term "least restrictive measures" into the bill. This completely contradicts what the Minister of Public Safety said. In fact, it proves that this government has abandoned victims and prefers to release criminals like Terri-Lynne McClintic no matter the cost.

It has also abandoned correctional officers, who risk their health every day to protect us and to protect society.

Terri-Lynne McClintic was transferred to a healing lodge, which is a minimum-security institution. An amendment proposed by the Conservatives in the other place would have ensured that someone like Terri-Lynne McClintic, who was convicted of kidnapping, raping and savagely beating eight-year-old Tori Stafford to death with a hammer could not be placed in a healing lodge, where children might be present and where escape and flight would be possible. Even worse, an amendment requiring that the minister be notified in writing at least 15 days before the assignment of a new security classification was also rejected.

This tells me that the government does not pay attention to the testimony heard by the House of Commons Standing Committee on Public Safety and National Security, or to the concerns Canadians raise about public safety, or to the concerns of Tori's father and relatives, who have also been condemned to what I would call a life sentence.

The use of the expression "least restrictive measures" creates a presumption that detention conditions should always be less restrictive. It also assumes that decision-makers will grant early parole, including temporary absences from prison, day parole and full parole.

Some senators will certainly agree that this is a good idea. However, we must not forget that the most important aspect of any potential release under the Corrections and Conditional Release Act is risk. A prisoner may have committed the most heinous crime and may even refuse to admit guilt. However, under a system that uses the least restrictive measures, if it cannot be proven that the prisoner poses a risk, he or she could very well be released .

The government refuses to admit that this is a reality. This does not even include the other very serious issues raised with other parts of the bill.

For example, Bill C-83 will limit the tools available to Correctional Service Canada to ensure basic safety.

Last month, Jason Godin, the national president of the Union of Canadian Correctional Officers, told the Standing Senate Committee on Human Rights the following about Bill C-83:

> Eliminating disciplinary and administrative segregation will significantly impact the ability to maintain control over diverse populations. We accept that an overreliance on segregation as a disciplinary consequence may lead to negative outcomes. However, there are incidents in which swift and immediate responses to dangerous behaviour are necessary options.

It is also a question of managing inmates. Again quoting Mr. Godin:

> . . . the inability to adequately manage incompatible inmates will lead to consequences like those seen at Archambault and Millhaven institutions where inmates were murdered in separate incidents in early spring 2018. . . .

He also added the following:

> The reduction in our ability to manage the most difficult cases securely through segregation when necessary will only further exacerbate already dangerous work environments for correctional officers. I mentioned earlier two inmates were murdered in 2018 in treatment centres. I have not seen that in 27 years.

• (1710)

Mr. Godin informed us that following the adoption of Commissioner's Directive 709, *Administrative Segregation*, and CD 843, *Interventions to Preserve Life and Prevent Serious Bodily Harm*, segregation policies had already been modified. He suggested that those policies significantly reduced CSC's ability to manage its institutions through the use of segregation. He added:

> Although well-intended, these quickly led to a sharp increase in violence within federal penitentiaries.

Now the government is proposing taking this even further under Bill C-86, while offering correctional officers few if any alternative measures to ensure their safety. Violence will therefore increase. The creation of structured intervention units will allow inmates to interact with other inmates for at least two hours, as well as spend four hours outside their cells. Despite the good intentions that led to these changes, Jason Godin feels that they are unrealistic with the current number of employees and the existing infrastructure. Our penitentiaries are not well-suited to this bill.

The measures in the bill will make correctional institutions more dangerous for prison guards, correctional workers, other inmates and inmates placed in segregation for their own protection. One consequence may be that more high-security prisoners would be incarcerated in minimum-security institutions. Specifically, the proposed legislation would have an impact on inmate transfers and would enable the commissioner to assign a security classification to each area of a penitentiary or even to each cell. That means every cell could have a different security classification. That is completely illogical.

If interactions among inmates of different security levels are not controlled, there is likely to be more drug trafficking and more conflict among inmates. A member of the Hells Angels and an inmate with another security level cannot be together. That would be totally absurd. Clearly, this bill was conceived by office-bound bureaucrats, not people on the ground. In a maximum-security penitentiary like Port-Cartier, nothing gets in and nothing gets out because all the prisoners are in a high-security penitentiary. There is a reason for that. They are the most dangerous people in the country: Paul Bernardo, members of the Hells Angels, and so on.

The Conservative members decried the fact that Bill C-83 does not contain any measures to prevent a high-risk offender from being incarcerated in a minimum-security prison. I am very concerned about the direction this government is taking in its corrections policy. We are taking a step backward by seriously jeopardizing the health of corrections staff. I am completely opposed to any policy that would increase violence in our prisons, and I think that the vast majority of Canadians would agree with me on that.

Instead, we need to strengthen measures and tools that focus on rehabilitation and encourage education and work. This bill will not help rehabilitate inmates. On the contrary, it will increase burnout and absenteeism among staff.

It is clear from reading these measures that the Liberal government is more concerned about the rights of inmates than the rights and protection of victims. However, even the rights of inmates are not protected under Bill C-83, according to Jason Godin, who pointed out in his testimony that inmates are killed in our prisons because of less stringent rules about segregation.

It is essential that public safety be at the heart of any measures we introduce in our criminal justice system. I do not believe, however, that public safety was duly considered in Bill C-83.

Honourable senators, I hope that you will join me in opposing Bill C-83 as long as countervailing measures are not put in place to protect the safety of our front-line staff in correctional institutions. Thank you.

[*English*]

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

[*Translation*]

Senator Boisvenu: Yes.

[*English*]

Senator Pate: Thank you very much for your work and the extent to which you have researched this area.

I was very happy to hear you say that you completely disagree with anything that will decrease rehabilitation and increase violence in prisons. I'm sure you're aware that the genesis of the current corrections legislation that included "least restrictive measures" when it was passed was actually in response to and generated during a previous Conservative government. Then MPs David Daubney and Rob Nicholson recommended a human rights style of corrections legislation that would assist in the reduction of the number of people in prison, particularly Indigenous prisoners, women and those with mental health issues, which was just emerging as a focus.

Then in the mid-1990s, all the heads of corrections in this country, including a former member of your caucus, made recommendations that we could release at that time 75 per cent of the people then in prison across this country in federal, provincial and territorial jails and not increase the risk to public safety.

Most recently, the Office of the Correctional Investigator has released information showing that we now have the highest staff-to-prisoner ratio in the world, and that all of the evidence shows that the more security measures used, the more there's a heightened risk of violence to both staff and other prisoners; a reduced access to programs and services; and a reduced structured gradual release into the community, which is the safest way in terms of public safety concerns as well as the rehabilitative concerns for those who enter the community.

Senator Boisvenu, have you had an opportunity to look at the research that's been done and to look at some of the recommendations some of us have been involved with about how we can better assist victims in ways that wouldn't necessarily mean creating a situation of people coming out of prison worse than when they went in?

[*Translation*]

Senator Boisvenu: Deinstitutionalization is a phenomenon I have been interested in for 15 years. Deinstitutionalization has been steadily decreasing since 1972, and incarceration has been steadily increasing since 1972. These two trends are proportionally inverse to one another. Today, we are told that nearly 30 per cent of men and over 40 per cent of women in federal institutions have mental health problems.

Obviously, the choice of institution is very important. I agree with you that a good many of the people in the penitentiaries should not be there. Instead, they should be in supervised housing, where people have some structure in terms of curfews and taking medication and so on. We know that under those conditions, the rate of recidivism drops by 90 per cent.

Unfortunately, provincial health care budgets and the budgets for the Canadian prison system are not aligned. They need to linked. To keep a person with mental health problems in a federal institution costs $200,000 a year. To keep that same person in supervised housing costs $50,000 a year. That means that for the cost of keeping someone with mental health problems incarcerated, we could care for four people in supervised housing.

However, I have to wonder. Prisons now house a large number of inmates with mental health issues. What would happen if the Institut Philippe-Pinel, a well-known mental health care institution, said that it would no longer put patients in segregation? It would be impossible for the doctors and other staff members to manage. In general, our prisons are not just responsible for rehabilitating criminals anymore. They also have the job of treating people with mental illnesses. I have a background in psychology, and in the mental health sector, segregation is a tool used to protect patients from themselves and from other patients, especially if the other patients are violent. Right now, what we are seeing in federal penitentiaries is that inmates with mental illnesses are often victimized by real criminals.

• (1720)

With the bill before me, I am very concerned that there will be more violence, because the essential tool of segregation will no longer be available. Segregation will now have to be assessed on an individual basis, because every inmate has a different psychological profile.

If we stopped using segregation in prisons tomorrow morning, the psychiatric problems would get worse. There are two types of inmates in penitentiaries: those who should be in health centres, and those who really belong in penitentiaries.

If we take the tool of segregation away from guards and correctional officers starting tomorrow, I have no doubt we will see a proportional increase in violence. That's why I believe we must be very careful.

[*English*]

Senator Lankin: I have another question, senator. There is much that you said in your response to Senator Pate's question that I would agree with. However, towards the end, when you were talking about segregation and protection of people with mental illness and using segregation for that tool, I point out there's a vast difference between protective custody and segregation as we know it. We also have examples of forensic institutions as well. I wonder if there are alternatives to the administrative segregation that are now proposed that you would consider would meet the concerns that you've raised.

[*Translation*]

Senator Boisvenu: I think your question gets to the heart of the matter. I attended some of the meetings. I remember at the other place when the union of correctional officers came to testify. They were asked a question at the very end and there was not enough time for any discussion. They were asked whether they had any alternatives to administrative segregation. They said no, they did not. That is the problem. If we decided tomorrow to get rid of administrative segregation and there is no alternative then I think we are only making matters worse.

Let's find alternatives to administrative segregation and reduce segregation, but in many cases, as the officers tell me, that is the only tool they have to deal with highly dangerous offenders.

[*English*]

Senator Pate: Would the honourable senator take another question?

Senator Boisvenu: I seem to be popular.

Senator Pate: Thank you very much.

Like Senator Lankin, I was pleased to hear a number of your comments. I want to focus on the issue raised around de-institutionalization because certainly regarding the progressive changes and rending of our social safety net that have resulted in more people being in prison rather than in social programs, much of it falls under provincial jurisdiction.

Senator Boisvenu, would you be supportive of looking at some of the ways that the federal government and we as parliamentarians could assist the federal government to develop the kinds of national strategies and standards for the delivery of services in exchange for the tax agreements and transfer agreements that exist to develop those varied kinds of strategies? In fact, in Bill C-83, one of the areas that is also diminished is exactly what you discussed, the ability to transfer those with mental health issues under section 29 of the Corrections and Conditional Release Act to mental health facilities. Is that something you would be interested in pursuing or working together on?

[*Translation*]

Senator Boisvenu: Here's an easy way that costs nothing. Everyone knows about the At Home/Chez soi program. There are programs in Toronto, New Brunswick and Quebec. As I said earlier, instead of putting offenders in prison, and for some individuals released from prison, the program sets people up in "controlled" environments. A nurse takes care of patients and gives them their medicine. There's an 11 p.m. curfew, and people get used to working in society. The recidivism rate dropped by 90 per cent. There is a way.

Keeping 10 people in prison costs us $2 million. I would urge the Minister of Public Safety and the Minister of Health to look at how much money we might save by taking those 10 people out of prison. They could reallocate the funds to homes for people with mental health issues. It would cost us nothing; we could even have fewer people working in prisons. The ministers need to create that kind of program.

I get requests from organizations in Sherbrooke and Quebec City that want to take in these people and open this type of centre but don't have the funding. The money is going to the prisons. Let's take some of the money that is going to prisons and use it to get those people out of the prison system and into a controlled environment where they are monitored and where there are people to take care of them so they are not out on the streets. Right now, two out of three police interventions at night in Montreal involve people with mental health problems.

Right now, the streets are the only new care centre available to people with mental health problems. There are things that can be done at no cost. We just need to sit down with the two ministers, pool our resources and build centres for these people.

[*English*]

The Hon. the Speaker: Senator McPhedran, on debate?

[*Translation*]

Hon. Marilou McPhedran: Honourable senators, I rise to speak to Bill C-83 on the corrections system and conditional release. I have a number of concerns about this bill and its potential consequences.

[*English*]

Medical experts have documented beyond all doubt the severe psychological harms that result from placing a human being in solitary confinement. The harms associated with isolation begin almost as soon as a cell door closes. The Ontario Court of Appeal has now found that these harms amount to such cruel and unusual treatment or punishment that they violate the Constitution. International standards recognize that more than 15 days of solitary confinement amounts to torture and that no one with mental health issues should ever be put into solitary confinement.

Despite its well-intentioned promises of a more progressive approach, of more programming, of more human contact, as other colleagues have outlined, Bill C-83 perpetuates the same unconstitutional conditions of isolation as the system of segregation it purports to replace. The rationale is unclear as to why Bill C-83 was not drafted to uphold human rights by putting an end to this practice, but we were alerted by this bill's sponsor of the spectre of shutting down administrative segregation, resulting in a problematic and precarious environment, and to quote:

> . . .beyond my and your comprehension . . .

— if we stray too far from the current system of segregation. This was the rationale we heard. Yet we have heard little recognition that this system's torturous and even fatal consequences make it a direct threat to the security of prisoners.

Honourable senators, while denial of these harms may help supporters of the bill to sleep more soundly at night, it is our duty to consider the experience of those locked in segregation cells and to insist on alternatives to their continued suffering in torturous conditions.

Indeed, just this week a lawyer wrote to a number of our honourable colleagues, imploring senators to act to assist her segregated, mentally ill Indigenous client. Thanks to the intervention of Senator Dyck and the Federation of Sovereign Indigenous Nations, what could have been a tragedy was averted.

To examine the dangers of the entrenched, rights-denying, security-centric mindset this legislation reinforces, by sending this bill to committee there will be an opportunity to critically examine the loopholes in Bill C-83 that Senator Klyne acknowledged were of concern to the committee in the other place.

• (1730)

Where else but in a prison would we ever have to specify the time someone is allowed to spend outside should not be provided in the middle of the night or that meaningful human contact does not include conversations through a mail slot?

These amendments are not worth celebrating. These are not least restrictive measures. Rather, they are proof of the lack of human rights protections within prisons and the challenges of attempting to legislate respect for human rights in an environment that lacks effective measures for remedial oversight.

Let's avoid denial and delusion afforded by our privilege as parliamentarians who get to visit prisons and then return to the comforts of our lives by walking out of those prisons. How many more legal challenges, inquiries, deaths and inquests do we need to confirm that Correctional Services Canada cannot uphold these standards on their own?

We have an opportunity to follow through on the recommendation for correctional oversight that former Supreme Court Justice Louise Arbour made more than 23 years ago, following her Commission of inquiry into events at the Prison for Women in Kingston when she noted, "The Rule of Law is absent, although rules are everywhere."

The Office of the Correctional Investigator's report into the preventable death of Ashley Smith, of which we heard much heartbreaking detail from Senator Lankin today, concluded:

> There is reason to believe that Ms. Smith would be alive today if she had not remained on segregation status and if she had received appropriate care. An independent adjudicator — as recommended by Justice Arbour — would have been able to undertake a detailed review of Ms. Smith's case and could have caused the Correctional Service to rigorously examine alternatives to simply placing Ms. Smith in increasingly restrictive conditions of confinement . . .

— that often seemed to be entertainment for the guards watching her 24 hours a day.

Even when decisions to charge, shackle, pepper spray, isolate, transfer or otherwise restrict prisoners and make sentences harsher than the ones originally ordered by judges, prisoners have no entitlement to seek a sentence review.

High levels of media attention brought awareness of the Ontario court decision to stay murder charges against a young Indigenous man, Adam Capay, in light of the egregious conditions of isolation he endured for four and half years while awaiting trial.

There is currently no comparable post-sentence remedy. Correctional accountability requires robust judicial oversight as well as effective remedies. We need as a society and prisoners deserve judicial oversight of Corrections, especially when correctional authorities interfere with the integrity of sentences by rendering the conditions more punitive.

This is one of the key reasons, contrary to Senator Klyne's assertion in his speech to us, committee witnesses in the other place seriously questioned segregation units. Whether or not segregation units are relabelled, they will remain a product of the same failed approaches that have resulted in conditions of isolation that violate constitutional guarantees and international standards against cruel and unusual treatment and punishment, conditions that pursuant to international law can amount to torture.

The Ontario Court of Appeal has now ruled that "The distinguishing feature of solitary confinement is the elimination of meaningful social interaction or stimulus."

The government has said it is serious about upholding the human rights of prisoners. If that is the case, the government should not be asking Canadians to trust that Bill C-83 will end segregation without credible external oversight that needs to be set out in this bill.

The approach the government has chosen is not one that will uphold human rights in practice. It will not make it possible for prisoners to live their rights. Yes, in our constitutional democracy prisoners have rights.

Instead, expert evidence and recommendations would be ignored. This bill fails to deliver long-overdue changes to the prison system by renaming segregation and removing the existing, albeit woefully inadequate, procedural safeguards instead of eliminating segregation and introducing effective safeguards.

Thank you, *meegwetch*.

Senator Klyne: Will the honourable senator take a question?

Senator McPhedran: Yes.

Senator Klyne: Honourable senator, what is your position on the United Nations Nelson Mandela Rules?

Senator McPhedran: Thank you for the question, Senator Klyne, and thank you for your work in sponsoring the bill.

We all appreciate the fact that being a sponsor of a bill does not mean that one has to support every single element of that bill. I think you've raised some very important questions. I know that you spent considerable personal time during the break visiting prisons. It is much appreciated.

I think the international standards on segregation are violated in this bill. They are not being upheld in the way in which the bill has been drafted.

Senator Pate: Honourable colleagues, some of you may perceive segregation and the proposed structured intervention units or SIUs in Bill C-83 as a certain type of prison cell, a certain number of hours and a certain number of days. These abstract terms do not paint a true picture of the horrific consequences of a system that will continue to give Correctional Service of Canada staff the discretion to indefinitely isolate some of the most vulnerable people in solitary confinement.

Over four decades, I have spent countless hours kneeling on cement floors outside segregation cells, pleading through meal slots in solid metal doors as someone's loved one — someone's child, sibling, parent or partner — smashed their heads against cement walls or floors, slashed their bodies, tied ligatures or put nooses around their necks, tried to gouge out their own eyes, mutilated themselves in sometimes unimaginable ways, or smeared blood and feces on their bodies, windows and walls. I have heard indescribable sounds of torment and despair that reverberate and haunt me.

I believe this bill is well-intentioned. I applaud the minister's stated willingness to end the use of segregation. Unfortunately, this bill does not. Nor does it include even the minimal measures

the courts have deemed necessary to prevent the human rights violations of isolation units, by any name, from descending into conditions that amount to torture.

Many have voiced their concerns that Bill C-83 is unconstitutional, from the Ontario Court of Appeal to over 20 legal academics, experts and practitioners. Allow me to briefly summarize some of the reasons this bill amounts to an unconstitutional renaming and perpetuation of segregation.

First, there is no guarantee that an additional two hours out of a cell will constitute meaningful or any human contact. The bill provides prisoners "an opportunity" to have an additional two hours out of a cell in SIUs. If prisoners are only allowed out of cells alone in restrictive spaces, two hours more will not alleviate conditions of isolation in solitary confinement.

Second, the UN Standard Minimum Rules for the Treatment of Prisoners, known as the Mandela Rules and the Bangkok Rules for women, demand evidence of meaningful contact. The CSC's near limitless discretion offers little assurance that conditions of confinement in SIUs will meet our Charter or international guidelines.

Third, the bill contains no requirement or plan for oversight. Despite ongoing failures to abide by the law, the CSC asks us to accept that it will uphold such standards in the future.

• (1740)

More than 23 years ago, former Justice Louise Arbour recommended judicial oversight of CSC in order to prevent human rights abuses associated with segregation. It's time to make this a reality.

Fourth, aside from a new name, Bill C-83 does not mandate any actual alteration of solitary confinement units or cells. Worse still, the bill makes it possible for the expansion of highly restrictive conditions and routines throughout entire prisons.

Fifth, the bill does nothing to eliminate or even place hard caps on isolation and separation. The predictable consequence is that some people will continue to spend days, weeks and even years in uninterrupted solitary confinement.

The bill is premised on the view that some form of segregation by some name is a necessity to the detriment of other human-rights-affirming options. It is not. As senators, I believe it is our duty to consider the alternatives before supporting a bill that is by many accounts unconstitutional.

Prisons across Canada have operated smoothly for months, even years, without segregation units. In my working experience alone, the Dorchester Penitentiary operated without a segregation area while it was being retrofitted. For five years after abandoning its attempt to open a 34-bed, segregated, maximum-security unit for women in the Kingston Penitentiary for men, CSC operated with no maximum security unit and no segregation for federally sentenced women in Ontario.

When the Standing Senate Committee on Human Rights studied the rights of prisoners, we heard testimony about other prisons such as Fraser Valley, another federal prison for women, which operated for 18 months with no segregation or maximum security unit, using only minimum- and medium-security houses.

During my time with Elizabeth Fry, my children sometimes accompanied me during prison advocacy visits. During my infant daughter's inaugural visit to the segregated unit for women in the Saskatchewan Penitentiary for men, the head of security advised he was planning to dispatch the emergency response team to respond to women who were screaming, yelling threats and banging the bars of their cells. I asked what was going on. I had met with the women in that unit earlier in the day — they were all Indigenous. I advised that, although they were upset about the lack of programming and lack of spiritual support, they were calm when I left. They had agreed to address their issues by submitting a group grievance.

I offered, first, to return to the range, prior to the riot squad being deployed, to find out why the situation had escalated. The staff agreed. One suggested, "Why don't you take the baby down? I hear they like your baby." How serious could the risk posed by the women have been if the head of security believed a baby could calm the situation?

Opportunities to use alternatives to draconian security measures exist. Yet too often, honourable senators, we fail to consider these options. Incidentally, the situation had needlessly escalated because the staff had not delivered grievance forms despite repeated requests from the women.

I'm still called by staff in federal prisons. Not long ago I was called by an officer trying to defuse a potentially volatile situation. A mother was distressed because her request to attend her child's funeral had been denied. Despite being urged to do so, the staff member chose not to deploy the institutional emergency response team, not to pepper spray, not to body-shackle and not to segregate the woman. Instead they provided support, worked with her peers and provided telephone calls to family members and others. The potential standoff ended without incident. The administrative decision was corrected and she attended the funeral two days later.

Although correctional authorities often cite prisoner and staff safety as a justification for isolating prisoners, the majority of men and women who are isolated are those with disabilities including mental health and age-related mental and physical infirmities that leave them acutely vulnerable. The use of segregation to provide protective custody for some who are so compromised that they pose no risk to others should not be accepted.

Imagine the exacerbation of dementia symptoms and other damage that might be caused by isolating your parents or mine in small, locked units. We should contract beds in psychiatric and seniors care facilities, not segregate vulnerable people.

There are better, more effective ways to achieve the public safety and rehabilitative objectives of CSC than by simply renaming segregation. The Parliamentary Budget Officer projects that the annual cost of implementing Bill C-83 will be $1.8 million per prison for men and $1.5 million per prison for women. Most of the cost is for additional correctional staff.

CSC already has the highest staff-to-prisoner ratio in the world. Imagine if those funds were instead put into the community-based supports — as discussed by Senator Boisvenu and others — to not only uphold basic human rights but to make profound differences in the lives of prisoners, their families and others who are marginalized and victimized.

Honourable senators, I do not believe this bill should go forward. That said, I recognize that colleagues will want the opportunity to hear evidence and witnesses before coming to their own decision about this bill.

If this bill continues beyond second reading, honourable senators, I expect you to make two commitments: First, commit to go into prisons and to meet with those isolated in segregation units before you decide on this bill.

Pursuant to section 72 of the CCRA, the Corrections and Conditional Release Act, each of us in this chamber and the other place has the right of access to federal penitentiaries including segregation units. A highly respected appellate court has taken the unusual step of giving us a clear indication of constitutional flaws in this bill. If we pass an unconstitutional bill, we must take individual and collective responsibility for authorizing and sanctioning tortuous conditions in prisons. I cannot and will not abandon my responsibility and assuage any residual guilt by hoping that a prisoner will be able to mount some future legal challenge to this new system. Such a legal challenge would take years and resources that prisoners in segregation simply do not have. We have a responsibility, honourable colleagues, to end this egregious situation.

This bill poses a near-certain violation of the human rights of marginalized and criminalized individuals. Our constitutional role as senators to safeguard the Charter and represent minority interests requires serious and thoughtful study based on evidence about conditions in segregation. This is evidence uniquely hard to gather.

The second commitment is to return regularly to prisons to monitor conditions of confinement. If passed, Bill C-83 will leave few remaining ways to uphold and ensure respect for human rights of those in segregation or SIUs: no judicial oversight, increased delays before inadequate mechanisms that rely on discretionary authority for oversight to kick in, and further barriers to community and advocates. In such an environment, our section 72 right of access to prisons would take on an urgency and provide one of the few remaining ways to seek to hold correctional actors accountable.

Honourable senators, Bill C-83 renames segregation and solitary confinement without any further meaningful change. As colleagues who spoke before me have outlined, we know from the experts what real change would look like if we truly want to end separation and isolation by any name.

With this mind, I want to close by dedicating this speech to all those who have survived as well as those who have languished and those who have died — too many, like Ashley Smith, by homicide, in segregation, in this our country.

Instead of passing Bill C-83, I urge us to work on Tona's Law. Tona is a woman with whom members of the Senate Human Rights Committee met during our visit to a forensic psychiatric hospital in the Atlantic region. Tona described her 10 years in federal custody, all of which she spent segregated for what was characterized even by institutional psychologists as attention-seeking personality and behaviour issues. It was not until she was transferred into the mental health system that she was diagnosed with schizophrenia. Moreover, her elevated states of psychosis have now been directly linked to her extended periods in prison segregation cells and the post-traumatic stress associated with the tortures of such isolation.

• (1750)

Tona implored us to take legislative action to end segregation and get women and people with mental health issues out of prisons and into appropriate mental health services. Tona is far from the only person to advocate such a change. The inquest into Ashley Smith's death, Louise Arbour and the 1996 Commission of Inquiry into certain events at the Prison for Women in Kingston, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Canadian and Ontario Human Rights Commissions, the Canadian Medical Association, the Canadian Association of Elizabeth Fry Societies, the Native Women's Association of Canada, and the DisAbled Women's Network of Canada — they have all recognized solitary confinement and segregation as deeply inhumane practices, particularly for youth, women, racialized and Indigenous prisoners and those with mental health issues.

The bill before us today is not Tona's Law. Despite best intentions, it risks being a series of empty promises extended to those who have worked and waited far too long for recognition of the human rights that most of us take for granted.

It is time to reject this bill and work for meaningful change.

Thank you. *Meegwetch*.

Some Hon. Senators: Hear, hear.

Hon. Serge Joyal: Honourable senators, I want to add my voice to the debate today because I think this bill raises a very important issue. It tests our concept of humanity.

Have you ever visited a protective society against animal cruelty? You enter the shop and you see all those cages and the animals there, the cats, dogs and the other pets — animals that people like to have in their homes. You look at them and try to decide which one you are going to pick up, but they are caged. They are behind bars, and, behind bars, they are at the mercy of those who take care of them.

When we decide as a society through our court system to order a human being to go into prison, we order them to be caged. Once they are caged, everything they might do falls under the control of those who have the keys. The conditions under which they will be caged are essentially how we test our humanity as a society.

When you put a mentally ill person in a cage, or somebody who has symptoms of mental illness that are not detected, most of the time you trigger the manifestation of those deficiencies. When you put Aboriginal people in a cage because you think that they are always in a society that can't value what they have been and what they should be, you also cage people. Why do you cage them? It is because they are defenceless. When you are mentally ill, you are not a human being who is the master of all your capacity. When you are an Indigenous person in our society, you also have a chance of being caged because you don't defend or affirm yourself enough because you have been deprived of your identity, your freedom of being who you were, because for 150 years our policy has been to impose on them a way of being that they were not born to have.

This bill raises important constitutional issues. I'll tell you why. When this bill was drafted some years ago, the government could have benefited from the enlightenment of the court in the decision of British Columbia and the Ontario Court of Appeal. We are faced with this dilemma. The bill was drafted when the Charter had not been interpreted to determine the level of humanity that we have to protect when we put people in the cage. Why do we have a Charter? We don't have a Charter just to move around. We have a Charter to protect those who fall under a condition whereby their freedom is determined by others. There are three sections in the Charter that are at stake in this bill.

I will read section 7 to you, and as I do, think of this concept of caging somebody. Section 7 reads as follows:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

"Except according to the principles of fundamental justice," and what are the principles of fundamental justice that are at stake when you put somebody in solitary confinement? The Ontario Court of Appeal has determined the three criteria to test. That's what I want the Social Affairs Committee to test with this bill.

The first test is the function of duration. How long can you put somebody in the cage? Is it five days? Is it 30 days? Is it 60 days? The court has determined that segregation should not exceed 15 consecutive days. What does Bill C-83 say in the terms of number of days? This is the first important element. Why? It is because the court stated it:

> The effect of prolonged administrative segregation is thus grossly disproportionate treatment because it exposes inmates to a risk of serious and potentially permanent psychological harm.

The duration is the first important factor.

The second, as the court says, is the indeterminacy and inadequacy of the monitoring mechanism. In other words, when you put somebody in the cage, you have to monitor the person. That means that somebody has to go there meaningfully, and Justice Arbour has stated how that has to be judicialized. It is not somebody opening the small window and trying to see if the person is there and not dead. That is not a monitoring mechanism. The monitoring mechanism has to be made in respect to the principle of fundamental justice that I just read in section 7 of the Charter.

The third element, and it is fundamentally essential, is section 15 of the Charter, which deals with Indigenous people and mentally ill people. When you are deprived of your liberty, you are at the mercy of somebody else, and when that person exercises control over you, he or she cannot make a distinction and has to take into account if you are in a weaker position to state your rights as mentally ill and Indigenous people are in prisons.

Honourable senators, I hope that the Standing Senate Committee on Legal and Constitutional Affairs will read the decision of B.C. and Ontario with the criteria that the court has identified, the sections of the Charter that are at stake in this bill, and report to us at the report stage if those criteria are satisfied in the bill as drafted before we have the benefit of the court interpretation of the Charter sections in relation to solitary confinement.

Honourable senators, this is our job. That's why we are here. We are here to test the legislation according to the best and most recent legal expertise and judicial pronouncements in relation to the protection of the freedom of the weakest in our society. That's why I'm telling you that this is the test of our concept of humanity. It is at stake when we have full control over a human being who we put in prison and lock the door.

Honourable senators, think about it twice — sober second thought in relation to this bill — because we have control of the level of freedom of the weakest of our society in this bill that was well-intentioned when it was drafted. I submit to you respectfully and personally that the judicial interpretation has evolved since the time this bill was drafted. We need to adapt it to the level of understanding of what humanity is as protected in the Canadian Charter of Rights and Freedoms. Thank you, honourable senators.

• (1800)

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

REFERRED TO COMMITTEE

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

(On motion of Senator Klyne, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.)

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, the time is six o'clock. Is it agreed that we not see the clock?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: There being no agreement, the sitting of the Senate will be suspended until 8 p.m.

(The sitting of the Senate was suspended.)

[*Translation*]

• (2000)

(The sitting of the Senate was resumed.)

MULTILATERAL INSTRUMENT IN RESPECT OF TAX CONVENTIONS BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-82, An Act to implement a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting.

(Bill read first time.)

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

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

[*English*]

SPEECH FROM THE THRONE

MOTION FOR ADDRESS IN REPLY—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator Cordy:
>
> That the following Address be presented to His Excellency the Governor General of Canada:
>
> To His Excellency the Right Honourable David Johnston, Chancellor and Principal Companion of the Order of Canada, Chancellor and Commander of the Order of Military Merit, Chancellor and Commander of the Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.
>
> MAY IT PLEASE YOUR EXCELLENCY:
>
> We, Her Majesty's most loyal and dutiful subjects, the Senate of Canada in Parliament assembled, beg leave to offer our humble thanks to Your Excellency for the gracious Speech which Your Excellency has addressed to both Houses of Parliament.

Hon. Stan Kutcher: Honourable senators, it is a privilege to stand and introduce myself today. I'm humbled by the responsibility of being a member of this chamber, and I am looking forward to working with all of you to help create the conditions in which ". . . all Canadians . . . have a real and fair chance to succeed."

This vision, which I share, can be found in the Speech from the Throne that opened the Forty-second Parliament. To me, this means working together to ensure that all Canadians have equal opportunity to create better lives for themselves and their families. Over time, we have seen many positive improvements in quality of life for most, but not for all, Canadians.

However, in recent years, we have witnessed a heightened fragmentation that has resulted in a retreat from civil discourse and a tendency to see other people who do not reflect ourselves as unequal, as the other. This fragmentation has increased existing barriers to opportunity and equality. It has also hidden from us the reality that equality of opportunity is not a given for many Canadians.

We know that Canada scores high on the Human Development Index, but the Organisation for Economic Co-operation and Development ranked Canada twentieth among its member countries for income inequality.

Across our nation, more than 1 million children are living in poverty, 4 million people experience food insecurity and 3 million people are precariously housed. Many Canadians do not have access to clean water or good health care. Doing well in Canada is not a given.

Too often, success is based on where you live, who you are and where you and your family are from. These and other factors that create inequality of opportunity must be changed.

We live in a bountiful country, but the opportunity to share in that bounty is not equally available. We need to recognize that better outcomes for all cannot occur without equality of opportunity for all.

I have come to realize that in this place we have the chance and the responsibility to address this compelling issue through legislation, study and advocacy, to help create an environment in which all Canadians can expect and receive an equal chance, an environment that removes the barriers to prosperity.

In my opinion, two important areas that we can address to move in this direction are fostering research and innovation, and furthering best evidence-based decision making to improve health outcomes for individuals, families and communities. I realize that these are not the only areas that we need to address, but these are two that, together with others in this chamber, I would hope to give consideration to.

Honourable senators, in order for me to give context to these directions, I would like to share with you a bit about my own story and that of my family, in particular the challenges we have faced and the opportunities we have had in Canada.

Through my experiences as a child of refugees and an individual who has succeeded in my field while managing a learning disability, I, as many of you, have encountered my fair share of the vicissitudes of life. Woven together, these experiences make up my personal tapestry, one that is part of a larger piece that ties me to all Canadians.

Respectively, my parents both found their way to Canada as refugees from Ukraine at the end of World War II. At 16, my father moved away from his family to study medicine. The day he left was the last time he would see any of them. Of those who survived the war, many died in the Holodomor, a famine that was orchestrated by Stalin. The survivors had their land confiscated, and since they were *kulaks*, they were sent to Siberia and branded "enemies of the people." Making his way through warring armies, he survived the bombing of Dresden and somehow made it to Canada.

At the end of the Second World War, over 32,000 Ukrainians found refuge in Canada. Upon arrival, many of these migrants, like my father, had to learn a new language and find a new job while facing many of the barriers common to refugees. He had aspirations to continue medical school. However, he was not accepted; foreigners were not allowed in. Instead, he became a Presbyterian clergyman and along the way met and married my mother.

My mother came to Canada with her parents and brother as refugees sponsored by a church group. They arrived at Pier 21 in Halifax, an ocean liner terminal and immigration shed that was active from 1928 to 1971 and which received over 1 million immigrants over that time.

Decades later, I would come back to where my mother first landed, making Halifax my home.

In Ukraine, my grandfather was a tailor. Conscripted into the Polish army when the war broke out, he survived the annihilation of his unit and made his way back to his family. Soon thereafter, they were shipped by cattle car to the Reich. They managed to avoid being chosen for death, survived cholera, somehow stayed together and finally made their way to Canada.

My grandparents settled in Toronto and worked in the *schmata* factories. By saving every penny, they bought a house and turned it into a dwelling to house other refugees. When they died, they left highly educated grandchildren and a number of properties. However, neither had ever learned to read or write English.

• (2010)

Being a preacher's kid, I lived in many parts of the country. We lived in rural and urban areas of Alberta, Manitoba and Ontario. However, no matter where we settled, my family was always the "other". We were the kids who spoke the funny language at home. My father found his vocation with home missions, working with immigrants and refugees in the inner city. What I learned from him was to never give up. His favourite saying was: "Success is 10 per cent inspiration and 90 per cent perspiration."

To my family, Canada was a place of welcome and opportunity. It was a place that would give them the chance that they needed to build a new and successful life, and they did. This is why Canada's support for refugees is so vital now. We must continue to be a nation known for its welcome and its opportunities.

Coincidentally, my amazing wife Jan has spent the bulk of her professional life helping to create an equal and level playing field for immigrants and refugees here in Canada. I know this work would have helped my parents and other migrants like them when they arrived here.

As a student, I struggled through school, courtesy of ADHD and dyslexia. At the time, neither were widely known nor understood by educators or peers. My parents, however, understood the value of education and saw it as the pathway to success. It was their expectations and considerable poking and prodding that helped me take advantage of the opportunity that schooling offered.

This is the technique we have successfully used with our three children, Daniel, Matthew and Leah. I hope they will now do the same with our now seven grandchildren.

My academic life was not without its challenges. You may not know, but I'm a university dropout from a Ph.D. in history. I decided to go to McMaster medical school, graduated, completed my residency in Toronto and post-residency training in brain metabolism research in Edinburgh. Upon returning, I established the first comprehensive adolescent mental health clinical research program in Canada. As an advocate in my field, I went on to assist with the development of innovative directions in clinical and population mental health research.

Throughout my career, I have witnessed the importance of fostering creativity through supporting research and innovation. Top of mind for me has been STEM: Science, technology,

engineering and medicine. But I have seen that the opportunities in these fields do not come with a level playing field. There are too many groups that have for too long been bypassed. They have for too long not enjoyed equal opportunity for access or advancement. This cannot continue.

I have also had the good fortune to have served as the Associate Dean of International Health and as director of the World Health Organization Collaborating Centre at Dalhousie. My job took me to over 20 different countries, many of them in development, where I worked in numerous health-related areas, from adolescent mental health to helping establish new medical schools and research capacity building.

More recently, I worked to develop effective mental health interventions in schools across Canada and abroad. I noticed in this work that, more often than not, there were significant and substantial gaps in scientific and health literacy, not only in the general population but among educators, professionals and policy-makers. This was the case in developing countries as well as developed settings such as Canada.

As a result, many people were not empowered with the knowledge and skill sets that they needed to help themselves and their families live better lives. This led to inequalities in health outcomes at both the individual and population levels. I realized that by enhancing scientific and health literacy, people could make better-informed decisions that could improve their lives.

This is not a new idea. This is part of what Canada championed over 30 years ago in the Ottawa Charter for Health Promotion. However, this need is probably more pressing now than it was then. We are living in an age where pseudoscience and wellness trends made popular by celebrities have become a major source of information used by Canadians to inform and direct their health and mental health decisions. As a result, we have seen the return of preventable diseases and the purchasing of products and programs that have no proven scientific value.

We can change this trend by enhancing the strength of our regulatory system, by vigorously disseminating scientifically valid information and by creating opportunities for all Canadians to enhance their scientific and health literacy. The challenges that I have experienced and the lack of equal opportunities that I have seen have led me to rethink the value of viewing Canada through the metaphor of a mosaic.

From afar, a mosaic looks whole, but when examined closely the pieces are noticeably unequal in size and are isolated from each other. These separations can and do become barriers. They keep us from knowing each other and they can perpetuate the inequalities that exist. We do not want barriers in Canada.

Instead, I see our country through the metaphor of a tapestry. Each unique thread is woven together with many other unique threads. Each thread strengthens others and, in turn, is strengthened by other threads. These threads hold us together instead of pulling us apart. These are the ties that bind us together.

Colleagues, Canada is a nation that was and will continue to be built by many different hands. Canadians will tell our stories through many different voices. Some of us have been here for a very long time. Others have arrived more recently. Woven together, our stories make up the tapestry of our country. What Canada is and what Canada could be is dependent on us to provide, "all Canadians with a real and fair chance to succeed." How do we do that? By ensuring equality of opportunity for all.

Honourable senators, I look forward to working with all of you together to do what we can to further develop our country into a nation that treats all its citizens equally. Thank you.

Hon. Senators: Hear, hear!

(On motion of Senator Harder, for Senator Bellemare, debate adjourned.)

BUDGET IMPLEMENTATION BILL, 2019, NO. 1

CERTAIN COMMITTEES AUTHORIZED TO STUDY SUBJECT MATTER

Hon. Peter Harder (Government Representative in the Senate), pursuant to notice of May 1, 2019, moved:

That, in accordance with rule 10-11(1), the Standing Senate Committee on National Finance be authorized to examine the subject matter of all of Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures, introduced in the House of Commons on April 8, 2019, in advance of the said bill coming before the Senate;

That the Standing Senate Committee on National Finance be authorized to meet for the purposes of its study of the subject matter of Bill C-97, even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto; and

That, in addition, and notwithstanding any normal practice:

1. The following committees be separately authorized to examine the subject matter of the following elements contained in Bill C-97 in advance of it coming before the Senate:

   (*a*) the Standing Senate Committee on Aboriginal Peoples: those elements contained in Division 25 of Part 4;

   (*b*) the Standing Senate Committee on Agriculture and Forestry: those elements contained in Subdivision C of Division 9 of Part 4, insofar as it relates to food, and in Subdivision J of Division 9 of Part 4;

   (*c*) the Standing Senate Committee on Banking, Trade and Commerce: those elements contained in Divisions 1, 5 and 26 of Part 4, and in Subdivision A of Division 2 of Part 4;

(*d*) the Standing Senate Committee on Energy, Environment and Natural Resources: those elements contained in Divisions 23 and 24 of Part 4;

(*e*) the Standing Senate Committee on Legal and Constitutional Affairs: those elements contained in Division 17 of Part 4, and in Subdivisions B, C and D of Division 2 of Part 4;

(*f*) the Standing Senate Committee on National Security and Defence: those elements contained in Divisions 10 and 21 of Part 4;

(*g*) the Standing Senate Committee on Social Affairs, Science and Technology: those elements contained in Divisions 15, 16, 18, 19 and 20 of Part 4, and in Subdivisions C, K and L of Division 9 of Part 4; and

(*h*) the Standing Senate Committee on Transport and Communications: those elements contained in Divisions 11, 12, 13 and 14 of Part 4, and in Subdivision I of Division 9 of Part 4;

2. That the various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-97 be authorized to meet for the purposes of their studies of those elements even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto;

3. That the various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-97 submit their final reports to the Senate no later than June 6, 2019;

4. That, as the reports from the various committees authorized to examine the subject matter of particular elements of Bill C-97 are tabled in the Senate, they be placed on the Orders of the Day for consideration at the next sitting; and

5. That the Standing Senate Committee on National Finance be simultaneously authorized to take any reports tabled under point four into consideration during its study of the subject matter of all of Bill C-97.

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

Hon. Senators: Agreed.

(Motion agreed to.)

THE SENATE

MOTION TO AFFECT QUESTION PERIOD ON MAY 7, 2019, ADOPTED

Hon. Peter Harder (Government Representative in the Senate), pursuant to notice of May 1, 2019, moved:

That, in order to allow the Senate to receive a Minister of the Crown during Question Period as authorized by the Senate on December 10, 2015, and notwithstanding rule 4-7, when the Senate sits on Tuesday, May 7, 2019, Question Period shall begin at 3:30 p.m., with any proceedings then before the Senate being interrupted until the end of Question Period, which shall last a maximum of 40 minutes;

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

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

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

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

Hon. Senators: Agreed.

(Motion agreed to.)

ADJOURNMENT

MOTION ADOPTED

Hon. Peter Harder (Government Representative in the Senate), pursuant to notice of May 1, 2019, moved:

That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, May 7, 2019, at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (2020)

FOOD AND DRUGS ACT

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Seidman, seconded by the Honourable Senator Boisvenu:
>
> That the Senate agree to the amendments made by the House of Commons to Bill S-228, An Act to amend the Food and Drugs Act (prohibiting food and beverage marketing directed at children); and
>
> That a message be sent to the House of Commons to acquaint that house accordingly.

Hon. Pamela Wallin: I've spoken to Senator Martin about this and I have some information that I would like to share. I will not do it this evening, but I would like to take the adjournment in my name.

(On motion of Senator Wallin, debate adjourned.)

BANKRUPTCY AND INSOLVENCY ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Eggleton, P.C., seconded by the Honourable Senator Richards, for the second reading of Bill S-253, An Act to amend the Bankruptcy and Insolvency Act and other Acts and Regulations (pension plans).

Hon. Leo Housakos (Acting Deputy Leader of the Opposition): I'd like to adjourn this in my name.

(On motion of Senator Housakos, debate adjourned.)

CANADA REVENUE AGENCY ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Mercer, seconded by the Honourable Senator Day, for the second reading of Bill C-316, An Act to amend the Canada Revenue Agency Act (organ donors).

Hon. Vernon White: Honourable senators, today I'm pleased to speak to Bill C-316, An Act to amend the Canada Revenue Agency Act (organ donors).

I'm also pleased to say that, for the first time in seven years, I agree with my friend from Nova Scotia. Bill C-316 proposes a simple and effective method to increase the size of the organ donor base in Canada. It would also help update existing databases but, most important, it would save lives.

This legislation would give authority to the federal government to coordinate with the provinces and territories to allow Canadians to register as organ donors through their federal tax filings.

With the electronic process often used today, or when people give the information to their accountant, it would be done easily, quickly and with one simple question to answer — a very important question. It would prod people to make that decision now and to look at this every year.

No information would be passed along to an individual's province or territory of residence unless that individual had authorized the Canada Revenue Agency to do so in the income tax return. As a result, respect for the privacy of Canadians would continue to be of the utmost importance under this bill.

In Canada, the safety of organs and tissues for transplantation is governed federally under the Safety of Human Cells, Tissues and Organs for Transplantation Regulations, pursuant to the Food and Drugs Act, which standardize the screening and testing of potential donors in Canada.

Provinces and territories have legislation governing all other aspects of organ and tissue donation, with the exception of Quebec, where such donation provisions are included in its Civil Code.

Provinces and territories are also responsible for the administration and delivery of health care services, including organ donation and transplantation. Each province has established its own organ donation organization and specific programs for organ donation and transplantation. The federal government provides financial support to the provinces and territories for the provision of these services under the Canada Health Act.

Bill C-316 seeks to address a serious problem within our health care system facing many Canadians. Despite an increase in the organ donor rate in Canada, the waiting list of Canadians in need of a transplant continues to grow. Every year, the number of Canadians awaiting transplantation surgery surpasses the number of organs available for transplant. On average, over 200 patients die each year while awaiting a transplant. The demand for organs still is not met, and Canadian organ donor rates lag behind those of many countries.

While recruitment of living donors has been more successful, primarily for kidney donation but also for partial liver donation, the living organ donor rate has not risen significantly within the last decade.

Efforts to improve the donation and transplantation system increased after 2008, when responsibility for coordinating national efforts in organ donation and transplantation was transferred to Canadian Blood Services. Since that time, Canada has seen more transplant activity, thanks to the Kidney Paired Donation Program and the real-time transplant waiting lists through the Highly Sensitized Patient registry and the National Organ Waitlist.

Debate continues in Canada and other countries about whether the introduction of a presumed consent regime, whereby consent to donate is presumed unless a person has expressly indicated otherwise, would increase organ donor rates, as we have seen in Nova Scotia, which is the only province or territory that has adopted such a program. Many countries that have introduced such legislation have seen increases in rates, but generally only when concurrent investments in donation and transplantation infrastructure have also been made.

Today we have this bill in front of us, which received unanimous consent in the other place. The addition of a single line to Canadians' tax forms will strengthen the organ donor donation and transplantation system. It is a simple and effective method to increase the size of the donor base in Canada and has the potential to save lives.

Honourable senators, I would strongly encourage you to support Bill C-316. I would ask for consideration to send this bill to the Social Affairs Committee for further review.

Hon. Ratna Omidvar: I would like to take adjournment of the debate.

The Hon. the Speaker: I think you'll need leave for that, Senator Omidvar. Is leave granted, honourable senators?

Senator Plett: No.

(On motion of Senator Ringuette, debate adjourned.)

DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Omidvar, seconded by the Honourable Senator Gold, for the second reading of Bill C-344, An Act to amend the Department of Public Works and Government Services Act (community benefit).

Hon. Brian Francis: Honourable senators, I rise today to speak in support of Bill C-344, An Act to amend the Department of Public Works and Government Services Act (community benefit). I thank Senator Omidvar for shepherding the bill into this chamber and for her impressive and detailed remarks outlining the many good reasons for the federal government to take into consideration the on-the-ground impact of their decision making.

Senator Plett: Your Honour, there are issues with the translation. They are speaking French on the English channel. For those of us who have a bit of a hearing impediment, we need the earpiece even when they're speaking in our required language. If they could correct that, please.

Senator Francis: The federal government spends tens of millions of dollars annually on its construction, maintenance and repair projects. These projects happen in all regions in the country — from the East to West Coasts, and from Northern Canada to our southern border.

The government has stated that it is committed to transparency and an open bidding process. Asking a company that is competing for federal work during the bidding process to outline its community benefit impact demonstrates the government's commitment to the communities that are the backbone of this country and to the youth, the unemployed and the Indigenous community members who will be helped from this very simple provision.

• (2030)

This one, non-mandatory request by the minister, asking those companies who would like to take on a federal government contract is not an erroneous or excessive demand. Any federal contract, whether building, refurbishing or retrofitting, is going to impact the surrounding communities and the lives of their citizens, hopefully in a positive way. Bill C-344 asks that companies outline the positive impacts of benefits going into a project and provide an assessment of community benefits realized at the end of a project.

In my view, the most important aspect of Bill C-344 is a spinoff effect for youth at risk and Indigenous youth who will be able to take advantage of the opportunities that would come from such an endeavour.

Buy Social Canada is a social enterprise with a goal to educate, advocate and engage social suppliers and purchasers from across governments, institutions and corporations to advance social procurement policies and practices. Imagine Canada works alongside other charitable sector organizations and often in partnership with the private sector, governments and individuals in the community to ensure that charities continue to play a pivotal role in building, enriching and defining our nation.

Both of these organizations support the aim of Bill C-344. In their estimation, federal construction and repair projects should add value to the businesses in the communities in which they occur and should benefit the people in those communities.

While not a federal contractor, Ontario Power Generation has specifically targeted Indigenous groups and mandated an Indigenous relations policy first developed in 2007. Since much of OPG's work in the nuclear industry occurs on or near First Nations lands, OPG chose to involve the Indigenous people in their decision-making and to proactively foster positive relationships in order to create social and economic benefits for their communities.

A couple of recent examples of these collaborations are the partnership with Coral Rapids Power Corporation, a wholly owned company of the Taykwa Tagamou Nation to build the Peter Sutherland Sr. Generating Station on the New Post Creek location in northeastern Ontario. This $300-million project employed 220 workers at its peak and was completed in 2017.

The Lower Mattagami River project was a $2.6-billion hydroelectric redevelopment partner with the Moose Cree First Nation that was completed in 2014 ahead of time and on budget. Two-hundred and fifty local Indigenous people worked on this project as an equity partner. The skills and training they learned were of immense value.

Community benefits are not a new idea, as was pointed out by Senator Omidvar. Our Commonwealth cousins in the United Kingdom initiated the Public Services (Social Value) Act 2012. It calls for all public sector procurement to factor in economic, social and environmental well-being in connection with public service contracts. It requires that all public bodies in England and Wales consider how the services they commission might improve the social, economic and environmental well-being of the area. This includes providing apprenticeships and work placement programs.

In Australia, the state government of Victoria published a guide for use by their community governments on social procurement. It mandates it that government procurement take the following factors, among others, into consideration when awarding contracts: build and maintain strong communities by generating local employment, particularly among disadvantaged residents; promote social inclusion and strengthen the local economy; strengthen partnerships with a diverse range of community and government stakeholders; demonstrate leadership across a wider community and local government sector; and achieve greater value for money for their communities.

In 2016, the European Union commissioned and published a report entitled *Social enterprises and the social economy going forward*. This report argues for a European action plan that would promote an environment for social enterprises and a social economy to build on their core values. These include democratic governments, social impact, innovation, profit reinvestment and, most important, priority given to the individuals in the economic decision-making.

Bill C-344 is not another burden being placed on companies asking to be considered for federal contracts. It is a way for the federal government to take into consideration the economic, social and employment benefits of their decisions, using taxpayer dollars.

Senator Omidvar outlines examples in Canadian urban areas and outside of Canada. I have looked specifically at the benefits attained or that are possible within Canada's Indigenous communities. Lack of employment or underemployment is a major factor for the desperation and hopelessness felt by Indigenous youth. While this may stem from geographic isolation, it is very often simply a lack of opportunity. For companies to include in their federal government proposals the community benefits relating to local employment, especially the employment of Indigenous youth, as done by Ontario Power Generation mentioned earlier, the impacts could be quite literally life-changing.

Proposed section 20.1 of Bill C-344 defines "community benefit" as follows:

> . . . ***community benefit*** means a social, economic or environmental benefit that a community derives from a construction, maintenance or repair project, and includes job creation and training opportunities, improvement of public space and any other specific benefit identified by the community.

There is nothing negative in this definition and nothing that might prove onerous to those companies wanting to do business with the Government of Canada. Everything that touches Canadian communities and the people living in them should be beneficial; otherwise, why bother?

I ask that colleagues take the time to read the bill and move it forward for study at committee. The aims of Bill C-344 can only benefit the regions, provinces, minorities and Indigenous peoples. As senators, these include everything and everyone we represent.

Wela'lioq. Thank you.

Hon. Senators: Hear, hear.

Hon. Tony Dean: Honourable colleagues, I follow Senator Omidvar and Senator Francis in rising to support Bill C-344, An Act to amend the Department of Public Works and Government Services Act (community benefit). This is a modest bill that sets out to leverage federal infrastructure investments by requiring bidders to partner with communities in order to ensure that everyone wins, including people in communities, and public and private project participants. We should refer this short and simple piece of legislation to committee as quickly as possible.

I have struck out some sections of my statement; I'm not going to repeat things that other colleagues have said. I will add that one of things that community benefit initiatives do is contribute to the public health and social fabric of communities. In particular, they are responsive to the particular needs of local areas in ways that one-size-fits-all programs sometimes miss.

Senator Omidvar has spoken to specific Canadian examples. We, both being in Toronto, are aware of the Metrolinx project, which incorporates community benefits on the Crosstown and Finch light rail projects. I think she has mentioned the British Columbia announcement last month of $1.377 billion Pattullo Bridge replacement in Vancouver. We know that here in Ottawa, section 37 of the city's planning act has carved out the opportunity to ask for benefits to construct, fund or improve facilities when a development requires a zoning bylaw amendment.

Colleagues, here is what I particularly want to focus on in relation to this bill. Community benefits also help in growing Canada's emerging social sectors and it's social economy, which, of course, occupies the space between the traditional private sector on the one hand and the public sector on the other. This is

the space between in which we find social enterprises and other not-for-profit enterprises, and the charitable sector, which is often a key player in community benefit arrangements.

Social enterprises can be community groups, regional or national charities or businesses, and they engage in a wide range of community and social services that contribute significantly to personal and community development.

• (2040)

While we know — and certainly our colleagues in Quebec know — that Quebec has been a champion historically for decades in building a social economy and the establishment of social enterprises, we have seen in the last decade the rest of Canada starting to catch up.

A 2016 survey showed there are now more than 1,300 social enterprises in Canada. They employ 254,000 people and provide services to an additional 5.5 million people. Encouraging more community benefit agreements will build on this success and again, this is the space in between the traditional public and private sectors.

Why do I keep coming back to the link between community benefits and the broader development of a social economy? Colleagues, having worked as a public service adviser to a New Democratic Party government, to a Liberal government and to a Conservative government in Ontario, one can dwell sometimes on the differences between them. But as a public servant working in a non-partisan capacity, the things that really struck me were the success stories in the public sector and in public policy that actually lived from one government to another despite the different nature of its political stripe. Those are true success stories where governments of all political stripes recognize something that adds public value when they see it.

The social economy initiatives are a terrific example of this. I have observed this in my academic work in both the U.K. and in Canada. In this case, it's important to note that a current government has continued to build on the work done by its predecessors, including the Steven Harper government and, before that, the Paul Martin government. Prime Minister Harper's government was engaged with and actively supported in social enterprise and social finance initiatives, and my colleagues on the other side of the chamber will recall these things. Both social enterprise and social finance initiatives are connected to Bill C-344 because they contribute to social value outcomes. Social enterprises are often suppliers of social and other services so they have the potential to gain market share through social procurement initiatives.

In 2013, the previous government is to be applauded for having initiated funding for social enterprise development across Canada through the Enterprising Non-profits Program, ENP Canada. It also launched the Department of Employment and Social Development's *Harnessing the Power of Social Finance* initiative.

I will also add the work done in the report of the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities study on social finance also initiated by the previous government, which includes social procurement initiatives in the very style of community benefit programs. The committee also heard witnesses describe the role of social finance in supporting innovative approaches to persistent and complex social problems that neither the private sector alone nor the public sector alone has been able to wrestle to the ground.

And here is an interesting one: At the Social Enterprise World Forum in Calgary — and indeed there are social enterprise world forums that travel around the globe — then federal Minister of Employment and Social Development, a person who joined us in this place this morning, Jason Kenney, spoke of the government's unwavering support for social enterprise. In early 2015, the previous government issued a call for social enterprise support models and launched a social enterprise ecosystem project, which included social procurement.

This was interrupted by the October 19 election in the same year, so its implementation came after the election through the efforts of the current government, which today sees that cycle closing with the bill before us.

Honourable senators, supporting the development of a broader social economy is a win-win situation for all of us. That has been recognized by governments of every stripe in this country. It's important that both construction companies and communities leverage money already spent on these large projects. The return on those investments can be significant.

The Welsh government recently measured the benefit to the economy following 35 projects worth approximately 465 million pounds and found that communities saw 1 pound 80 pence worth of benefit for every pound spent, an 80 per cent return on the dollar that has additional social benefits that cannot be as tangibly measured.

From a corporate perspective, engaging in community benefits agreements could help to boost public image and employee engagement. It can also help to attract and retain potential investors by demonstrating commitment to local communities. They also benefit from unlocking the economic potential of local workers and businesses who may be uniquely skilled and knowledgeable about the particular region of an infrastructure project. More community benefit initiatives will see more social enterprises and the broader small business sector gaining market share, which I think is a desired outcome on which we can all agree.

Honourable senators, I close by saying that I encourage you to think about what Bill C-344 can do for your communities, especially in places with large populations of vulnerable people in communities that have experienced major job shortages or in places where training opportunities are scarce. It makes sense to leverage existing investments to ensure that everyone wins. I encourage you all to vote in favour of moving this bill to committee now and to seize the opportunity to improve social and economic conditions for the people in your communities who could benefit from our support.

Hon. David M. Wells: Would the honourable senator take a question?

Senator Dean: I would be happy to.

Senator Wells: Senator Dean, thank you for your speech. No one doubts that a community benefit results because of federal dollars being spent on a project somewhere or anywhere. What would you say about the additional burden put on small businesses, that are very often federal contractors — let's say an electrician company with 10 electricians on staff for a project worth $50,000 that might take a week to do.

With the requirement for a community benefits statement in that bid, do you not think that would be an onerous burden put on a small contractor trying to get a federal job? It could be a contractor who might have unionized employees and if the groups that were mentioned were forced in there — Indigenous groupings or any of the others that were mentioned in a number of speeches — would you think that would not put an onerous burden on a small contractor for a small federal project?

Senator Dean: Thank you for the question, senator. It's a really important one, and there are complexities associated with any significant effort to improve social equity. You have mentioned the difficult side of one of them and I would not expect anything to be forced on anybody. That would be counterproductive.

I'm familiar with the unionized sector of the construction industry and some of the rigidities that both employers and trade unions operate within. I'm also aware of an acute labour shortage across this country in large and small communities, and I'm particularly acutely aware of an absence or a need for apprentices and those feeder trades and sub-trades that support the apprenticeship system.

I do think that small, medium and large employers are experiencing job shortages, and to the extent that community benefit programs create opportunities for learning for those people, regardless of their backgrounds, Indigenous or not, racialized or not, to enter apprenticeships and skills training programs through this community benefit initiatives and other job promotion initiatives.

• (2050)

I think there are challenges, but there are also benefits for employers of all size, including those with rigidities. I know that trade unions in the construction sector that operate training programs are as acutely aware as their employer colleagues about the importance of attracting people to those trades. I think community benefit projects have the ability and some opportunities to attract and to bridge people who want to work in the trades and encourage people who want to work in the trades to actually have the opportunity to enter into training programs.

It's a great question. Thank you.

Senator Wells: Will you take another great question, Senator Dean?

Senator Dean: Yes.

Senator Wells: The legislation is very clear. It says, "The Minister may . . . require . . ." So it's possible it is at the judgment of the minister. If the minister does require that to be part of the assessment and possible success or failure of the bid versus "we want you to build this bridge and we want your cost," do you think the community benefit statement that goes into a proposal after an RFP would be considered as one of the criteria for success of the bid?

Senator Dean: It depends on the circumstances of the proponent and how they want to respond to community benefit initiatives.

I certainly think that the activation of a community benefit initiative as part of a project should be something that's considered at the completion end of a project in terms of its success. We should be evaluating these things all the time. But I hesitate to get drawn into the notion of rigidity. I doubt this is something that is going to be imposed on unwilling actors. We will need to make this successful. Those people who see the benefit of a community benefit arrangement, and I think a growing number will, need to step forward and see the broad benefits that will be available and to take advantage of those.

So I'm looking on the bright side of this, on the positive side, and I —

Hon. Patricia Bovey (The Hon. the Acting Speaker): Honourable senator, your time has expired. Are you asking for more time?

Senator Dean: No, I'm fine with that. Thank you.

(On motion of Senator Harder, for Senator Bellemare, debate adjourned.)

SENATE MODERNIZATION

NINTH REPORT OF SPECIAL COMMITTEE— DEBATE CONTINUED

On the Order:

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

Hon. Leo Housakos (Acting Deputy Leader of the Opposition): I would like to take adjournment in my name.

(On motion of Senator Housakos, debate adjourned.)

STUDY ON THE EFFECTS OF TRANSITIONING TO A LOW CARBON ECONOMY

TENTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the tenth report (interim) of the Standing Senate Committee on Energy, the Environment and Natural Resources, entitled *Decarbonizing Transportation in Canada*, tabled in the Senate on June 22, 2017.

Hon. Leo Housakos (Acting Deputy Leader of the Opposition): Honourable senators, I would like leave to adjourn in Senator Neufeld's name.

(On motion of Senator Housakos, for Senator Neufeld, debate adjourned.)

ETHICS AND CONFLICT OF INTEREST FOR SENATORS

FIFTH REPORT OF COMMITTEE—
DEBATE CONTINUED

The Hon. the Acting Speaker: Honourable senators, pursuant to rule 12-30(2), a decision cannot be taken on this report, as yet. Debate on the report, unless some other senator wishes to adjourn the matter, will be deemed adjourned until the next sitting of the Senate.

Is that agreed, honourable senators?

Hon. Senators: Agreed.

(Pursuant to rule 12-30(2), further debate on the motion was adjourned until the next sitting.)

LEGAL AND CONSTITUTIONAL AFFAIRS

MOTION TO AUTHORIZE COMMITTEE TO STUDY CERTAIN MATTERS PERTAINING TO THE FORMER MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA AND TO CALL WITNESSES—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Wells:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the serious and disturbing allegations that persons in the Office of the Prime Minister attempted to exert pressure on the former Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould, P.C., M.P., and to interfere with her independence, thereby potentially undermining the integrity of the administration of justice;

That, as part of this study, and without limiting the committee's right to invite other witnesses as it may decide, the committee invite the Honourable Jody Wilson-Raybould, P.C., M.P.;

That the committee submit its final report no later than June 15, 2019; and

That the committee retain all powers necessary to publicize its findings until 180 days after tabling the final report.

Hon. Donald Neil Plett: Honourable senators, I think this has been moved already.

Hon. Pierrette Ringuette: Honourable senators, I rise on a point of order. The usual practice in this chamber is when a senator requests an adjournment, like the adjournment earlier this week on this motion, when a senator rises that is not the senator adjourning the matter, he or she says, "I will adjourn at the end of my speech in the name of," in this case, Senator Ringuette.

• (2100)

My point of order is I would like Senator Plett to do that in conformity with our practice. That's my point of order.

The Hon. the Acting Speaker: Senator Plett?

Senator Plett: First of all, I said, "honourable colleagues." I don't think that in any way indicated what I was going to or not going to do. I'm not sure where the point of order came from. I didn't even have an opportunity to say anything other than "honourable colleagues." Is that your point of order?

Your Honour, I plan on speaking to this. I think some other colleagues plan on speaking to this. At the end of our speech, we plan on denying adjournment on this. I'm not sure what the point of order is going to be.

The Hon. the Acting Speaker: Senator Plett, Senator Ringuette had effectively begun a speech and the adjournment was in her name to carry on for the balance of her time. Unless there's leave given to adjourn in her name, at the end of it, she loses the opportunity to speak.

You have the right to speak. Will you give leave to Senator Ringuette to have the balance of her time? Senator Plett?

Senator Plett: I'm not sure I understood what you said because, as I said earlier, I have a bit of a hearing issue and again the microphone was not on properly. I'm not sure what I'm supposed to do.

It's my motion. I want to speak on the motion. We want the question to be called on the motion today. I believe we have a right to call a question on a motion at any time we want. I am quite prepared to say when I am done. I will sit down and Senator Ringuette can adjourn again and we will possibly at that time deny adjournment. If that is proper procedure, then I am willing to do that.

Senator Ringuette: It was a good thing I was proactive. It's clear that Senator Plett does not intend to respect my adjournment this week on this motion.

Actually, the fact is that Senator Plett moved a motion on April 2, a month ago. I was courteous. I was expecting in the last month that Senator Plett would have spoken on his motion. However, he did not. This week I adjourned the motion in my name because I have started to do research on the motion, and I intend to speak, which is my privilege in regards to this motion.

Senator Plett: I'm not sure whether Senator Ringuette wanted me to speak on Good Friday or what day in the last two weeks when we were on break I was supposed to speak. I think for her to talk about a month when two weeks of that month were break weeks is quite rich.

Speaker, I am at your mercy. You have to tell me what I can do. I'm not going to ask Senator Ringuette to tell me what I can do. I think you need to tell me. I want to speak. It's my motion. I believe I've moved the motion. Senator Ringuette has adjourned it. She can continue to try to have adjournment when I'm done, but today we want to call the question on this issue.

The Hon. the Acting Speaker: Senator Plett, you certainly have the right to speak, and at the conclusion of your speech, Senator Ringuette has the right to request leave to have it adjourned in her name.

Hon. Leo Housakos (Acting Deputy Leader of the Opposition): Speaker, indeed you are right, but we also have the right to call question right now, and we call question.

Senator Ringuette: If Senator Plett is not ready to speak, I am.

The Hon. the Acting Speaker: I recognized Senator Plett.

Senator Ringuette: They're calling the question, so that means that Senator Plett does not want to speak. I want to speak on this motion, so I am exercising my right to speak right now.

The Hon. the Acting Speaker: Honourable senators, I had recognized Senator Plett to speak.

Senator Ringuette: But their leadership asked for the question.

The Hon. the Acting Speaker: Their leadership, as I understand it, said they could ask for the question.

Some Hon. Senators: No.

Senator Ringuette: No, he stood up and called the question.

The Hon. the Acting Speaker: I have recognized Senator Plett to speak, after which I will give the floor to Senator Ringuette to speak.

Senator Plett: If I could just clarify, Madam Speaker. From what I understand, you have given me the right to speak. Senator Ringuette can then either speak or try to adjourn, and any other senator who wishes to speak will also be able to speak today. Is that correct?

The Hon. the Acting Speaker: Senator Plett, you have the right to speak and then Senator Ringuette can ask for leave to speak after you.

Senator Plett: Thank you. Let me start over.

Senators, I rise today to speak on the motion that is before us concerning that the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the serious and disturbing allegations that persons in the Office of the Prime Minister attempted to exert pressure on the former Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould, P.C., M.P., and to interfere with her independence, thereby potentially undermining the integrity of the administration of justice.

Senators, I believe this motion is probably the most important matter that has come before this chamber during the present Parliament. In fact, it is possible that this is one of the most important motions that have ever been considered by the Senate in its entire history.

Now, that is a bold statement, but I encourage you to put your politics aside for a moment, those people who believe everything we do here is political, and consider what has transpired that brought this motion to the floor of the Senate.

Two ministers of the government resigned on a fundamental matter of principle. Simultaneously, they levelled the most serious allegations against their own government for having inappropriately interfered in the administration of justice. This, colleagues, is unprecedented.

I realize that some time has transpired since these events were fresh in the media and in our minds. But I urge you to not mistakenly allow this to diminish the significance of what has happened and remains unresolved.

When she appeared before the House of Commons Justice Committee, the Honourable Jody Wilson-Raybould clearly stated:

> . . . I experienced a consistent and sustained effort by many people within the government to seek to politically interfere in the exercise of prosecutorial discretion . . .

Ms. Wilson-Raybould testified that the interference went on for several months with the Prime Minister's former principal secretary allegedly telling her in December 2018:

> . . . there is no solution here that doesn't involve some interference.

When the Clerk of the Privy Council continued the pressure in a subsequent conversation, the former Attorney General has testified that she emphatically told him:

> . . . we are treading on dangerous ground here. I also issued a stern warning because, as the Attorney General, I cannot act in this manner and the prosecution cannot act in a manner that is not objective, that isn't independent.

• (2110)

In her conversation with the Clerk, she told him:

> This is like breaching a constitutional principle of prosecutorial independence.

It is impossible to exaggerate how significant this is. All senators need to consider the testimony of the former Attorney General very carefully.

We have never had a former Attorney General or, indeed, a former minister, level these types of allegations against their own government. Never.

Now, as you know, since that testimony was given, we have had a second minister of the government resign from cabinet, the Honourable Jane Philpott. Since resigning, Ms. Philpott has stated:

> I resigned because I could not maintain solidarity with cabinet on the specific issue of the management of the SNC-Lavalin issue. I felt that there was evidence of an attempt to politically interfere with the justice system in its work on the criminal trial that has been described by some as the most important and serious prosecution of corporate corruption in modern Canadian history.

This is from Ms. Philpott — not me. Ms. Philpott, the former cabinet minister — she also stated:

> There's much more to the story that should be told.

Senators, I submit that, based on this testimony alone, it is imperative that the Senate pass the motion before us. I do not see how we can take any other option and remain credible as a legislative body.

We have heard some senators opposite openly state that members on this side of the house are pursuing this matter or matters before us on Bill C-71 for partisan reasons. The reality is that we are simply responding to the allegations that have been made by former senior ministers in the current government.

Would these same senators allege that Ms. Wilson-Raybould and Ms. Philpott are being partisan in making the allegations that they have made? The fact is there is only one organization in Canada opposing a full inquiry into this matter and that organization, honourable senators, is the Liberal Party of Canada.

If senators opposite vote against the motion that is before us, I submit they will be the ones in this chamber who are demonstrating blatant partisanship, partisanship on behalf of the current government.

Allow me to quote from an editorial in a Canadian newspaper:

> Liberals on the House of Commons justice committee are doing Canadians, and their own government, no favours by failing to clear the way for Jody Wilson-Raybould to tell her full story.
>
> She wants to speak out and there's no doubt that she should be heard. Trying to prevent that, or even just delaying it in the hope that everyone will lose interest, is both wrong and self-defeating.

That editorial, honourable senators, is from the *Toronto Star*. I think you'd have to agree with me that the *Toronto Star* is not exactly a conservative newspaper. This is an issue which concerns Canadians from coast to coast to coast, regardless of partisan stripe. Consider this quote:

> [We are] . . . concerned by recent allegations of interference in the prosecution of SNC-Lavalin that are subject to proceedings in the House of Commons Standing Committee on Justice and Human Rights. The Canadian engineering and construction group is the subject of an ongoing prosecution into allegations of the bribery of Libyan officials to obtain a Can$ 58-million contract to restore a water pipeline.
>
> As a Party to the Anti-Bribery Convention, Canada is fully committed to complying with the Convention, which requires prosecutorial independence in foreign bribery cases pursuant to Article 5.

Who said that? It's from a press release by the OECD Working Group on Bribery. Incidentally, in that same press release, the OECD Working Group initially applauded the government for having referred the matter to the House of Commons Justice Committee for investigation.

The problem is that, within days of that statement by the OECD, the government shut down the investigation by the Justice Committee, just as it has now also shut down a similar attempt at an investigation by the House of Commons Ethics Committee.

I can only hope that senators opposite will not follow the Liberal Party's lead and shut down an investigation by this house. Until now, Canada has had a very good international reputation regarding the rule of law and the administration of justice.

However, the actions that the government has taken to stifle a full inquiry into this affair have not enhanced its reputation. In fact, it has done exactly the opposite.

Senators, some in this chamber would argue that investigating this matter is the responsibility of the other house, not this one. I disagree. In fact, history disagrees with this assertion.

In 1961, the Diefenbaker government introduced a bill to remove James Coyne, who happens to be the father of Andrew Coyne, as the Governor of the Bank of Canada. The government then used its majority in the House of Commons to refuse to let Mr. Coyne appear before a house committee to defend himself, as the bill to fire him was rammed through the house.

When the bill came to the Senate, the Banking Committee invited him to appear. He did so and gave his side of the story. After listening to James Coyne's testimony, the Senate Banking Committee sided with him. In its report, they recommended that

the bill to remove him as governor not be proceeded with. The day that report exonerating him came out, James Coyne resigned. The bill became moot.

This incident became known as "the Coyne Affair." It is a perfect example of the Senate providing a forum for a very senior government official to give his side of the story when the government manipulated its majority in the House of Commons in an attempt to silence him. This is a powerful precedent which must not be ignored or diminished. It directly relates to the situation we find before us today in this motion.

Senators, this is a watershed moment for this chamber. Either senators step up to support the motion we have before us or this chamber is silenced.

I have heard Senator Harder state in the past that one of the key roles of the Senate is to act as a safety valve to protect Canadians against the tyranny of the majority. Is that simply rhetoric or does it actually mean something? We will find out shortly when senators finally vote on the motion that we have before us. I hope all senators will do the right thing and support this motion.

Hon. Pierre J. Dalphond: Will the honourable senator accept a question? Thank you. Will you instead accept the motion introduced by Senator Pratte which is fulfilling the same purpose but in a different context, instead of sending it to the Justice Committee? And if not, why?

Senator Plett: Honourable senators, Senator Pratte made a motion after I made mine, so if they are that similar, maybe Senator Pratte should not have made his motion and should have accepted mine. I guess I can throw that back.

I don't believe they are similar motions. Senator Pratte is making a motion to create some form of independent committee. I'm not asking that we create a committee. We have a committee. We have the Legal and Constitutional Affairs Committee that is quite capable of doing this work. I see no reason why we need to create another committee. I guess they are not, in my opinion, and with all due respect, Senator Dalphond, the same motion at all.

• (2120)

Senator Dalphond: Yes, but the main difference between these two motions is that first the Legal Affairs Committee has to study Bill C-75 and then we have to study Bill C-78 and then we have to study Bill C-337, and you want us to embark on this inquiry at the same moment. What has been proposed by Senator Pratte is a group that is made up mostly of independents who would be looking at the matter.

In terms of efficiency and greater independence, what's the problem? I think his proposal is much superior to your proposal.

Senator Plett: Senator Dalphond, by saying one proposal is superior to the other, you are saying they are two entirely different proposals, so I guess you and I don't agree. I think my proposal is superior to Senator Pratte's motion, and of course, we will have the opportunity to vote on mine, which I sincerely hope passes. If it doesn't, then I'm sure we will have the opportunity to vote on Senator Pratte's motion.

But you are asking us to support creating another body that you yourself say is going to be made up mostly of independents, which of course is your group, so you're already suggesting let's make up a group of "us" so that we can study what "us" did wrong. I don't accept that as the proper committee, so that is why I'm going to continue to ask that we support this motion, and of course, we have the right, and hopefully we will not do it in any political manner. We will do it in a non-partisan manner. We will see the light and have the epiphany that we need to have and support this motion.

The Hon. the Speaker: I'm going to recognize Senator Ringuette first.

Senator Ringuette: This has certainly been an interesting motion so far.

The Hon. the Speaker: Senator Ringuette, before you start, perhaps I should clarify something. The Scroll version of the Order Paper shows that Senator Ringuette has been starred on her adjournment, which means that in order for her to adjourn a second time, she would need leave. In this case, because the chair has already recognized Senator Plett to speak, and because Senator Ringuette is starred, she will also need leave to enter debate.

I should say, honourable senators, that normally when somebody adjourns a debate, if another senator wishes to speak, they will consult that senator and some agreement is usually reached. However, that was not done in this case, so Senator Plett was recognized and he spoke. In order for Senator Ringuette to speak now, she will need the leave of the Senate. I would caution, honourable senators, it would be courteous to allow a senator in whose name an item was adjourned the opportunity to speak.

Senator Ringuette, are you seeking leave?

Senator Ringuette: Thank you very much. I really appreciate —

Senator Mockler: The spirit of cooperation.

Senator Ringuette: — the spirit of cooperation.

Honourable senators, Senator Plett, setting aside the appropriateness of your proposal, events have taken place that call into question its usefulness. Many weeks ago, both former Ministers Wilson-Raybould and Philpott publicly stated there is nothing further to add. The former Minister Wilson-Raybould gave testimony at committee in the House of Commons Standing Committee on Justice and Human Rights for hours.

Subsequently, the former Attorney General filed a lengthy written brief together with an audio recording to the committee. At page 19 of that brief, former Minister Wilson-Raybould states:

> For my part, I do not believe I have anything further to offer a formal process regarding this specific matter.

In an interview on "Power Play," former Minister Philpott stated:

> I think there's enough information on the public record for Canadians to see what happened and judge for themselves.

In another interview, with *Maclean's*, Dr. Philpott was asked:

> Do you still feel there's more that Canadians should know?

Dr. Philpott answered as follows:

> . . . In reference to my previous comments, since that time obviously more information has become available. Probably the most important piece is the 43-page document that was tabled by the former Attorney General.

She continued by saying:

> Those were important pieces to put out there. Is there more to say? There are other pieces of information, parts of the story that I could add to based on conversations that I had. At this point, I'm not inclined to feel that there's benefit in making a big issue of that because I think there's enough information out there now for Canadians to judge what took place.

Before the Standing Committee on Justice and Human Rights and the examination by the Conflict of Interest and Ethics Commissioner, there is no such waiver for a Senate proceeding.

If anything, I find myself surprised by the outreach displayed by the members opposite. After all, PMO pressure on the Conservative government caucus of the Senate during the last Parliament is well documented. At this point, allow me to quote from paragraph 10-29 to 10-38 of the April 21, 2016, decision of the Ontario Court of Justice in *R. v. Duffy*:

> The email traffic that has been produced at this trial causes me to pause and ask myself, "Did I actually have the opportunity to see the inner workings of the PMO?"
>
> Was Nigel Wright actually ordering senior members of the Senate around as if they were mere pawns on a chessboard?
>
> Were those same senior members of the Senate meekly acquiescing to Mr. Wright's orders?
>
> Were those same senior members of the Senate robotically marching forth to recite their provided scripted lines?
>
> Did Nigel Wright really direct a Senator to approach a senior member of an accounting firm that was conducting an independent audit of the Senate with the intention to either get a peek at the report or part of the report prior to its release to the appropriate Senate authorities or to influence that report in anyway?
>
> Does the reading of these emails give the impression that Senator Duffy was going to do as he was told or face the consequences?
>
> The answers to the aforementioned questions are: YES; YES; YES; YES; YES; and YES!!!!!
>
> The political, covert, relentless, unfolding of events is mind boggling and shocking.
>
> The precision and planning of the exercise would make any military commander proud. However, in the context of a democratic society, the plotting as revealed in the emails can only be described as unacceptable.

I close the quote from the judge. With the benefit of some sober hindsight, there may be more to be learned about the power dynamic between the upper echelons of the previous PMO and the Conservative government caucus in the Senate during the last Parliament and the sustained pressure that was exerted on our independent institution.

• (2130)

Perhaps the Senate ought to exercise some sober second thought on this matter as well. It never did. After all, what is good for the goose is also good for the gander.

[*Translation*]

In the language of Molière, we also have an expression for "what's good for the goose is good for the gander."

[*English*]

MOTION IN AMENDMENT

Hon. Pierrette Ringuette: Therefore, honourable senators, in amendment, I move:

> That the motion be not now adopted, but that it be amended:
>
> 1. by replacing the words "report on the serious" by the words "report on the role of political staff in the Office of the Prime Minister in their interactions with parliamentarians, ministers and Attorneys general, including the serious"; and
>
> 2. by adding the following new paragraph after the words "Jody Wilson-Raybould, P.C., M.P.,":
>
> "That, as part of this study, and without limiting the committee's right to invite other witnesses as it may decide, the committee invite the following witnesses with potential experience in past matters of alleged political interference, direction and pressure on parliamentarians and their work in the Office of the Prime Minister:
>
> Nigel Wright, former Chief of Staff to the Prime Minister;
>
> Benjamin Perrin, former Special Adviser and Legal Counsel to the Prime Minister;

Ray Novak, former Chief of Staff to the Prime Minister;

The Honorable Senator David Tkachuk;

The Honourable Marjorie LeBreton, P.C., former senator;

The Honourable Irving Russell Gerstein, former senator; and

The Right Honourable Stephen Harper, P.C., former Prime Minister of Canada;".

Thank you.

The Hon. the Speaker: Honourable senators, in amendment it was moved by the Honourable Senator Ringuette, seconded by the Honourable Senator Woo that by —

Some Hon. Senators: Dispense.

The Hon. the Speaker: May I dispense?

Some Hon. Senators: Please.

The Hon. the Speaker: Anything on debate? Senator Plett on debate. I'm sorry, I should ask first, Senator Plett.

Did you have a question of Senator Ringuette, Senator Omidvar or did you want to enter debate?

Hon. Ratna Omidvar: I wanted to adjourn the debate.

Senator Plett: That's not going to happen —

Senator Omidvar: I can do it afterwards. Go ahead.

Senator Plett: That's not going to happen, not for a while.

You know, Your Honour, I'm not very often at a complete loss for words.

Senator Harder: Adjourn the debate then.

Senator Plett: I actually would be troubled if I would make such a mockery, such an absolute mockery, out of a bill that is of serious nature, to bring people back almost from the grave to come and testify and actually think that is humorous. I think it is shameful that we would make such a mockery out of such a serious situation where Canadians have been cheated, where a Prime Minister is under investigation, both ethically and criminally, where ministers have come down, condemning this Prime Minister and this government. Then for someone to bring people back from five and six and 10 years ago as if that is an amendment. It is not an amendment. It is a completely separate motion. Obviously, Speaker, at the end of day you are going to rule on this and I'm not making this a point of order. This is not even close to an amendment and I am astounded, flabbergasted and offended that somebody would try to make a mockery out of a serious situation.

Some Hon. Senators: Hear, hear!

Senator Omidvar: I move the adjournment of the debate.

Some Hon. Senators: No, no. On debate.

The Hon. the Speaker: Senator Omidvar has moved the adjournment. It is moved by the Honourable Senator Omidvar — I'm sorry, I recognized Senator Omidvar first, but I went to the other side to Senator Plett because he rose at approximately the same time. I am now recognizing Senator Omidvar.

Senator Housakos: With all due respect, it is the obligation of the Chair to ask if there is no more debate before he adjourns. That's the process in this place, it has been the precedent and the Chair should respect it.

The Hon. the Speaker: Senator Omidvar moved the adjournment of the debate. I'm going to recognize that and it is the right of the House to reject that if they so wish. It was moved by the Honourable Senator Omidvar, seconded by the Honourable Senator Woo that further debate be adjourned until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No!

Some Hon. Senators: Yes.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed, "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: I see two senators rising. Do we have an agreement on the bell? One-hour bell. The vote will take place at 10:36, call in the senators.

• (2230)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Anderson
Boehm
Bovey
Coyle
Dalphond
Dean
Duncan
Dyck
Lankin
McPhedran
Mitchell
Moncion
Omidvar
Pate
Pratte
Ravalia
Forest-Niesing
Harder
Klyne
Kutcher
Ringuette
Simons
Sinclair
Woo—24

NAYS
THE HONOURABLE SENATORS

Beyak
Housakos
Martin
Plett
Wells—5

ABSTENTION
THE HONOURABLE SENATOR

Griffin—1

(*At 10:40 p.m., the Senate was continued until Tuesday, May 7, 2019, at 2 p.m.*)

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