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OFFICIAL REPORT
(HANSARD)

Thursday, June 13, 2019

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Thursday, June 13, 2019

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

Prayers.

TRIBUTES TO DEPARTING PAGES

The Hon. the Speaker: Honourable senators, as I indicated earlier this week, we are paying tribute to Senate pages leaving this summer.

Today, we have Joshua Dadjo. Joshua is proud to represent Ottawa. He has just completed an honours bachelor of science in biochemistry and will begin a masters in health sciences, with a focus on child and maternal health policy this fall. Joshua is thankful to all honourable senators and Senate administration staff for such a great experience, and we are thankful to you, Joshua for your service. Thank you.

[*Translation*]

Priscilia Odia Kabengele just received a bachelor's degree in public relations and communications from the University of Ottawa. She will be pursuing her career with the Senate Communications Directorate. It was a privilege for Priscilia, a Canadian from Kinshasa, Congo, to serve as a page this year and to represent the province of Quebec. She wants to thank you for your help and your kindness, which she found very inspiring. Priscilia, goodbye and thank you so much.

Hon. Senators: Hear, hear!

[*English*]

SENATORS' STATEMENTS

GORDON LIGHTFOOT, C.C., O.ONT.

Hon. Gwen Boniface: Honourable senators, I rise today to pay tribute to an iconic Canadian musician, Gordon Lightfoot. Recently I had the honour of attending the official launch of a new documentary at the National Arts Centre and a special reception with Mr. Lightfoot. The documentary, *Gordon Lightfoot: If You Could Read My Mind*, was officially released on May 31 and is currently playing at select cinemas across the country. This 90-minute documentary celebrates the incredible musical career which has spanned more than five decades. Over those years, he has produced more than 200 recordings and has helped shape the 1960s and 1970s folk-pop genre.

The list of famous artists who have covered his songs is impressive. It includes Elvis who covered "Early Morning Rain," Johnny Cash who covered "For Loving Me," Bob Dylan who covered "I'm Not Supposed To Care" and Eric Clapton who covered "Looking At The Rain." His most popular song, "If You Could Read My Mind," was covered by dozens of artists, among them notables such as Don McLean, Glen Campbell, Johnny Mathis and Barbra Streisand.

Among his many honours and accolades, Gord is a Companion of the Order of Canada and recipient of the Order of Ontario. He received an Honorary Doctorate of Music from Lakehead University and the prestigious Governor General's Performing Arts Award.

He is also the pride of my home town, the city of Orillia, where he first got his start in music as a choirboy. He is honoured with a four-metre-high bronze sculpture called "Golden Leaves," which features him sitting cross-legged playing an acoustic guitar underneath an arch of maple leaves. Many of the leaves depict scenes from his 1975 greatest hits album "Gord's Gold." The monument rests at the location of the famous Mariposa Folk Festival where he performed many times.

This self-taught guitarist continues to perform at the age of 80 despite having a stroke in 2006, which temporarily affected the use of his right hand. He is currently on tour in the United States and will return here to Ottawa in December. He plans to release his first album in 15 years in 2020.

Lightfoot's biographer, Nicholas Jennings, sums up his legacy this way:

> Gordon Lightfoot's name is synonymous with timeless songs about trains and shipwrecks, rivers and highways, lovers and loneliness. His music defined the folk-pop sound of the 1960s and '70s. He is unquestionably Canada's greatest songwriter.

And, honourable senators, he remains the pride of our fair city.

The documentary is playing across Canada. Honourable senators, please make time to go and see it and celebrate this great Canadian.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Principal Rocco Coluccio, staff and students of Islington Junior Middle School. They are the guests of the Honourable Senator Marwah.

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

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of students and faculty of the Masters of International Public Policy program at the Balsillie School of International Affairs at Wilfrid Laurier University. They are the guests of the Honourable Senators Boehm and Deacon (*Ontario*).

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

Hon. Senators: Hear, hear!

THE LATE JAY BELL REDBIRD

Hon. Mary Coyle: Honourable senators, I rise today to honour a gifted and prolific artist, a friend and a beautiful human being — Jay Bell Redbird. A uniquely funny, playful and creative man, Jay was all heart.

Speaking of heart, Jay loved to give big warm bear hugs, and he always embraced you heart to heart in order to make a direct exchange of love.

He was a true original. After attending the opening, last Saturday, of his new show, "Expressions of Mother Earth" with his beloved life partner and fellow artist, Halina Stopyra, at Sherbrooke village, Jay returned to his home in Cape Breton, or "Paradise Island" as he liked to call it. He went to bed late as usual and just didn't wake up the next morning.

Jay left us much too soon. He was only 52 years old, and he was having so much fun. Knowing Jay, he would say that he has joined his dear mother in the spirit world.

• (1340)

Born in Ottawa to the late Elaine Bell and Duke Redbird, Jay was a member of the Wikwemikong Unceded Territory First Nation on Manitoulin Island, his mother's community. Jay was a proud father and loving brother to his sisters.

Jay was a self-taught artist. He told me stories of being surrounded in his childhood home by world-renowned artists Jackson Beardy and Norval Morrisseau; his uncle, the well-respected Leland Bell; and his dad, Duke Redbird, an artist, writer and activist.

An artist in the woodland style, Jay said:

> I paint legends and dreams, bringing to life the animal spirit and the spirit of all creation. My lines do not tell the story of prejudice, they follow the Red Road, Mino Bimaadiziwin as I do following the teaching of the Three Fires Midewiwin Society.

I was so honoured when Jay Bell Redbird was commissioned to create a painting for me by our mutual friend Rolf Bouman. I will forever cherish Jay's beautiful, bold, colourful painting depicting Mother Earth — the turtle — and depicting leadership using the symbolism of a loon and a heron, which is now in my Senate East Block office. Danny DeVito and Michael Douglas also own paintings by Jay.

A sacred fire is burning for Jay Bell Redbird. On Saturday, the friends and family of this vibrant, colourful source of joy and life will gather at the Friends United Indigenous artists centre in Cleveland, Cape Breton, to remember, grieve our loss and celebrate this true creative.

Jay Bell Redbird, you live on through the legacy of your gift of art. We will never forget you and the beauty you have brought into our world and into our hearts. Thank you. *Wela'lioq*.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Dr. Robert Forsey and Dr. Vina Broderick from Newfoundland and Labrador. They are the guests of the Honourable Senator Ravalia.

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

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Bonnie O'Neill. She is the guest of the Honourable Senator Black (*Ontario*).

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

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

PUBLIC SECTOR INTEGRITY COMMISSIONER

2018-19 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the annual Report of the Office of the Public Sector Integrity Commissioner for the fiscal year ended March 31, 2019, pursuant to the *Public Servants Disclosure Protection Act*, S.C. 2005,c. 46, sbs. 38(4).

[*English*]

PARLIAMENTARY BUDGET OFFICER

CLOSING THE GAP: CARBON PRICING FOR THE PARIS TARGET— REPORT TABLED

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

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FORTY-SECOND REPORT OF COMMITTEE TABLED

Hon. Sabi Marwah: Honourable senators, I have the honour to table, in both official languages, the forty-second report of the Standing Committee on Internal Economy, Budgets and Administration entitled *Annual Report on Parliamentary Associations' Activities and Expenditures for 2018-19*.

[*Translation*]

BUDGET IMPLEMENTATION BILL, 2019, NO. 1

FORTY-FIRST REPORT OF NATIONAL FINANCE COMMITTEE PRESENTED

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

Thursday, June 13, 2019

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

FORTY-FIRST REPORT

Your committee, to which was referred Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures, has, in obedience to the order of reference of Monday, June 10, 2019, examined the said bill and now reports the same without amendment but with certain observations, which are appended to this report.

Respectfully submitted,

PERCY MOCKLER
Chair

(*For text of observations, see today's* Journals of the Senate*, p. 5004.*)

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

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

STUDY ON CANADIANS' VIEWS ABOUT MODERNIZING THE OFFICIAL LANGUAGES ACT

THIRTEENTH REPORT OF OFFICIAL LANGUAGES COMMITTEE DEPOSITED WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. René Cormier: Honourable senators, I have the honour to inform the Senate that pursuant to the orders adopted by the Senate on April 6, 2017, and June 11, 2019, the Standing Senate Committee on Official Languages deposited with the Clerk of the Senate on June 13, 2019, its thirteenth report entitled *Modernizing the Official Languages Act: Views of the Federal Institutions and Recommendations* and I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

[*English*]

CRIMINAL CODE

BILL TO AMEND—THIRTY-SEVENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

Hon. Judith G. Seidman, Deputy Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday, June 13, 2019

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

THIRTY-SEVENTH REPORT

Your committee, to which was referred Bill C-84, An Act to amend the Criminal Code (bestiality and animal fighting), has, in obedience to the order of reference of Thursday, May 30, 2019, examined the said bill and now reports the same without amendment but with certain observations, which are appended to this report.

Respectfully submitted,

JUDITH G. SEIDMAN
Deputy Chair

(*For text of observations, see today's* Journals of the Senate*, p. 5005-5006.*)

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

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

[*Translation*]

INDIGENOUS LANGUAGES BILL

TWENTY-FIRST REPORT OF ABORIGINAL PEOPLES COMMITTEE PRESENTED

Hon. Lillian Eva Dyck: Honourable senators, I have the honour to present, in both official languages, the twenty-first report of the Standing Senate Committee on Aboriginal Peoples, which deals with Bill C-91, An Act respecting Indigenous languages.

(*For text of report, see today's* Journals of the Senate*, p. 5006-5009.*)

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

Senator Dyck: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(f), I move that the report be placed on the Orders of the Day for consideration later this day.

[*English*]

Hon. Donald Neil Plett: Your Honour, I would like to make a brief comment, just for the record. The Conservative Party would certainly give leave to both Bill C-91 and Bill C-92 to be moved to third reading today.

[*Translation*]

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

Hon. Senators: Agreed.

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

[*English*]

BILL RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

TWENTY-SECOND REPORT OF ABORIGINAL PEOPLES COMMITTEE PRESENTED

Hon. Lillian Eva Dyck: Honourable senators, I have the honour to present, in both official languages, the twenty-second report of the Standing Senate Committee on Aboriginal Peoples, which deals with Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families.

(*For text of report, see today's* Journals of the Senate*, p. 5010-5013.*)

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

Senator Dyck: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(f), I move that the report be placed on the Orders of the Day for consideration later this day.

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

Hon. Senators: Agreed.

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

• (1350)

ABORIGINAL PEOPLES

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

Hon. Lillian Eva Dyck: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Aboriginal Peoples have the power to meet on Wednesday, June 19, 2019, at 6:45 p.m., for the purpose of its study on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Metis peoples and on other matters generally relating to the Aboriginal peoples of Canada, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

QUESTION PERIOD

FINANCE

CARBON TAX

Hon. Larry W. Smith (Leader of the Opposition): Thank you, Your Honour. My question is for the government leader in the Senate. It concerns the report released this morning from the Parliamentary Budget Officer. This report provides an estimate of the additional carbon price that would be needed to achieve Canada's emissions target under the Paris Agreement, 30 per cent below 2005 levels by 2030.

The PBO report estimates the carbon tax would have to reach $102 per tonne in order to meet the Paris targets. As well, the report notes that this amount would have to apply more broadly covering all sectors except agriculture. It also would have to be applied to all provinces and territories, and not just those currently under the federal backstop.

Senator Harder, according to the PBO, the total impact to the Canadian economy would be a reduction of 1 per cent of our GDP. This would equal about $20 billion taken out of our economy. In the wake of the PBO's report, how can the government continue to justify its carbon tax?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. He will know, as all senators do, that the Parliamentary Budget Officer is exactly that, the Parliamentary Budget Officer providing advice to parliamentarians.

I would also note, though, that the report confirms that putting a price on pollution is an effective means of reducing emissions. That is a policy that the government has put in place. I can affirm to this chamber that the government has no plans to increase the price on pollution beyond the current scheduled plan.

As all senators will know, 80 per cent of Canadians would be better off under the federal carbon pricing regime.

I would also note that I trust that the PBO report will be useful advice to Mr. Andrew Scheer when he finally releases his climate action plan.

STATE OF THE ECONOMY

Hon. Larry W. Smith (Leader of the Opposition): Thank you. Higher carbon taxes combined with the impact of Bill C-48 and Bill C-69 will take a terrible toll on our economy and the financial well-being of families right across our country. Yesterday, the Canadian Chamber of Commerce called the government's decision to reject most of the Senate's amendments to Bill C-69 "a dark day for a nation of builders."

Yet the Prime Minister continues to attack the provinces for seeking changes to the bill and sharing their concerns about our national unity.

Senator Harder, the government's policies will devastate our energy sector, which is already hurting. These policies will hurt our country as a whole. The Prime Minister can change course, but will he do so? Will your government finally recognize the damage its policies are taking on our country before it's too late?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. He will know, of course, that I would have a different conclusion than he is drawing from the fact that the economy is leading the G7, that we have the lowest unemployment rate in two generations, and that the transition to a less carbon-intense economy is one that is under way as a result of actions taken by this government, Parliament and Canadians.

With respect to the references to Bill C-69, the view of the government, and, I hope, the ultimate view of this chamber and Parliament, is that Bill C-69 is an important stabilizing piece of legislation in ensuring that our environmental assessment process is one that actually leads to projects being built in a quicker time frame than hitherto.

[*Translation*]

INTERGOVERNMENTAL AFFAIRS

PROVINCIAL AND TERRITORIAL CONCERNS ON GOVERNMENT LEGISLATION

Hon. Jean-Guy Dagenais: My question is for the Government Representative in the Senate. With Bill C-69, your government is planning to infringe on Quebec's jurisdiction over project analysis, which will result in a duplication of human resources, additional costs and project delays. That is the result of your Prime Minister's stubbornness.

Support for Mr. Trudeau is dwindling every day, although I can't say I'm too sad about it. That being said, Leader, can you tell us whether your Prime Minister is completely unaware of what he is doing or whether he is deliberately provoking a crisis with the provinces so he can use it to cover up his government's mistakes during the upcoming election campaign?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. Of course, the Government of Canada has a different understanding of the measure than the honourable senator asking the question. It is important in the government's view to have the tools necessary to respond to a sudden dumping of product and that we are able to protect workers and jobs in Canada.

FINANCE

STATE OF THE ECONOMY

Hon. Nicole Eaton: Senator Harder, I hear you. The unemployment rate in Canada is the lowest in decades. But the IMD World Competitiveness Center recently released its annual rankings. It showed Canada had dropped three spots to number 13. It is the worst performance by Canada since the rankings started in 1997.

Canada ranked at the bottom of the barrel in the categories of competitive tax regime and competency of government. The report said one of the main challenges of 2019 for Canada was the shortage of favourable incentives to draw high-quality foreign direct investment.

Foreign direct investment, as you know, Senator Harder, in the Canadian economy has fallen off a cliff since 2015. The economy has barely grown for two consecutive quarters.

Senator Harder, why did the government not take this into consideration very directly when it tabled its last budget?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question. She will know, as a member of the Senate Finance Committee, that the last budget indeed has a number of measures in it to render the Canadian economy more effective and efficient.

She will also know, because she pays attention to these things, that in the last reporting period there was a surge in investment in Canada to make us the second-highest country in terms of receiving direct foreign investment.

[*Translation*]

ENVIRONMENT AND CLIMATE CHANGE

SINGLE-USE PLASTICS

Hon. Claude Carignan: My question is for the Leader of the Government in the Senate and has to do with the Trudeau government's announcement about banning single-use plastics by 2021.

I would like to know the government's position on certain medical equipment, such as plastic syringes and IV bags. Does the government also intend to ban single-use medical equipment? If so, what will be used to replace that equipment?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. He is raising an important question, which is why the Government of Canada undertook at the last federal-provincial-territorial meeting of ministers in the fall of last year a concerted action with respect to a Canada-wide strategy for zero single-use plastic waste. The discussions that are ensuing at the federal-provincial-territorial table are ones to deal with exactly the kind of situations that the honourable member raises.

• (1400)

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

CANADA-CHINA RELATIONS

Hon. Leo Housakos: Honourable senators, my question is for the Leader of the Government in the Senate.

Senator Harder, over the past couple of weeks I have been asking about whether Prime Minister Trudeau had confirmed a meeting with his Chinese counterpart at the upcoming G20 meeting to discuss the illegal detention of two Canadian citizens in China. I have received only non-answers from you, including yesterday. Don't worry, though. I have my answer, unfortunately from the CBC news, who have reported that Beijing has ignored a personal attempt by Justin Trudeau to arrange a conversation with his Chinese counterpart.

It is clear, Senator Harder, that China isn't taking Mr. Trudeau seriously. He can't even secure a phone call, let alone a meeting, with the President of China. Isn't it time that your government takes serious measures to stand up to China to protect the interests and human rights of these Canadians, like committing, for example, to ban certain Chinese imports to Canada? And when is this government going to show Huawei the door to demonstrate to the Chinese that we're serious about protecting Canadians?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. Let me simply say that the Government of Canada is taking all the steps necessary and appropriate, both publicly and otherwise, to secure the release of the Canadians and to resolve the matters that are under dispute in a bilateral sense, and I will add nothing to that.

Senator Housakos: Government leader, actions speaks louder than words, and it has been many months now that the government has shown complete ineptitude and inaction on this file and while Canadian lives are at stake. It is not, unfortunately, just Justin Trudeau that can't be taken seriously. Foreign Affairs Minister Chrystia Freeland has repeatedly tried and failed to obtain a meeting with her counterpart from China. The diplomat of the year, Minister Freeland, has now taken to begging with an open plea during a media scrum where she said:

> If Chinese officials are listening to us today, let me repeat that I would be very, very keen to meet with Minister Wang Yi or to speak with him over the phone at the earliest opportunity.

Senator Harder, as a former deputy minister under five Prime Ministers and 12 different ministers, including at Foreign Affairs, as an experienced diplomat, is this normal behaviour for a Minister of Foreign Affairs to resort to a press conference in order to catch the attention of the Chinese administration? And don't you think that the Canadian government right now should show concrete action in standing up for these two Canadians and not just words?

Senator Harder: I have nothing to add to my previous answer.

CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

Hon. Robert Black: Honourable senators, my question is for the Government Representative in the Senate.

During the negotiations of CETA, the Comprehensive Economic and Trade Agreement between Canada and the European Union, one of the major draws for Canada was that our meat producers would enjoy increased market access by increasing the quota of tariff-free pork and beef allowed into the EU. However, in various recent media reports producers have noted that their exports have barely increased and they have not been able to fill the quotas.

This has been noted as due to further regulatory barriers such as certain hormones now not being permitted in the EU and having to do various other tests that were not previously required. Meanwhile, the EU is taking advantage of their side of the trade deal and enjoying significantly increased access to our market for cheese.

Senator Harder, why is it that these barriers were not foreseen during the negotiations and what is the government doing to solve the problem?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. I will obviously reference his question to the appropriate minister, but if my recollection is correct, Canada's exports to Europe increased by 12 per cent in the last year as a result of the CETA. While there may be some sectoral challenges, as the honourable senator is suggesting, I think it's important for us all to recognize that this is an important agreement, a positive step for Canada and, as has been stated many times in this chamber, we are the only G7 country to have free trade agreements with all other G7 countries, the CETA being an important feature of that. I will seek further clarification. It has become a habit in some countries to use GMO and other non-tariff-like barriers. I will report back.

CROWN-INDIGENOUS RELATIONS

ELIMINATION OF SEX-BASED INEQUITIES

Hon. Marilou McPhedran: Honourable senators, my question is to the representative of the government, Senator Harder.

Yesterday, Minister Bennett tabled the report to Parliament on the collaborative process on Indian registration, band membership and First Nation citizenship.

The report states that the provision to remove the 1951 cut-off in the Indian Act "will come into force at a later date, once an implementation plan is developed."

What? My full question to Senator Harder is as follows: Since equal rights for Indigenous women were just considered a top priority in the recently released Final Report by the National Inquiry into Missing and Murdered Indigenous Women and Girls, is there an explanation as to why the government has failed to take action? Why is Canada choosing to perpetuate sex-based inequities that are cleaned up already in the Indian Act as a result of the Senate-led amendments to the Indian Act from Bill S-3 and that are sitting there not implemented? When does the government plan to actually take action and implement and follow up on these promises to Indigenous women?

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for her question and for all honourable senators who have had a keen interest in this area and indeed in the amendments that were brought forward with respect to Bill S-3.

The report that was tabled was part of the commitments made by the government in the context of that debate, as the honourable senator will know. With respect to the specific question being asked, I will make inquiries of the minister. Her report was intended to be a transparent reflection of the views of the minister at this point.

FINANCE

CANADA PENSION PLAN INVESTMENT BOARD

Hon. Salma Ataullahjan: Honourable senators, my question is for the Leader of the Government in the Senate. On May 27, the Canada Pension Plan Investment Board confirmed that it is conducting human rights checks on its investments following revelations about two Chinese companies in its holdings. In its most recent filing, the CPP Investment Board disclosed that it owns a total of $48 million worth of shares in these two companies. These companies manufacture equipment used in the mass surveillance of the minority Uighur Muslims, equipment used in the terrible human rights abuses committed against them in recent years. It has been estimated that 1 million Uighurs have been interned in China's so-called "re-education camps."

Senator Harder, could you tell us if Minister Morneau is aware of the status of the CPP Investment Board review of the investments? Has the review been completed? If so, have any other similar investments been identified?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and her vigilance on these matters. She will know, as all senators would, that the CPPIB is independent and rightly so. The board does an incredible job in the oversight responsibilities for this important fund. I will make inquiries with respect to the questions that have been asked, but I do think it's important for us to understand and underscore the independence of the board with respect to these governance matters.

Senator Ataullahjan: My next question then, Senator Harder, would be, recently Minister Freeland condemned the deepening crackdown on the Uighurs and members of other religious minority groups in China. Notwithstanding that the Canada Pension Plan Investment Board may operate independently of the government, I believe that it would take seriously the advice of the Minister of Finance if he were to relay his government's concern with the investments that involve human rights violations of the Uighurs. Senator Harder, has Minister Morneau asked the board to divest itself of the shares in these two companies? If not, why not?

Senator Harder: Let me indicate, as I did in the previous answer, that I would be happy to raise this with the minister and report back.

NATIONAL REVENUE

OVERSEAS TAX EVASION

Hon. Paul E. McIntyre: Honourable senators, my question for Leader of the Government in the Senate is a follow-up to questions I asked last week about tax evasion and a secret

out-of-court settlement which the Canada Revenue Agency offered KPMG clients involved in tax avoidance on the Isle of Man. Earlier this week, officials from the Canada Revenue Agency appeared before the Finance Committee of the other place. They were questioned about this case and the general lack of information on how and why the settlement was reached. While the CRA officials spoke of increasing transparency in these cases, their answers did not really provide any details of exactly how they intend to do so.

• (1410)

Leader, could you please inquire and inform us how Canada Revenue Agency will change its processes in tax evasion cases and settlements such as these to allow for greater transparency for Canadian taxpayers?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. He will know that the minister has given instruction to the CRA to allow for greater transparency in these processes and I will undertake to report back as the honourable senator is asking.

Senator McIntyre: Thank you for inquiring, leader.

Last fall, a report from the Auditor General which looked into tax evasion stated:

> We found that the Canada Revenue Agency did not consistently apply tax rules when it audited or reviewed taxpayers' files, even though the Taxpayer Bill of Rights includes the right to have the law applied consistently.

The Auditor General's report cited several ways in which ordinary taxpayers are not given the same consideration by CRA as those with offshore accounts.

Leader, does your government have any concern about the perception of a double standard?

Senator Harder: I thank the honourable senator for his question. It gives me the opportunity to share the concern inherent in the question that all Canadian taxpayers are treated fairly and equally. That is why the minister has undertaken the direction to the department that she has with respect to the offshore settlements. I would hope that the transparency can lead to the assurance of that fact.

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, I am ready to rule on the point of order that Senator Plett raised on June 6, 2019, concerning comments made on Twitter by another senator. Many colleagues took part in consideration of the point of order, indicating how seriously all of us take the issue of decorum and language, both in the chamber and outside it.

This is, of course, not the first time such issues have been raised. On a number of occasions in recent weeks senators have expressed concerns about the use of unparliamentary language. As recently as May 16, I had occasion to caution all colleagues:

> when you are using social media, please take your time before you send out tweets. If it is something you think will be offensive and you are not really sure whether or not it is something that is appropriate, I suggest you do not send, because it reflects poorly, not just on the people who are doing it, but on the whole chamber.

We have the enormous privilege of being members of the Upper House of the Parliament of Canada. With this enormous privilege comes enormous responsibility. Together, we all work for the good of our country. We can certainly disagree with each other. Indeed the exchange of conflicting ideas is vital to the health of our parliamentary system of government. We should, however, always approach one another with civility and respect, valuing the range of experiences and diverging views that we bring to Parliament. All of us are responsible for ensuring the proper functioning of this institution, and we must avoid undermining it, or undermining each other.

While the Speaker's role in relation to the *Ethics and Conflict of Interest Code for Senators* is quite circumscribed, we should remember that our own Code requires that "[a] Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator". Under the Code, adopted by the Senate as a whole, senators are to "refrain from acting in a way that could reflect adversely on the position of senator or the institution of the Senate". These principles should guide us in our behaviour, both in the Senate and outside it.

I, therefore, ask senators to focus on the substance of the issues we are addressing, and to avoid criticizing individuals or groups. By all means question and challenge policies and positions, but this should be done without undermining and attacking others who advance a particular point of view. This applies in the Senate, in committee, and outside proceedings. Historically, very few Speaker's rulings have had to address issues of unparliamentary language. This is a testament to our long history of respectful debate. Our behaviour as parliamentarians should serve as a model to be emulated – by those who work with us, and those in our communities whom we represent.

In terms of the specific point of order, the definition in Appendix I of the Rules states that a point of order is:

> A complaint or question raised by a Senator who believes that the rules, practices or procedures of the Senate have been incorrectly applied or overlooked during the proceedings, either in the chamber or in committee.

The concern raised by Senator Plett does not relate to proceedings, and so does not constitute a point of order. This is generally supported by the analysis of the ruling of May 2, 2019, dealing with a question of privilege, which noted that the Speaker's authority is limited to our proceedings.

I do, however, thank Senator Plett for raising his concern. It has given me the opportunity to emphasize the importance of civility and respect in all our dealings, both with each other and with others, irrespective of whether they are in the context of parliamentary proceedings or not.

ORDERS OF THE DAY

CRIMINAL CODE
YOUTH CRIMINAL JUSTICE ACT

BILL TO AMEND—THIRD READING—
DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Campbell, for the third reading of Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, as amended.

Hon. Dan Christmas: Honourable senators, I rise to speak to Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts.

I do so today, colleagues, on behalf of the All-Party Parliamentary Group to End Modern Slavery and Human Trafficking. Our group was launched in 2018 and includes members from across all official parties in Parliament. The APPG has four co-chairs representing each party.

In undertaking our business, the APPG has reviewed the amendments proposed to Bill C-75 around human trafficking. I am eager to echo serious concerns with the consequences such amendments will have in successfully addressing human trafficking in Canada. Among the provisions, Bill C-75 would allow some serious offences related to human trafficking and other crimes to be considered as relatively minor summary conviction offences.

As you may know, colleagues, human trafficking in Canada is very profitable. It is growing and inflicts unspeakable, horrific trauma on its victims. We know the vast majority of human victims in Canada are female and young.

Those most at risk including Indigenous women and youth, teenage runaways and children who are in protection; yet we know anyone can become a victim of human trafficking. Even more disconcerting is the knowledge that while Indigenous women only make up 4 per cent of the population of Canada, they comprise at least 50 per cent of the victims of human trafficking in Canada.

This percentage is even higher in certain parts of the country. Consider Winnipeg, in which an estimated 70 per cent of trafficked women and girls are Indigenous. The estimated percentage in the downtown east side of Vancouver is even greater at approximately 80 per cent.

• (1420)

Honourable colleagues, we know all too well that Indigenous women often face circumstances of extreme poverty and homelessness and have suffered violence, all of which are high-risk causal factors associated with human trafficking.

In recognizing these tragic realities, I'm both sorrowful, yet thankful, for the recent release of the *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. I'm sorrowful that such misery seems to run rampant in our country, while I'm thankful that the report critically illuminates the failure of Canada to provide true justice for our Indigenous women and girls. We need such sombre findings to embolden us as a nation to act to end this ruthless scourge.

In particular, the Executive Summary of the report reminds us that:

> Canada also has the responsibility to take all possible measures to "prevent, investigate, punish and compensate" violence against women. . . .

In Chapter 8, "Confronting Oppression - Right to Justice," the report affirms, on page 623, that:

> . . . access to justice represents a basic principle of the rule of law. In international human rights law, and as protected by a variety of human rights instruments, people have the right to be protected from violent crime, as well as a right to justice when they are victims of these types of crimes.

There is a common thread throughout the final report revealing that many Indigenous women and girls who are victims of crime — especially violent crime — are failing to receive their right to justice.

In the section on sexual exploitation and human trafficking, the report shares the heartbreaking story of a family member and her experience with the systemic bias displayed by the justice system following the disappearance and murder of her sister-in-law:

> There was no justice for my sister-in-law. He [the perpetrator] . . . wasn't even charged. She was the fourth one to die in this man's company. And they were all First Nation women except one, and that's how he was charged was the last one wasn't from the street, she wasn't a streetwalker. . . .

I'm so grateful that the report points us toward steps we can take to end this inequality experienced by Indigenous women and girls.

Under "Calls for Justice for All Governments: Justice," the report makes specific calls, such as:

> 5.2 We call upon the federal government to review and amend the *Criminal Code* to eliminate definitions of offences that minimize the culpability of the offender.
>
> 5.18 We call upon the federal government to consider violence against Indigenous women, girls and 2SLGBTQQIA people as an aggravating factor at sentencing . . .

I would ask honourable senators to note the intentional language being used here in the report.

We must ensure that the Criminal Code guarantees the right to justice for Indigenous women and girls who are victims by not minimizing the culpability of the offenders of violence towards Indigenous women and girls, and by considering violence against Indigenous women and girls as an aggravating factor at sentencing.

Now to the provisions of the bill itself. Bill C-75 has many helpful amendments that seek to increase justice and fairness in our criminal justice system. However, honourable senators, I have concerns about the amendments around the bill's provisions for human trafficking offences.

Bill C-75 proposes to hybridize the indictable human trafficking offences in subsection 279.02(1) (material benefit - trafficking); subsection 279.03(1) (withholding or destroying documents - trafficking); and subsection 286.2(1) (material benefit from sexual services).

As well, Bill C-75 proposes to amend the human trafficking provision of Bill C-452, which received Royal Assent in 2015 but was not brought into force, and eliminate the consecutive human trafficking sentence provisions of Bill C-452.

If the amendments proposed by Bill C-75 are accepted, anyone found guilty of these offences could end up with a fine of $5,000 and face no jail time at all. The deterrence provided by a $5,000 fine is minimal compared to the $300,000 profit a trafficker makes for only one victim per year. In such instances, a fine of $5,000 would be only 1.6 per cent of the potential profit that a trafficker makes from trafficking of an individual victim. It's merely the cost of doing business.

In considering the extreme violence and human degradation that victims of human trafficking must often endure, the punishment proposed for the offence clearly and certainly does not correlate to the nature of the crime. This is even more concerning when considering the impact of hybridized offences on traffickers of Indigenous women and girls.

Research has also established that systemic discrimination exists within the policing and judicial system — supported by years of colonialism — which has resulted in Indigenous women victims of human trafficking and sexual and physical violence not reporting their crimes.

Policing services racially stereotype Indigenous women victims as individuals deserving of the abuse they have endured; and at times, instead of providing them with protection, they further subjugate them to sexual violence.

I'm particularly grateful for the work of our colleague Senator Lillian Dyck, who has been studying this matter. The evidence she has gathered shows that courts are more lenient to people who commit violence against Indigenous women and girls than to those whose victims are not Indigenous.

Such factors demonstrate that the proposed amendments providing discretionary prosecution of hybrid offences for human trafficking will significantly increase the likelihood that a human trafficking offence against an Indigenous woman or girl would proceed as a summary conviction offence.

I would ask my colleagues, with the myriad information we have available on human trafficking and the injustices faced by its victims, why would we seek to minimize the culpability of traffickers and further separate trafficked Indigenous women and girls from the justice they both deserve and, indeed, have a right to?

During testimony to the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-75, the Federal Ombudsman for Victims of Crime, Heidi Illingworth, highlighted this, stating:

> I am concerned with where the bill proposes to hybridize offences related to forced marriage, child abduction and some offences related to human trafficking. These offences, primarily committed against women and children, should not be of lesser concern. They constitute a grave violation of human rights, including the rights of women and children to live free from coercive control and violence. The serious nature and harm caused by these offences must be recognized in our laws and policies.

I note that the committee adopted amendments to Bill C-75 that would require judges to consider harsher sentences for domestic violence against Indigenous women. Allowing the hybridization of human trafficking offences seems to be counter to the goal of ensuring violence against Indigenous women and girls is treated as an aggravating factor in court.

Honourable senators, human trafficking in Canada is a criminal activity that is elusive, complex and under-reported by its victims, primarily due to fear that victims have of their traffickers. As well, it is a low-risk, high-profit crime that can provide traffickers with significant amounts of money, and with little chance of being apprehended.

As I have stated, we know that Indigenous women are overrepresented in the human trafficking industry. Couple this with systemic racism and judicial discretion, and it seems clear to me that these amendments will specifically contribute to the continued disadvantaged position of Indigenous women and girls in the criminal justice system.

Paradoxically, while Canadian social and criminal institutions have recently begun to focus their combined efforts on progressively decreasing human trafficking offences, justice will be increasingly denied for human trafficking victims through the proposed amendments, if adopted.

The Criminal Code offences of material benefit from human trafficking and sexual services, and withholding or destroying documents, listed in Bill C-75, are serious offences — sadly, committed by pimps and human traffickers every day in our country.

This is why today I am moving an amendment that will ensure that these human trafficking crimes remain indictable offences. The blunt truth is that Indigenous women and girls are not for sale. Those who traffic them should not be facing the possibility of a mere $5,000 fine as a hybrid offence. They deserve a penalty that reflects the gravity of their crime.

Colleagues, a few days ago, we senators received a communication on this proposed legislation from the Evangelical Fellowship of Canada, which endorsed the idea of this amendment.

• (1430)

In it I found the most eloquent explanation supporting that which I seek to achieve through the amendment I'll be moving. The EFC said:

> Criminal laws give expression to the norms that undergird a society. They both express and reinforce the basic commitments that bind a society together. It is often said that the law is a teacher . . . we must carefully consider the implications of any changes we make [to the Criminal Code].
>
> The categorization of a criminal offence tends to indicate the seriousness of the conduct it addresses. Hybridization suggests that an offence can now be considered less of a violation of human dignity, less of a threat to society or social cohesion, and less harmful to the vulnerable among us.

Honourable senators, if the law is indeed a teacher, then I intend on changing the textbook used in this application in our courts. Accordingly, I hereby request your support for my amendment to preserve sections 279.02(1), 279.03(1) and 286.21) of the Criminal Code as indictable offences.

MOTION IN AMENDMENT NEGATIVED

Hon. Dan Christmas: Therefore, honourable senators, in amendment, I move:

> That Bill C-75, as amended, be not now read a third time, but that it be further amended:
>
> (*a*) in clause 104, on page 35, by deleting lines 4 to 12;
>
> (*b*) in clause 105, on page 35, by deleting lines 13 to 25;
>
> (*c*) in clause 109, on page 36, by deleting lines 23 to 31; and
>
> (*d*) in clause 386, on page 182,
>
> (i) by replacing line 11 with the following:
>
> "**5 This Act comes into force on the**", and
>
> (ii) by deleting lines 18 and 19.

Wela'lioq. Thank you.

The Hon. the Speaker: In amendment, it is moved by Senator Christmas, seconded by honourable Griffin that Bill C-75 be not now read a third time, but that it be amended — may I dispense?

Hon. Senators: Dispense.

[*Translation*]

The Hon. the Speaker: Senator Boisvenu, do you wish to ask a question or take the floor?

Senator Boisvenu: I want to ask a question.

[*English*]

The Hon. the Speaker: Senator Christmas, a couple of senators have asked permission to ask questions but your time has expired. Are you asking for five minutes to answer questions?

Senator Christmas: Yes, Your Honour.

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

Hon. Senators: Agreed.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Senator Christmas, first let me congratulate you on your speech and your amendment. Human trafficking is indeed a major problem in Quebec and in Indigenous communities.

Here's my question. As you said, Bill C-75 calls for consecutive sentences. Consecutive sentencing is crucial to keeping under-age girls safe from the pimps who, in many cases, go back for them. Unfortunately, the government would have to issue an order to implement consecutive sentencing.

Bill C-452 was passed in 2015. Its terms were the same, including the coming-into-force order. That same order is part of Bill C-75. Do you agree that, if an order is required, this government will never bring consecutive sentencing into force?

[*English*]

Senator Christmas: Thank you, senator, for the question. I presented that particular argument that you had mentioned about Bill C-452 to our Standing Senate Committee on Legal and Constitutional Affairs along with the other three positions I brought forward on the Criminal Code offenses. It grieved me,

senator, as I thought about my presentation today, that I felt I had to make a choice. I didn't think the government would accept all of the amendments that we had proposed and so it grieved me to drop any reference or any amendment to C-452 on consecutive sentences for human traffickers. It doesn't mean that I don't think that's an important issue. I believe that if a human trafficker only receives one sentence after trafficking multiple victims, it's a serious injustice.

I fully support C-452. I wish it were brought into force but, given my dilemma today, I thought I would try to find the support of the Senate simply on the three Criminal Code amendments on which I spoke. Thank you, senator. I appreciate the question.

[*Translation*]

Hon. Jean-Guy Dagenais: Senator Christmas, I listened to your speech, and as a former police officer, there was one thing that struck me. You said the police officers who investigate in your communities often racially stereotype victims. Can you tell us what you mean by police officers' "racial stereotyping"?

[*English*]

Senator Christmas: Thank you, senator. I appreciate the question. I guess the one example that continues to haunt me is that of my fellow community member from the First Nation of Membertou, Donald Marshall, Jr. He was 16 at the time. He was at the site of a crime. When the investigating officers arrived at the crime, they immediately concluded that Donald Marshall, Jr. was the guilty party, even though there was no evidence to do so.

The inquiry that followed later determined that Junior — that's what we called him — that Junior's race, as a Mi'kmaq person, contributed to the investigating police officers thinking him guilty of murder which he did not commit.

Honourable senators, I know that's an extreme case. I have also seen many reports and investigations that have similarly used the factor of race in judging whether someone is guilty of a crime. Obviously, that should not be in our criminal justice system. Unfortunately, the reality of the world is that although human beings try not to allow their prejudices and biases to influence them, even those in the criminal justice system — judges, Crown prosecutors and police officers, that was all evident in Junior Marshall's case, it unfortunately happens. Unfortunately, it happens way too often.

The Hon. the Speaker: I'm sorry, but the honourable senator's time has expired. Is leave given for five more minutes for Senator Christmas to answer more questions?

Senator Plett: No.

The Hon. the Speaker: Approval is not given.

Hon. Murray Sinclair: I'm sure there were lots of people with lots of questions they wanted to ask. Thank you, Your Honour. I rise to speak against the amendment. I want to delineate why. I want to assure my brother. He and I have spoken about this. I totally understand the passion he feels and the concern he has about this.

The information that was provided to the committee has shown that none of the offences that are being hybridized are having any other maximum sentences reduced. The maximum sentence for all offenses, including the maximum offence available for human trafficking offences, remains unchanged when the offence is preceded with by way of indictment.

From time to time, Crown prosecutors have indicated — and this is as a result of discussions with the provinces — that they wish to have available to them the opportunity to proceed by way of summary conviction because statistics show that, even in cases of human trafficking and any of the other indictable offences which are being hybridized, some people are being sentenced to lesser periods of time than in provincial jail and less than the two years that is currently going to be provided by Bill C-75 in the amendments to the Criminal Code.

Often in those cases, the lesser players in a situation are being brought to justice because they are usually the first ones caught. In the case of human trafficking, we have experience in Winnipeg, Manitoba, for example — and in the Prairie provinces generally and probably on the West Coast. The data shows that when it comes to young Indigenous women being caught up in the human trafficking industry, young Indigenous men are often used as the first line of recruiting. The recruiters are the ones who bring the young women into the system and are sometimes young relatives, such as brothers or cousins, or young gang members. Their recruitment often consists of bringing them to parties where others — the bigger players in the system — then identify them to be dragged into a life of victimization.

• (1440)

Those young men who bring the girls to the parties or who drive them to their dates or who participate in a significantly lower way to this point in time are proceeded with by way of indictment because of their role in the proceeding. They can face not only a serious consequence, but they also face a more significant criminal record.

Crown prosecutors have often — and as a judge, I presided over proceedings in which Crown prosecutors have expressed regret that they had to proceed by way of indictment because they point out that the individual himself often — sometimes it's even a young woman who is used to recruit other young women into the system. This person clearly did commit a human trafficking offence, and they regret having to proceed as they did, by way of indictment. These individuals are thus burdened by a significant criminal record, but there is no choice because the provision is treated as a serious one.

Crown prosecutors will now be given an opportunity to treat those lesser players by way of summary conviction. Crown prosecutors know the difference between utilizing a summary conviction procedure and an indictable procedure because generally the rule that they follow is when they have thought and concluded in their mind they are going to seek a sentence over and above what a summary conviction matter would provide, then they will proceed by way of indictment. But if they think the circumstances of the offence or the circumstances of the offender would justify a lesser sentence, now they will have the option to

proceed by way of indictment with the amendments in Bill C-75, but they do not have that option at present in the way the current Criminal Code provides.

In addition to that, allow me to point out that the higher players are often members of gangs. Gangs are the exploiters. They are the ones who are running the human trafficking circles. The reality is, it's hard to get to the top players in those systems unless the lower players are prepared to testify against them and talk about what they are doing. Sometimes, in order to offer some encouragement to the lower players to testify against those in the higher echelons of the gang, the Crown prosecutors would like to be able to offer them an opportunity to face a lesser sentence in exchange for their testimony. That's a valid use of criminal procedure.

Right now, again, they have no choice other than to say, when you do plead guilty to this human trafficking offence, even though we're proceeding by way of indictment, we will not seek a sentence higher than this particular amount. Nonetheless, the individual is burdened by an indictable conviction on his record. Rather, now, with this particular amendment, they will be burdened with a summary conviction offence, which is not treated as seriously when it comes to expungement of records and the review of criminal convictions.

In addition to that, the statistics show that very few people who are involved in lesser roles with regard to this particular offence receive sentences over two years. So this provision, this amendment, as it is with all of the hybridized offences, is intended to recognize that those who are now getting two years or less of a sentence will continue to get two years or less of a sentence but in a way that allows the courts to clear those cases faster.

We must remember that Bill C-75 is about reducing court delay. Bill C-75 was always intended to allow the courts, in response to the Senate's report on court delays, to respond in a way that would allow cases to be cleared more quickly.

Right now, even the lesser players would be entitled to a preliminary hearing, with the exception of the amendment to Bill C-75. They would be entitled to a trial by jury, and that would mean that the system would be clogged up by those lesser cases. So these amendments are intended to allow the cases to clear more quickly, to be dealt with more quickly and for Crown prosecutors to be able to offer opportunities to those lower players.

I appreciate the messaging that has gone out there by those who are critical of the hybridization decision that the government has made has been to say that we are treating this like it's a less serious matter. The reality is, the maximum sentences remain in place. The indictable procedure remains in place. However, those who the Crown decides are not as seriously involved in the offence as others will now give the Crown an opportunity to be dealt with in a less serious way and to be dealt with in a way that will not clog up the courts.

We know, for example, that provincial courts are currently dealing with preliminary inquiries. There was a concern that moving them into summary conviction matters would clog up the provincial court system, but the reality now is that we're doing away with preliminary inquiries. Therefore, there will still be provincial court time available to deal with these cases.

I appreciate the concerns. I share them with you; I assure you of that. I am deeply concerned as well about the report from the Missing and Murdered Indigenous Women and Girls Inquiry, which points out that many of the victims are those who were caught up in the system. Those who are guilty and who are identified will continue to receive the maximum sentence available to the prosecutorial system. It's those who are the lesser players in that system, the Crown prosecutors will now be able to deal with more effectively in a way that reduces the demands upon court time and allows those individuals, who are lesser players, to be able to move on with their lives in a way that does not burden them with as difficult a criminal record as they would otherwise have received.

Honourable senators, I encourage you to consider that when it comes time to vote with respect to this amendment, I think the provision of hybridizing offences is generally a good provision. I think we should maintain it. I think we should allow prosecutors to have that discretion. I think we should trust our prosecutors.

By taking it away from prosecutors, we are saying to them that we don't trust them to make the decision so we will not allow them to make that decision, and that's not right. We, in fact, need to allow prosecutors to be part of the system that makes decisions that allow for courts to clear their cases in a more effective manner. By taking this out of the hybridization process, this particular offence will contribute to court delay. Thank you.

The Hon. the Speaker: Senator Boisvenu would like to ask a question. Senator Sinclair?

Senator Sinclair: Certainly.

[*Translation*]

Senator Boisvenu: Senator Sinclair, I listened to the amendment Senator Christmas proposed earlier indicating that the main problem with Bill C-75 is that it's based on a judicial perspective rather than the victim's point of view. That is the crux of the problem with this bill.

In the case of Bill C-452 on human trafficking, which affects many people in your community, the federal government had four years to bring this legislation into effect, but it never passed the order. Bill C-75 contains the same order with the same terms as four years ago. Can we trust this government to implement any measures to combat human trafficking any time soon?

[*English*]

Senator Sinclair: Thank you, senator, for the question. The reality is that this provision, I think, is going to be a greater benefit for victims than the previous provisions have been.

You yourself, senator, should be aware of the fact that one of the problems with the previous law is the fact that victims have had cases involving their particular perpetrator thrown out because of court delay. The purpose of the amendments contained in Bill C-75 is to reduce court delay. When victims are

having their perpetrators freed because the courts say that the amount of time it has taken to bring their accused to court is taking too long, then that's not fair to the victim either.

• (1450)

If you believe in victim rights, then you have to support these provisions because this is intended to address the issues raised by the Supreme Court of Canada's decision in *Jordan*, and in other cases as well, in which they have said that when you take too long to get to court, the accused is entitled to have the case dismissed. With these provisions, we're saying this is how we can get them to trial faster.

[*Translation*]

Senator Boisvenu: I do not have a problem believing in victims' rights, as I helped ensure the passage of the Victims Bill of Rights. What I do have a problem with is believing your government, which in 2015 had Bill C-452 before it. This bill would become An Act to amend the Criminal Code (exploitation and trafficking in persons), and was supported by Prime Minister Trudeau. It took the government four years to implement Bill C-452, which could have protected the young girls of your community, senator.

Today, you are asking us to believe a government that is introducing a bill similar to Bill C-452, namely Bill C-75. How can we trust a government that took four years to take action when young girls in your community were being exploited?

[*English*]

Senator Sinclair: Thank you for the question, senator. The reality is that the issue of court delay has been part of the court process and concern for well over 25 years. This is not a situation that suddenly arose in October of 2015.

For years now, and under previous governments as well, the courts have been expressing concern about the fact that courts are taking too long to clear cases. Years ago, in a case called *Askov*, and in subsequent decisions, the Supreme Court of Canada ruled that when a case takes too long to come to trial, the accused has the right to have the case dismissed.

Since then, despite what other governments have done, including the previous administration under Prime Minister Harper, those cases have not proceeded expeditiously. It was the Senate committee report that indicated ways for these particular provisions to be put into place that would allow for proceedings to be dealt with more expeditiously.

The government is merely responding to what this committee and what this Senate has called upon it to do. We should be proud of the fact that they are following our directions.

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

Hon. Senators: Question.

The Hon. the Speaker: Senator Anderson, do you have a question? I'm sorry, Senator Sinclair's time has expired.

Senator Sinclair, are you asking for more time to answer a question?

Senator Sinclair: I would ask for leave for more time, yes.

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

Hon. Senators: Agreed.

Hon. Margaret Dawn Anderson: I'm from the Northwest Territories and I have worked with the Department of Justice for 17 years. In the Northwest Territories, what happens with the court system is that the court parties fly from Yellowknife into all the communities. They are on schedule every six to eight weeks. My opinion, based on my experience working within the criminal justice system, is that some of the delays are not due to the type of offence. Rather, they are due to the scheduling of the courts that are travelling into our communities and are further hampered by weather, flight delays, plane cancellations and other matters that come up..

Are you familiar with some of the delays that come into play that are not as a result of the type of charge, whether it's hybrid, summary or indictable?

Senator Sinclair: Thank you, senator, for the question. I am quite familiar, in fact, with the issue of travelling court parties and the delays that result from circuit courts. I wrote a complete report on this in 1991 and talked about the need for changes to be done to the way that provincial and territorial governments, in the case of the Northwest Territories, need to look at changing the way that courts utilize their resources in communities.

One of the recommendations we made was that they should utilize more local people in order to deal with matters rather than waiting for outside judges and prosecutors to come into the community to deal with the court case.

In Manitoba, for example, as a result of our report, hearing officers were appointed in many northern communities, and they had the authority to deal with summary conviction matters in order to clear the cases so that when the court party came in, they only dealt with more serious cases. Those more serious cases often ended up going to trial in a more urban place, often miles away from the community.

The reality is that circuit courts do contribute to court delay — there is no question of that — and provincial and territorial governments who are responsible for organizing the circuit court systems have to find the means by which they can enhance and improve the way circuit courts deliver justice in Northern Canada.

Hon. Ratna Omidvar: Senator Sinclair, thank you for clarifying some of the context around this issue. I think you have described the food chain of human trafficking from introducer to customer. I believe the view is shared by all senators that all of these are criminals and should be appropriately punished.

You have argued that by providing lesser sentences to the lesser players — the lower-hanging fruit, so to speak — you can eventually cut off the tree. That's the hope.

I ask you whether the reverse would also not be true. If you pluck the low-hanging fruit and punish these people appropriately, then the industry may well die out.

Senator Sinclair: Thank you. That's a tempting conclusion to reach, but the reality is that doesn't prove to be true. I know, for example, that in Manitoba's Stony Mountain Institution, one of the serious problems that they have — as does any institution — is bringing drugs into the institution using mules, usually females. They carry the drugs into the institution, often in their body cavities. They get searched and are charged with trafficking as a result, even though they may be doing so under duress. They may be threatened, their children might be threatened and they, themselves, may be subject to abuse and direction from an outside source.

Judges decided early on in Manitoba that one way of stopping that from happening was to sentence those young women who were taking drugs into the institution to more serious sentences. By sending them to prison for a longer period of time than had been the case to that point, that would contribute to the stopping of the importation of drugs.

The reality is that didn't happen at all. Drug trafficking in the institution, in fact, became much more sophisticated. Those who were in charge of the institution found, for a period of time, that drugs continued to flow into the institution. They didn't know how it was happening, because now the women were not bringing them in, but some other means of importation was occurring.

Now, in fact, drugs are being imported into the institution using drones, these little flying objects that can drop small objects from the sky over the walls of an institution.

The reality is that the importation of drugs in that case was not reduced. The women who were being incarcerated for longer periods of time as a result of that approach were themselves being given sentences out of keeping with their role in the entire system, and their victimization was not factored into the court's decision.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by Senator Christmas, seconded by Honourable Senator Griffin, that Bill C-75 be not now read a third time but that it be amended — may I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: I see two senators rising.

Do we have agreement on the bell?

Senator Plett: One hour.

The Hon. the Speaker: The vote will take place at 4 p.m. Call in the senators.

• (1600)

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

YEAS
THE HONOURABLE SENATORS

Anderson	Mercer
Ataullahjan	Mockler
Batters	Ngo
Bernard	Oh
Boisvenu	Omidvar
Carignan	Patterson
Christmas	Plett
Doyle	Poirier
Eaton	Richards
Housakos	Seidman
MacDonald	Smith
Manning	Stewart Olsen
Marshall	Tannas
Martin	Tkachuk
McInnis	Wells
McIntyre	White—32

NAYS
THE HONOURABLE SENATORS

Bellemare	Klyne
Boehm	Kutcher
Boniface	LaBoucane-Benson
Bovey	Lankin
Boyer	Marwah
Busson	Massicotte
Campbell	McCallum
Coyle	McPhedran
Dalphond	Mitchell

Dawson	Moncion
Deacon (*Nova Scotia*)	Pate
Deacon (*Ontario*)	Petitclerc
Duncan	Pratte
Dupuis	Ravalia
Dyck	Ringuette
Francis	Saint-Germain
Gagné	Simons
Gold	Sinclair
Greene	Verner
Harder	Woo—40

ABSTENTIONS
THE HONOURABLE SENATORS

Cormier	Mégie
Forest	Miville-Dechêne—4

BILL TO AMEND—THIRD READING—
DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Campbell, for the third reading of Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, as amended.

Hon. Denise Batters: Honourable colleagues, I rise today to speak to Bill C-75 at third reading. This criminal justice reform bill is massive. I wish to limit my remarks to one small but significant portion of it the removal of peremptory challenges.

For those senators who are not aware, a peremptory challenge can be used by lawyers during the jury selection process for a criminal trial. By using a peremptory challenge, a lawyer can dismiss a potential juror from the jury selection pool without stating a specific reason. It's always important to remember when we are considering this issue that Canada's system of jury selection is considerably different from the U.S. I think many Canadians look at these types of issues and, influenced by television and movies from the U.S., think we have a lengthy and complex jury selection process in Canada. Generally, it is not. It is actually quite quick and efficient. That's how it's viewed by a number of the lawyers who use it. Eliminating peremptory jury challenges would take that part out and instead leave it to a complex, expensive delaying process of challenge for cause.

The Trudeau government argues that repealing peremptory challenges will create more diverse jury pools, but our Standing Senate Committee on Legal and Constitutional Affairs heard from lawyers who work in courtrooms every day and they presented substantial and compelling evidence that indicated exactly the opposite.

Peremptory challenges are, in fact, a tool that defence counsel use to increase diversity on juries and a quick and efficient method of rejecting potential jurors who may be prejudiced against an accused for any number of reasons, including racism. At times, this might even come down to a gut feeling or sense about a potential juror during the selection process if a possible juror scowls at an accused, for example, or refuses to make eye contact. The same clause of Bill C-75 that eliminates peremptory challenges also makes changes to the process of judges being allowed to stand aside jurors, adding the vague "maintaining public confidence in the administration of justice or any other reasonable cause" as a reason for doing so.

I have practiced law in Saskatchewan for 25 years. Saskatchewan has a high percentage of Indigenous people. It is in that context that I have heard significant concerns about this major change to the jury selection process contained in Bill C-75. I have heard these strong concerns from judges, defence counsel and Crown prosecutors. Those concerns were echoed vociferously by almost every single one of the witnesses we heard from on this issue in our study.

The Trudeau government's Justice Minister barely even mentioned this significant change of eliminating peremptory challenges in our criminal justice system when he addressed the Standing Senate Committee on Legal and Constitutional Affairs. When I questioned Minister Lametti on the concerns expressed about the potentially negative ramifications these jury selection changes might have on racialized accused, he stated simply:

> We have certainly heard those commentaries throughout. The preponderance of evidence in our view goes the other way.

Honourable senators, that is not at all what we heard during our committee study. The vast majority of the evidence in our meetings on Bill C-75 was that these jury selection changes on stand-asides and eliminating peremptory challenges should not be made. The Canadian Bar Association, which consists of thousands of lawyers across Canada, both defence lawyers and Crown counsel, opposes these jury selection changes in Bill C-75.

• (1610)

On the changes to the stand-aside provision, the Canadian Bar Association brief stated:

> This is a broad and vague power . . . . There is also no guidance on what specific process a trial judge should follow in making this determination. In essence, it appears that judges would be invited to engage in their own peremptory challenge processes.

Canadian Bar Association witness Tony Paisana explained further why the CBA opposes these jury selection changes.

> Our submissions come from the very first principled basis that you are entitled to a jury of your peers, and "your" means the accused's peers. As we have heard over and over again throughout these hearings, Indigenous people and other racialized communities are overrepresented in the criminal justice system. The idea that that individual, faced

> with a jury that does not look like a jury of their peers, could have no meaningful say in the composition of that jury is very problematic for us.
>
> . . . this peremptory challenge process gives such accused an opportunity to shape the jury so that it is more representative of their interests, of their community, of their cultural background and their experience, both in life and in the criminal justice system, to provide for a jury of their peers, not a jury of everyone's peers.

Mr. Paisana went on to describe the impact that eliminating peremptory challenges will have on court delays.

> You will see more challenges for cause. They are time consuming. They are very difficult to advance on behalf of the accused, so the results of those challenges will likely be fruitless in many cases.
>
> In addition, you will note from the bill that they have proposed that the judge actually have some form of peremptory challenge themselves in the name of the administration of justice. What we envision, unfortunately, is all sorts of applications by accused persons to force the hand of the judge to exercise that power, resulting in voir dires or appeals where the judge refuses to do so and more delay, more applications where we already have a system where this sort of thing unfolds quite quickly.

William Trudell of the Canadian Council of Criminal Defence Lawyers echoed the CBA's concerns about how the bill's jury selection changes will impact court delays. He said, about the effect of getting peremptory challenges, ". . . it's going to increase the time it takes to choose juries and invites this bill to give more power, if I might say, to the judge. The judge should not have more power in the selection of juries."

On May 2, Annamaria Enenajor of the Criminal Lawyers Association, testified before our Senate Legal Committee and explained her organization's objections to the jury changes in Bill C-75, saying:

> There is a very limited mechanism for criminal defence lawyers where their client is an Indigenous or a racialized person. There is really no mechanism by which we can ensure that there is representativeness from their community on the jury. The peremptory challenges have been the only tool available for us to do that, to get to the only one, two or three members of the jury pool who might be of Indigenous or racialized background such that our client has members from their community on the jury.

The Trudeau government has cited a 2013 report on peremptory challenges conducted by former Supreme Court Justice Frank Iacobucci as supportive of their changes to jury selection process. Lawyer Michael Johnston provided our legal committee with this important context about the 2013 Iacobucci report:

> You don't throw the baby out with the bathwater. Can't we find some way to preserve the benefits and mitigate the damages? That is exactly why I would respectfully submit that the Honourable Frank Iacobucci, when he studied this matter in 2013 of First Nations representations on Ontario juries, did not recommend their eradication with the greatest of respect.

In fact, Mr. Johnston pointed out that former Justice Iacobucci recommended ". . . to the Attorney General of Canada an amendment to the Criminal Code that would prevent the use of peremptory challenges to discriminate against First Nations people serving on juries." He then goes on to reference the U.S. practice which is what is called a *Batson* challenge.

This is not to suggest, honourable senators, of course, that the U.S. *Batson* challenge should be the replacement for the peremptory challenge in the Canadian justice system. Clearly, any alternatives to replacing peremptory challenges would require further study in a Canadian context.

The point is that the Honourable Mr. Justice Iacobucci did not recommend the elimination of peremptory challenges but, rather, replacing it with an alternative. Of course, the Trudeau government did not present such alternatives for jury selection in Bill C-75.

This same lawyer, Michael Johnston, also provides our committee with some key context about the 1991 Manitoba report written by now Senator Sinclair.

> . . . I want to draw to the Senate Committee's attention that the report has to be understood contextually. That was written in 1991 when the Crown still had the power to stand by jurors. The Crown had the power to stand by 48 jurors in 1991 and have four peremptory challenges.

Obviously, Senator Sinclair is well equipped to explain his conclusions from his 1991 report, but I think it is helpful to have this context about both the 1991 Sinclair report and the 2013 Iacobucci report.

Mr. Johnston also brought to our attention that Senator Sinclair had then recommended that a major overhaul of the challenge for cause procedure occur if peremptory challenges are eliminated. That also has not happened in Bill C-75.

One of last witnesses appearing before our Senate Legal Committee on the issue of peremptory challenges was defence lawyer Brian Pfefferle from Saskatchewan. Mr. Pfefferle has conducted many jury trials in Saskatchewan, including representing a significant number of Indigenous accused in jury trials. He has frequently seen how peremptory challenges work in actual practice when representing Indigenous accused. Here is what he told us:

> . . . it is extremely difficult to obtain Indigenous jurors on our juries because of a number of factors, but peremptory challenges are not a cause in my experience. In fact the opposite is true. I use peremptory challenges for the purposes of obtaining Indigenous jurors on my juries. . . .
>
> . . . there's the issue of when the clerk asks the juror to look at the accused and the accused to look at the juror. That experience is one that you cannot really describe. It's not an experience of racial profiling or anything the like in my experience. If the juror won't even look at my client, I don't

> want them on my jury. Can I prove bias? No, I can't. To an Indigenous person sitting on that jury and particularly standing in front of this grand crowd can be an intimidating experience.

Mr. Pfefferle went on to say:

> It's going to lead to significant, expensive delays in our jury trial process, again with Indigenous people being overrepresented in that process while underrepresented on juries. . . .
>
> Rarely are we challenging a juror simply because of the way they look, but on occasion we are challenging them when they glare at our clients or give a look. We're counsel, and human beings can identify those people who aren't going to be fair.

The Trudeau government is hoping that the making these changes to the jury selection process will increase diversity on juries and make justice more equitable for racialized communities, including Indigenous Canadians, but time and again, the lawyers actually representing racialized accused in Canada's courtrooms told us the changes would harm these communities.

Again, Saskatchewan defence counsel Brian Pfefferle, who represents many Indigenous accused on an ongoing basis in jury trials, said:

> My experience anecdotally is certainly that peremptory challenges are valuable in creating diversity. As an example, I ended up running the jury trial in The Battlefords following the Gerald Stanley trial. I represented an Indigenous male who resided 600 kilometres away from the community where he was being tried. We used three straight peremptory challenges so that we could obtain what we viewed as a visibly Indigenous person on our jury. The accused was ultimately acquitted of his homicide charges.

Certainly Mr. Pfefferle and other defence counsel who testified in support of peremptory challenges do not view them as discriminatory practices. I don't think that's even what the government would contend. Instead, these defence lawyers clearly stated their intent to help their accused clients actually get a jury of their peers.

Honourable senators, eliminating peremptory challenges runs the risk of harming the very individuals this legislation purports to be trying to help. At the very least, this issue requires more study.

The jury selection changes in Bill C-75 were introduced 48 days after a highly emotionally charged verdict, an acquittal in the Gerald Stanley trial in Saskatchewan. There was not sufficient time for proper consultation on the major impact the removal of peremptory challenges could have on our justice system.

If the jury selection process is to be changed, it should not be before the issue of peremptory challenges has been adequately studied and an alternative is in place to mitigate potential consequences.

The Canadian Bar Association agreed, in their brief, stating:

> Bill C-75 was introduced less than two months after the *Stanley* verdict. Some amendments to the jury process, including abolishing peremptory challenges, seem insufficiently considered. If legislative reform is required, it should be based on empirical data generated through a thorough examination of the jury system. The CBA Section recommends that the government undertake further study before making any major legislative amendments to the jury process.

• (1620)

Honourable senators, the counsel who represent Indigenous and other racialized accused on a frequent basis in jury trials in Canada view peremptory challenges as a useful tool to help their Indigenous and other racialized clients. Proceeding with removing peremptory challenges, as Bill C-75 asks us to do, could have unintended consequences to Canada's criminal justice system, and it could negatively impact the most vulnerable Canadians this bill aims to help.

For those substantial and compelling reasons, I ask you, my colleagues, to consider this matter carefully and join me in voting to delete clause 269 and clause 270 in Bill C-75. Voting in favour of my amendment would leave the system of peremptory challenges in place as it is now. If we wish to revisit this issue in the future, let us do it properly after careful, thoughtful study and consideration.

MOTION IN AMENDMENT NEGATIVED

Hon. Denise Batters: Therefore, honourable senators, in amendment, I move:

> That Bill C-75, as amended, be not now read a third time, but that it be further amended on pages 110 and 111 by deleting clauses 269 and 270.

Thank you.

The Hon. the Speaker pro tempore: On debate, Senator Sinclair.

Hon. Murray Sinclair: I have a few brief comments with respect to the comments that have just been made by Senator Batters and, specifically, will focus on the issue of peremptory challenges as they are addressed in Bill C-75. There are many other provisions in Bill C-75 that could have been addressed, but since she focused only on this one I will talk about only this issue.

I find it interesting that during the course of submissions made to the committee by the various presenters on Bill C-75's provisions dealing with peremptory challenges, the strongest argument that people marshalled in favour of utilizing and maintaining peremptory challenges was that they could be used to continue discrimination. What I mean by that is that the argument we have heard time and time again is that it's taking away from defence counsel who are representing Indigenous accused the right to remove White people from the jury so they can have more Indigenous people on the jury, an act of

discrimination in itself. Of course, it was in a case of the use of peremptory challenges to remove Indigenous members of the jury pool from sitting on a jury that the issue first came to light and has been the source of studies from the late 1980s and, in the case of non-Indigenous Black jurors, it has been in the course of case comment in the United States as well as other studies.

Peremptory challenges are not regulated at all by the Criminal Code. They allow defence counsel to essentially say, without saying it out loud: "I don't like this person. I don't like the way this person looks. Therefore, I don't want him or her on my pool." It was utilized against women, keeping women off juries, for example, when it involved rape or sexual assault cases, the argument being that the women will be sympathetic to the victim and therefore should not be allowed on. When studies showed, in fact, that women were harder on female victims of offences in some cases, then lawyers were convinced to stop approaching things in that way.

Peremptory challenges have been used historically to allow discrimination to occur, not exclusively to allow discrimination to occur, but have always been marred by the fact they have been used to discriminate against women, people of colour and, now apparently, people who are of White background.

The reality is that all of this has led to countries around the world taking a serious look at the use of peremptory challenges and removing it from their system. England removed the right to use peremptory challenges in 1988. New Zealand, Australia and other Commonwealth countries have removed from the criminal trial process the right to use peremptory challenges.

The basic reason is that because the intention of the jury system is that if the pool is properly created, if you draw properly from the community, you will get a fair cross-section of the community in the jury pool from which members of the jury can be selected. Therefore, the jury itself should be representative of the community that is sitting in judgment of the accused.

It has worked against the accused in a couple of ways in that regard. When we studied the issue of the use of juries in Indigenous communities and Indigenous people in the 1991 Aboriginal justice inquiry report, of which I was co-author, we pointed out was that the selection of people from the communities in the North to sit on the jury pool suffered because distances that people had to travel to get to where the jury trial was being held proved to be too difficult for many people. Language issues proved to be problematic. In addition, no financial assistance was provided to people being called from a community that was 100 miles north of an urban centre to allow them to stay in hotels or to have access to food while they were waiting to be selected on a jury or not. Sometimes people in the North who only had sporadic employment would lose an opportunity for employment because while they were sitting on a jury the only job they might have for that season was passing them by in the community, and they were not being compensated for being on a jury. It was the way the jury pool itself was being created.

Sitting in a jury pool, you were called by the random selection process to stand up in order for the lawyers to determine whether they wanted you to be on the jury. They then could discriminate against you because of your race, and that seemed even more eminently unfair. So our recommendation was to do away with peremptory challenges, as had been the case in England, Australia and New Zealand.

I'm proud to tell you the fact that in New Zealand, Australia and England, the criminal justice system has not gone to hell. It has not fallen apart. Everybody still gets a fair trial. People are still called to sit in jury pools and sit on juries, and they are able to do so in a fair way without peremptory challenges being used to discriminate against them. The reality is that the system has not been negatively impacted by the removal of peremptory challenges in those countries.

The reference to the *Batson* decision in the United States said that judges should supervise the use of peremptory challenges to ensure they are not discriminatorily utilized, but recent studies have shown that judges have been lax in their enforcement in the use of discriminatory techniques by lawyers who do not have to disclose why they set someone's name aside or say they don't want them on the jury.

So the reality is that peremptory challenges have been a source of injustice in many communities as well as the source of unfairness to people who get called to serve on juries who are then told to go home. "We don't want you because" — in the mind of a lawyer — "we don't like the race that you come from; we don't like your gender," or for whatever reason.

What we said in the AJI report and what this bill says is it's time to put a stop to that. The criminal justice system will not come grinding to a halt. People will still be able to get a fair trial and have a jury of their peers, people who are representative of the community where the offence has occurred and from which they come.

There is no reason for us to continue to allow this discriminatory practice to continue, and I would encourage all of us to vote against this proposed amendment.

Thank you.

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

Senator Sinclair: I certainly will.

Senator Batters: Senator Sinclair, you made a few remarks there that I want to ask you about.

When you spoke about sexual assault trials, you indicated how in the past this could be used to eliminate women from jury trials. I have actually personally witnessed the opposite. I have witnessed many sexual assault jury trials in recent years, and spoken to many lawyers and judges who have been practising in the criminal court more recently than I about this aspect of this issue.

• (1630)

What I have noticed in sexual assault trials, where perhaps you have a female victim in that case, I have witnessed that the lawyers on both sides — and certainly Crown prosecutors — using the pre-emptory challenges to ensure that they have some women on the jury. Sometimes they could end up, just through

the random process of how juries are selected in Canada, with a jury that has almost all men, say 10 out of 12 are men on a jury, where they are dealing with a sexual assault trial.

I have seen pre-emptory challenges used to ensure that, again, not only people of racialized background make a jury more diverse, but also, in this case, women.

Wouldn't you agree that as time goes by and society becomes more modernized, as we are always working on myths and stereotypes about people of racialized backgrounds, of women and other types of visible minorities, these types of changes are helpful? That now pre-emptory challenges are used on a frequent basis to make sure women are on juries?

Senator Sinclair: I thank you very much for the question, honourable senator. I think that's the point I made. I suspect maybe your practice in the courts probably post-dated the earlier practice, which I referenced, which was that male lawyers in the early part of the jury system in Canada — I'm talking about the 1950s and 1960s according to the studies we had looked at during the AJI, but also according to anecdotal evidence — often removed women from sitting on juries involving sexual assault cases because they believed that a female juror would be sympathetic to the female victim of a sexual assault trial.

Studies later showed that those who were removed were, in fact, less sympathetic towards a female victim than males. This suddenly increased the number of female members of a jury panel. I suspect that, in fact, is the aura of the practice of law at the time that you might be talking about.

More importantly, again, this is an example of where the justification used to encourage the maintenance of the pre-emptory challenges process is to say that we should allow lawyers to continue to discriminate against a particular group because we want another group to be represented on the jury. The use of discriminatory practices based upon myths and stereotypes should be disallowed in the jury selection process, not encouraged and not maintained.

I have presided over hundreds of jury trials as a judge. I want you to know that I believe fervently in the jury system. I believe in it so much that I have often felt that they came to a decision that I would not have come to as a trial judge, but that they were representative of the community and they are the ones that were charged with making that decision. I accepted that as their role.

Senator Batters: That is exactly what we're trying to do: To constitute a jury that is representative of the community. Now, thankfully, we don't have to worry as much about the issues that were prevalent in the 1950s and 1960s where male lawyers disregarded females. What we're trying to do is constitute a representative jury.

One of the things you mentioned about the jury pool in your comments, and I agree with you, there are big problems about the proper constitution of jury pools in Canada right now. Those, in large part, are due to different provincial guidelines and nothing that is really dealt with in Bill C-75.

Wouldn't you agree that, as a large part of this process, some of the fixes that need to be made are to the jurisdiction of the provincial governments and how they go out and try to find people from a particular community for a jury? There are many changes that need to be made in properly constituting a jury pool, and maybe that is the way we should be going about this issue rather than to change the selection process.

Senator Sinclair: Thank you again, honourable senator, for the question and for making the point.

The reality is that the best way to address the fairness of jury pools and panels — that is, those who are sitting on juries — is to ensure that the pool selection process is a better process than what we now have in place. That is clearly to address the issue as raised through the fact that the criminal procedure involving jury trials is a divided procedure. The provinces have jurisdiction over the way that jury pools are created, many provinces used to rely upon the use of municipal rolls or band membership lists. More and more provinces are now moving to utilizing the health rolls so that those who have a health number are called for jury trials and called to sit in the pool. The pool itself then becomes the community from which the members of the jury are selected.

If the pool is not properly representative of the jury, then the panel is not likely to be properly representative of the jury. That's what we need to ensure, not through the use of pre-emptory challenges, to create a proper pool. If the use of the jury selection process — which is a random-draw process, as you know, senator, whereby your name gets drawn literally out of a hat, they call your name and you are then placed on the jury, could result in 12 men or 12 women being on a jury panel. Those are the ways that our juries are now created. Until we come up with a better way, then that's what we have to —

The Hon. the Speaker pro tempore: The time is up, honourable colleagues. Do you request more time Senator Batters?

Senator Batters: I have one further question.

The Hon. the Speaker pro tempore: Senator Sinclair, will you accept more questions?

Senator Sinclair: I will accept the question. It's for the chamber to decide if I have more time.

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

Some Hon. Senators: Agreed.

Senator Plett: There is a "no," Your Honour.

The Hon. the Speaker pro tempore: I apologize, I did not hear the "no." No more time is allowed.

Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker pro tempore: In amendment it was moved by the Honourable Senator Batters, seconded by the Honourable Senator Mockler that Bill C-75 be not now read a third time, but that it be amended on pages —

Some Hon. Senators: Dispense.

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

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker pro tempore: I see two honourable senators rising. Do we have an agreement on the bell?

Senator Plett: 15 minutes.

Senator Mitchell: 15 minutes.

The Hon. the Speaker pro tempore: 15 minutes. The vote will take place at 4:53 p.m.

Call in the senators.

• (1650)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	McIntyre
Batters	Mockler
Boisvenu	Ngo
Carignan	Patterson
Dagenais	Plett
Doyle	Poirier
Eaton	Seidman
Housakos	Smith
MacDonald	Stewart Olsen
Manning	Tannas
Marshall	Tkachuk
Martin	Wells
McInnis	White—26

NAYS
THE HONOURABLE SENATORS

Anderson	Kutcher
Bellemare	LaBoucane-Benson
Bernard	Lankin
Black (*Ontario*)	Lovelace Nicholas
Boehm	Marwah
Boniface	Massicotte
Bovey	McCallum
Boyer	McPhedran
Busson	Mégie
Campbell	Mercer
Christmas	Mitchell
Cormier	Miville-Dechêne
Coyle	Moncion
Dalphond	Munson
Dawson	Omidvar
Deacon (*Nova Scotia*)	Pate
Deacon (*Ontario*)	Petitclerc
Dean	Pratte
Duncan	Ravalia
Dupuis	Ringuette
Dyck	Saint-Germain
Gagné	Simons
Gold	Sinclair
Greene	Verner
Harder	Woo—51
Klyne	

ABSTENTION
THE HONOURABLE SENATOR

Richards—1

• (1700)

[*Translation*]

BILL TO AMEND—THIRD READING—
DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Campbell, for the third reading of Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, as amended.

Hon. Pierre-Hugues Boisvenu: Honourable senators, I rise today, likely for naught, to stand up for women's safety. Every year in Canada, between 50 and 60 women are murdered by their partners or former partners.

I speak as a critic of Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts. This bill was sold to Canadians as a historic reform of the justice system, a reform meant to reduce delays in the justice system and better protect victims.

I have my doubts about that, now that I've watched this chamber reject Senator Christmas' amendment a few minutes ago.

First, the conversion of more than 100 offences into hybrid offences is meant to speed up criminal proceedings, since Crown counsel will have the benefit of opting for summary conviction in order to reduce the number of ongoing cases. None of the witnesses we heard from at the Standing Senate Committee on Legal and Constitutional Affairs were able to prove that.

I am sure that any efficiency gains resulting from these changes will come at the expense of victims of crime, who would rather see offenders be given tougher sentences. This improved efficiency will benefit the superior courts at the expense of the provinces, since the provincial courts will have to pick up the slack. Moreover, the addition of more than 100 hybrid offences will mean more sentences of two years or less.

This will divert some major cases to the provincial courts. Take, for example, people who have been convicted of fraud, interfering with a dead body, child abduction, forced marriage, human trafficking and so on.

What is more, Bill C-75 attempts to address the large and complex issue of domestic violence. According to Elizabeth Sheehy, a woman is killed by her current or former partner every six days in Canada. Indigenous women are killed by their intimate partners at a rate eight times higher. These family tragedies are destroying lives and undermining our communities. Domestic violence is the real national emergency, not the environment.

I spend a lot of time thinking about the hardship endured by victims of domestic violence. In one version of a private member's bill being drafted, I intended to propose amending section 267 of the Criminal Code to add a new paragraph that would include choking, suffocation and strangulation. We did not spend a lot of time discussing that issue when examining Bill C-75, but many women are strangled or suffocated by their partners. These crimes leave very little evidence and show how violence can escalate. With regard to domestic violence, I still get upset when I think about the Quebec boxer who was granted a conditional discharge after committing one or more acts of violence against his wife. That boxer hit his ex-wife in the nose during an argument in 2015. He broke her jaw and her nose. This case involved a boxer, but it could have just as easily been a lawyer, judge, businessman, doctor or blue-collar worker. Domestic violence knows no social boundaries.

That was just one of the hundreds of sad cases in which our justice system took no pity on the woman involved and showed her no consideration. The assailant got off with a conditional discharge. His actions did not result in a criminal record, which meant he could travel to the United States. His life went on as though nothing had happened. In contrast, that traumatic event continued to affect the woman, who, for years, was afraid that individual would abuse her again.

Honourable senators, if Bill C-75 had been in force before the tragic event I described, and if that individual had reoffended by hitting his partner again, would he be required to prove that he would not pose a threat if released while awaiting trial? The answer is no. Why not? Because, under this bill, the onus of proof in intimate partner violence cases would be reversed only for repeat offences, that is, only when an individual has already been convicted of intimate partner violence, which excludes this type of assailant.

This opinion was also shared in an open letter by Elizabeth Sheehy and Isabel Grant, law professors at the University of Ottawa's Faculty of Law and at the University of British Columbia, respectively. Their letter, published in the *Toronto Star*, was entitled "Bill C-75 reforms too little, too late to respond to domestic violence". The two experts were critical of the proposed changes to clause 225 in the bill, which amends section 515 of the Criminal Code.

Bill C-75 reverses the onus of proof, but it does not take into account the very nature of domestic violence and the likelihood of repeat offences. Under Bill C-75, a person accused of an offence involving violence against an intimate partner and who has a criminal record for such offences will have to prove why he or she should not be detained in custody pending trial.

However, as professors Sheehy and Grant pointed out, and I quote:

> This provision is justified by the fact that half of domestic violence offenders breach bail and half of these involve assault, criminal harassment, and sometimes even murder.

I repeat: half of domestic violence offenders breach their bail conditions. Therefore, if a woman reports her spouse and he is arrested and released pending his trial, half of the time those men will not respect their bail conditions, which could include, notably, not approaching the victim, not contacting her and not threatening her. We also know that those things happen frequently on social media.

Daisy Kler, a transition house worker at the Vancouver Rape Relief and Women's Shelter, appeared before the Standing Committee on Justice and Human Rights on September 24, 2018, and said the following:

> In a case in which I was working with a battered woman, her abuser was a lawyer. He argued to the judge that he needed to go to the States to visit family. Even though he admitted that he was guilty, she granted him a conditional discharge. If he batters again, which he likely will, he won't be held on this reverse onus.

Honourable senators, if you are a victim of domestic violence, you are less likely to report your spouse if you know he will be released that quickly after his trial.

If he lives under your roof and has the keys to the house, you will only report him if you believe that he will be detained for a certain amount of time.

The statistics are clear. According to 2014 Statistics Canada data from the Uniform Crime Reporting Survey, in the section entitled "Police-reported family violence," 70 per cent of incidents of spousal violence are not reported.

You can then understand that most women who appear before a judge after reporting their attacker have obviously experienced several incidents of spousal violence before getting to that point.

The proposed addition of paragraph 515(6)(b.1) to reverse the onus of proof for the person accused of an act of domestic violence who has been previously convicted of an act of domestic violence represents progress.

That is why this section 515 provision does not go far enough. We already know that police forces are sometimes outraged to see offenders who have been arrested return home without any qualms after having committed a serious crime. This bill will impact human lives. I am thinking of the family and friends of murdered, kidnapped and missing victims whom I have supported after the death of their mother, sister or daughter. We must ensure that repeat offences are properly dealt with in the bill and that this section has a much broader scope.

I understand the good intentions of the legislator when it comes to Bill C-75, but this bill does not go far enough. I do believe we have to do more and include those cases of perpetrators who have already received a conditional discharge. At the hearing before the justice of the peace, it will be up to the Crown prosecutor to prove that the individual has received an absolute discharge in a case of domestic violence.

• (1710)

I am not including cases of absolute discharge in my amendment because there is a shadow of doubt in terms of the accused's guilt. What I mean by that is that guilt is harder to prove in cases of absolute discharge. The amendment I am proposing pertains to cases of individuals who received a conditional discharge. Under the Criminal Records Act, this information can be quickly obtained. The law allows the prosecutor to communicate to the justice of the peace, who must decide on the release of the offender awaiting trial, any record or statement attesting to an conditional discharge without authorization.

Let's put ourselves in the victim's shoes for just a minute. Just the thought of the perpetrator possibly being released after his arrest will only discourage victims from coming forward. Honourable senators, Nancy Roy, President of the AFPAD, was with Bruno Serre, whose daughter Brigitte was murdered in 2016, when she said that "the victims of domestic violence do not get a second chance."

Reversing the onus of proof requires that there be a previous domestic violence offence. This means that a criminal must have beaten a woman, assaulted her or confined her if the onus of proof is to be reversed for a second offence. I think we have missed the mark here. Victims of domestic violence know that, because domestic violence can escalate, a second offence could well be fatal.

MOTION IN AMENDMENT NEGATIVED

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

> That Bill C-75, as amended, be not now read a third time, but that it be further amended in clause 225, on page 79, by replacing line 27 with the following:
>
> > "been previously convicted — or discharged on the conditions prescribed in a probation order under section 730 — of an offence in the com-".

In conclusion, senators must understand that when a perpetrator receives a conditional discharge, he or she is considered by the court to have never committed an act of domestic violence. In such cases, since the information exists, we must absolutely recognize that this individual is violent. Discharging this person a second time would mean putting the life of his or her spouse or former spouse in real danger.

Thank you.

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Boisvenu, seconded by the Honourable Senator Patterson, that bill C-75 be not now read —

Hon. Senators: Dispense.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

[*English*]

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

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

Senator Mitchell: Fifteen minutes.

The Hon. the Speaker: The vote will take place at 5:28 p.m.

Call in the senators.

• (1720)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Ngo
Batters	Oh
Boisvenu	Patterson
Carignan	Plett
Dagenais	Poirier
Doyle	Richards
Eaton	Seidman
Housakos	Smith
MacDonald	Stewart Olsen
Manning	Tannas
Martin	Tkachuk
McInnis	Verner
McIntyre	Wells
Mockler	White—28

NAYS
THE HONOURABLE SENATORS

Anderson	Kutcher
Bellemare	LaBoucane-Benson
Bernard	Lankin
Black (*Ontario*)	Lovelace Nicholas
Boehm	Marwah
Boniface	Massicotte
Bovey	McCallum
Boyer	McPhedran
Busson	Mégie
Campbell	Mercer
Christmas	Mitchell
Cormier	Miville-Dechêne
Coyle	Moncion
Dalphond	Munson
Dawson	Omidvar
Deacon (*Nova Scotia*)	Pate
Deacon (*Ontario*)	Petitclerc
Dean	Pratte
Duncan	Ravalia
Dupuis	Ringuette
Dyck	Saint-Germain
Gagné	Simons
Gold	Sinclair
Harder	Woo—49
Klyne	

ABSTENTIONS
THE HONOURABLE SENATORS

Black (*Alberta*) Greene—2

• (1730)

The Hon. the Speaker: Honourable senators, pursuant to rule 9-6, the bells will now ring for 15 minutes for the deferred vote on the motion in amendment of Senator Sinclair on Bill C-48. The vote will take place at 5:50.

Call in the senators.

• (1750)

OIL TANKER MORATORIUM BILL

THIRD READING—MOTION IN AMENDMENT ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Woo, seconded by the Honourable Senator Gold, for the third reading of Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast.

And on the motion in amendment of the Honourable Senator Sinclair, seconded by the Honourable Senator Campbell:

That Bill C-48 be not now read a third time, but that it be amended,

(*a*) on page 2, by adding the following after line 18:

"Rights of Indigenous Peoples of Canada

3.1 For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of the Indigenous peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

Duty of Minister

3.2 When making a decision under this Act, the Minister must consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*."; and

(*b*) on page 16, by adding the following after line 16:

"Review and Report

32 (1) At the start of the fifth year after the day on which this section comes into force, a comprehensive review of the provisions of this Act must be undertaken by the committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

(2) The review undertaken under this section must take into account any report of a regional assessment conducted under section 33.

(3) The committee referred to in subsection (1) must, within one year after the review is undertaken under that subsection, submit a report to the House or Houses of Parliament of which it is a committee.

Regional Assessment

33 (1) Subsections (2) to (7) apply if Bill C-69, introduced in the 1st session of the 42nd Parliament and entitled *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, receives royal assent.

(2) The Minister of the Environment must, no later than 180 days after the day on which both this section and section 93 of the *Impact Assessment Act* are in force, establish a committee to conduct a regional assessment in relation to activities to which this Act relates.

(3) Before establishing the committee, the Minister of the Environment must offer to the governments of British Columbia, Alberta and Saskatchewan and to any Indigenous governing body within the meaning of section 2 of the *Impact Assessment Act* that acts on behalf of an Indigenous group, community or people that owns or occupies lands that are located on the part of the coast of British Columbia that is referred to in subsection 4(1) of this Act to enter into an agreement or arrangement respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted.

(4) If an agreement or arrangement referred to in subsection (3) is entered into, the Minister of the Environment must establish — or approve — the committee's terms of reference and appoint as a member of the committee one or more persons, or approve their appointment.

(5) The committee must submit to the Minister of the Environment a report of the assessment no later than four years after the day on which this section comes into force.

(6) The Minister of the Environment must have the report referred to in subsection (5) laid before each House of Parliament on any of the first 30 days on which that House is sitting after the Minister of the Environment receives it.

(7) The *Impact Assessment Act* applies to the regional assessment conducted by the committee established under subsection (2) as if that committee were established under section 93 of that Act, with any modifications that may be necessary in the circumstances.".

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

That Bill C-48 be not now read a third time, but that it be amended,

(a)on page 2, by adding the following after line 18: —

Shall I dispense, honourable senators?

Hon. Senators: Agreed.

Motion in amendment of the Honourable Senator Sinclair agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Anderson	Klyne
Bellemare	Kutcher
Bernard	LaBoucane-Benson
Black (*Ontario*)	Lankin
Boehm	Lovelace Nicholas
Boniface	Marwah
Bovey	Massicotte
Boyer	McCallum
Busson	McPhedran
Campbell	Mégie
Christmas	Mercer
Cormier	Mitchell
Coyle	Miville-Dechêne
Dalphond	Moncion
Dawson	Munson
Deacon (*Nova Scotia*)	Omidvar
Deacon (*Ontario*)	Pate
Dean	Petitclerc
Duncan	Pratte
Dupuis	Ravalia

Dyck
Gagné
Galvez
Gold
Griffin
Harder
Ringuette
Saint-Germain
Simons
Sinclair
Woo—51

NAYS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Black (*Alberta*)
Boisvenu
Carignan
Dagenais
Doyle
Eaton
Greene
Housakos
MacDonald
Manning
Martin
McInnis
Mockler
Ngo
Oh
Patterson
Plett
Poirier
Richards
Seidman
Smith
Stewart Olsen
Tannas
Tkachuk
Verner
Wells
White—29

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of members of the National Youth in Care Network. 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!

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it is not yet 6 p.m., but before resuming debate on Bill C-48, pursuant to 3-3(1), I am required to ask if at 6:00 we are going to see the clock. With your permission, honourable senators, may I ask a couple of minutes in advance: Are we going to see the clock at six o'clock?

Some Hon. Senators: No.

The Hon. the Speaker: Honourable senators, I shall have to wait until 6:00, and I will call the question because I believe I heard a "yes."

OIL TANKER MORATORIUM BILL

THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Woo, seconded by the Honourable Senator Gold, for the third reading of Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast, as amended.

Hon. Dennis Glen Patterson: Honourable senators, I rise today to speak to Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast.

According to the bill's summary, Bill C-48 prohibits oil tankers that are carrying more than 12,500 metric tonnes of crude oil or persistent oil as cargo from mooring, anchoring or unloading that cargo at ports or marine installations located along British Columbia's north coast, from the northern tip of Vancouver Island to the Alaska border. It prohibits loading if it would result in the oil tanker carrying more than 12,500 metric tonnes of oil.

The bill has been characterized by proponents as one that merely formalizes an existing voluntary exclusion zone in northern B.C. Indeed, Minister Garneau explains that:

> . . . there is a long-standing policy legacy going back to 1985 at the federal level to safeguard against oil spills, notably through the voluntary Tanker Exclusion Zone with the U.S.

• (1800)

But, colleagues, it is important to note that this bill does not formalize what already exists. It creates a new measure, one that is aimed at keeping Canadian products in the ground and keeping Canadians from benefiting from our abundant natural resources.

The Hon. the Speaker: I'm sorry, Senator Patterson, I apologize, but it is now 6:00 p.m. Pursuant to rule 3-3(1), I am required to leave the chair unless it's agreed that we not see the clock. Is it agreed?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: I hear a "no." The sitting is suspended until 8 p.m.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (2000)

The Hon. the Speaker: Resuming debate on Bill C-48. On debate, Senator Patterson.

Senator Patterson: Thank you, Your Honour.

As I was saying, I was talking about the existing voluntary Tanker Exclusion Zone. This zone is specifically about vessels that are making a continuous journey from Alaska down into the continental U.S.

By contrast, the tanker moratorium is focused on vessels that will be transiting along the north coast of British Columbia and precludes them from stopping, loading or unloading beyond that certain threshold at Canadian ports or marine installations, that is, installations that are themselves attached to the land. They're certainly complementary to one another, but they are distinct in their structure and intention.

Minister Garneau reinforced this statement during his second appearance before the committee when he said:

> . . . the moratorium is consistent and complementary with these existing measures and, unlike other places in Canada, would not be disruptive to an already existing economy in the region.

What was of specific interest to me in that statement was the emphasis on not disrupting an "already existing economy" in the region. That worries me greatly because the North, where I am from, could potentially benefit in the future from oil and gas. Yet, were this bill to be passed, a dangerous precedent could be set. Record ice melt is opening up the Northwest Passage as never before. This government has already instituted a five-year oil and gas ban in the Arctic, without consultation. It is not outside the realm of the possible to think that a similar tanker ban in the Arctic could be next.

I've already lamented the questionable science that went into the drafting of this bill. I've railed against the government's unwillingness to explore other options for preservation, like the Particularly Sensitive Sea Areas established around the world to protect ecologically sensitive and diverse marine areas such as the Great Barrier Reef in Australia.

On February 26, 2019, Robert Lewis-Manning, President of the Chamber of Shipping of British Columbia, told committee members that:

> Interestingly, the Council of the Haida Nation, in its submission to the house standing committee the year before last, recognized the importance of opportunity of PSSAs to the overall marine spacial planning efforts of this region.

Despite that intervention by the Haida and subsequent interventions from witnesses such as the Chamber of Shipping of British Columbia, we face the possibility of an all-out ban on the loading and off-loading of Canadian products instead of a measured and scientific approach to environmental protection.

Bill C-48 would also not prevent similar catastrophes of tugs, ferries and smaller vessels carrying similar fuels, and that coast will not have the technology to help prevent spills from happening.

I also find it hypocritical for a government to laud their new approach to impact assessments, as proposed by Bill C-69, by making bold statements such as Minister McKenna's statement in the other place on June 12:

> . . . we are keeping our promise to put in place better rules to protect our environment and build a stronger economy. It reflects our view that the economy and the environment must go hand in hand and that Canada works best when Canadians work together.

If Bill C-69 were truly about balancing the economy and environment, why is this tanker ban even necessary? Does the government not have enough faith in its own systems and review process? Because if there is no moratorium, honourable senators, and a pipeline or a port project is proposed, the full rigorous review process established under Bill C-69 would allow a thorough socio-economic and environmental review.

If Canada truly "works best when Canadians work together," then why has this government refused to work together with Alberta, Saskatchewan and Indigenous communities in B.C. and Alberta to find solutions that work for everyone? At what cost is this government forging ahead with this bill?

We heard in our important debate last week about the concerns of Alberta and Saskatchewan. I would like to emphasize the concerns from First Nations in the region.

Earlier this week, senators would have received a letter from Eva Clayton, President of the Nisga'a Lisims Government.

Given the potential effect this bill would have on Ms. Clayton's territory, which has enjoyed the constitutionally protected rights and privileges of a modern treaty since May 11, 2000, I feel it is important to share the contents of the letter with those senators who may not yet have had the opportunity to read her powerful message:

> Senators:
>
> I write to you on behalf of the Nisga'a Nation with respect to Bill C-48, the Tanker Moratorium Act.
>
> The Nisga'a Nation is opposed to the imposition of a moratorium that would apply to areas under our Treaty. The Bill flies in the face of principles of reconciliation, self-determination and environmental management that lie at the heart of the Nisga'a Treaty.
>
> The Nisga'a Treaty was the first modern Treaty in British Columbia. It was also the first Treaty in Canada, and perhaps the world, to fully set out and constitutionally protect our right to self-government and our authority to make laws over our land and for our people. Under the Nisga'a Treaty, we have substantial rights over the Nass Area, which encompasses over 26,000 square kilometres in northwestern British Columbia. We also own and have

> legislative jurisdiction over approximately 2,000 square kilometres of land in the Nass River Valley, known as Nisga'a Lands. Since the year 2000, our nation has recognized legal and constitutional authority to conduct our own affairs.
>
> It is in the context of seeking respect for our modern Treaty that we are asking you to consider amendments to this legislation in order to exclude the Nass Area from the area subject to the moratorium.

• (2010)

> This legislation was introduced without any discussion or consultation about the significant implications it would have on the Nisga'a Nation and the Nisga'a Treaty. Moreover, as has been clearly demonstrated by considerable evidence tabled during the Senate Committee's study, Bill C-48 is not based on science. The government's own scientists and its own responses to British Columbia concerning tanker traffic contradict the assertion that this kind of legislation provides any additional protections to sensitive ecosystems along the coast. Further, it is an arbitrary choice of one area of the country for redundant and unnecessary sterilization.

These are the words of the president, honourable senators.

> For the Nisga'a Nation, this is entirely about our constitutionally protected right to have a meaningful say in what happens in our territories. This includes a process in the Treaty which ensures that decisions are based on robust environmental assessment processes where scientific evidence plays a central role and all important considerations can be appropriately identified and analyzed. This ensures that the necessary balance between a strong economy and protecting our environment is achieved.
>
> The Nisga'a Nation never has and never will support a project that could result in devastation to our land, our food and our way of life. At the same time, we cannot stand idly by as arbitrary and unsubstantiated restrictions are placed on our Treaty area and not others. We regret that on this issue, which has such immense implications to the Nisga'a Nation and to all Canadians, the government has proceeded without any meaningful accommodations for the differing views of Indigenous peoples who have the most to lose.
>
> It appears that keeping a poorly conceived election promise is more important to the government than the genuine reconciliation which requires respecting its Treaty promises.
>
> We urge you in the strongest possible way to consider amendments to this legislation in order to reflect Canada's commitment to the Nisga'a Treaty by removing the Nass Area from the moratorium.
>
> Yours truly,
>
> Nisga'a Lisims Government

I would similarly urge honourable senators in this chamber today to do the same thing and consider an amendment that actually protects the rights established by this modern treaty.

Minister Garneau, during his May 14, 2019, appearance before the committee, argued:

> I know that many senators were impressed by the testimony of those Indigenous witnesses who are opposed to Bill C-48, particularly the Nisga'a. I have always acknowledged that opinion is not monolithic among Indigenous people.

He went on to say:

> Nevertheless, the Government of Canada has a responsibility to weigh all of the views it hears and to make decisions that it views to be in the national interest.

I know from my political experience, of course, it's true. You can't please everyone. It's difficult, often, to balance the competing interests and priorities of different groups, but I think the last line of that testimony bears repeating:

> Nevertheless, the Government of Canada has a responsibility to weigh all of the views it hears and to make decisions that it views to be in the national interest.

Is it in the national interest to contravene a modern treaty that is, again, constitutionally protected? Does that not then undermine every modern treaty and comprehensive land claim that Canada has ever entered into?

Is it in the national interest to disregard the opposition from other Indigenous groups? Kenneth Brown, a spokesperson for Eagle Spirit Chiefs Council Group on April 10, 2019, stated to the committee:

> I don't think it comes as any surprise to anybody here that the chiefs coalition categorically and unequivocally rejects the merits of Bill C-48. There is a myriad of reasons why we reject the bill, both in substance and in its attempt at implementation. The crux of the matter for the communities is that it serves as a pretty significant impediment to the coalition bands being able to achieve self-sufficiency, self-reliance and economic independence through resource development.

The idea of the importance of economic sovereignty was also furthered by Stephen Buffalo of the Indian Resource Council of Canada on March 20, 2019, when he said:

> Our communities want a strong resource industry so we can continue to expand our investments in and benefits from development as employees, partners and owners. The prosperity of our nations is closely tied to the prosperity of the energy industry. But the industry is suffering greatly from the lack of pipeline access. It is creating a massive price differential, where Canadian oil is receiving less than world prices. We need access to new markets to obtain fair value for our oil resources.

Steward Bruce Dumont of the Aboriginal Equity Partners wrote in a letter dated June 9, 2019, that he has:

> . . . worked for the past seven years to help develop collaborative partnerships between Metis, First Nations and industry around the pipelines and ports in northwest B.C. with the goal of promoting economic development in the region. These efforts have been stymied by the government again and again. I am writing today to ask one last time, as this legislation nears a final vote, to please reject or amend Bill C-48. The future prosperity of the affected Indigenous communities is at stake. A ban on oil tankers would be devastating.

So we have coalitions of chiefs who are telling us that they represent hundreds of communities looking to become self-reliant, who want to no longer be dependent on Ottawa for funding. These are hundreds of communities looking for a hand up, not a handout. Is it in the national interest to refuse them that assistance by foreclosing potential economic opportunities?

Is it in the national interest to tell Canadians from Alberta, Saskatchewan, Manitoba and even other parts of B.C. that their concerns are not valid if their concerns don't align with the environmental agenda of this government? I don't believe so.

I believe that we need to listen to President Eva Clayton, Bruce Dumont and Kenneth Brown. I think we should heed the advice and testimony of Stephen Buffalo, and we should look for a way forward that protects the environment without sacrificing the economic opportunities.

I have, of course, studied Senator Sinclair's amendment, carefully listened to the debate on it, and consulted with Nisga'a leadership. I must respectfully suggest that the amendment does not do what Senator Sinclair may have hoped it would.

The non-derogation clause in the senator's clause 3.1 is one that has been used repeatedly over the years, but one that has drawn criticism from various quarters. There are those Indigenous leaders who believe that a better standard for a non-derogation clause would be one that clearly affirms the rights of Indigenous people as per section 35 of the Constitution.

However, and perhaps more importantly, the main concern I have with the amendment is clause 3.2, which states:

> When making a decision under this Act, the Minister must consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982.

This does not bring any guarantee or certainty to the Nisga'a. As I read it, it merely gives the Minister another box to tick prior to ultimately deciding to implement a ban.

The wording of this amendment could easily be interpreted as meaning that the minister must only show that he or she thought about the deleterious economic impact that a ban would have on the Nisga'a and other Indigenous groups opposed to the ban before ultimately deciding to proceed.

It could also mean that a minister could use the potential negative impacts on Indigenous nations that could come from allowing Canadian products to be exported in B.C.'s northern coast as justification for ultimately deciding to proceed with a ban.

Either way, this amendment does not address the specific concerns of a nation that worked for years to become B.C.'s first modern treaty holder. It does nothing to respond to the outcry that says this bill seeks to undo almost 20 years of hard work to make Nisga'a Nation a strong, stable and economically independent community.

• (2020)

Additionally, the amendment proposes to start a review process five years after the bill comes into force. If a joint review panel is such a great idea, why would it not begin for five years? This will certainly do nothing for the Nisga'a in the short term, but in the longer term, there is certainly no guarantee of a positive outcome for them either.

After my conversations with Nisga'a leadership since the amendment was introduced yesterday, I would question whether they were consulted prior to the introduction of this amendment. It was only introduced yesterday, but I was given the impression they are not happy with the amendment, as they don't feel it addresses their specific concerns. As they are uniquely affected as a rights holder with the only comprehensive land claim agreement in the region, I would think it would be only appropriate that they should have some input into how we seek to address their concerns.

I have developed my amendment, which I will introduce shortly, in consultation with Nisga'a leadership and with the input of other Indigenous stakeholders. I believe that my amendment creates a clear and definitive way forward that respects the Nisga'a agreement while also trying to balance the issue of environmental protection.

MOTION IN AMENDMENT NEGATIVED

Hon. Dennis Glen Patterson: Therefore, honourable senators, in amendment, I move:

> That Bill C-48, as amended, be not now read a third time, but that it be further amended in clause 4, on page 2, by adding the following after line 25:
>
> "**(1.1)** The Minister may make regulations to revise the northern limits of the area described in subsection (1) if it is necessary to do so in order to ensure that the Nisga'a Nation has control over maritime access to the lands referred to in section 8 of the *Nisga'a Final Agreement Act*.".

Thank you, honourable senators.

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Patterson that Bill C-48, as amended, be not now read the third time, but that it be further amended — may I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: Senator Patterson, will you take a question?

Senator Patterson: Yes.

Hon. André Pratte: Thank you. Are you aware, Senator Patterson, that in Senator Sinclair's amendment, which you just mentioned a few minutes ago, it is written at 33(2), concerning the joint panel, that the Minister of the Environment must, no later than 180 days after the day on which this section comes into force, establish a committee to conduct a regional assessment. So it's not five years for the joint panel; it is 180 days. Are you aware of this in the amendment?

Senator Patterson: Well, proposed subsection 32(1) says:

> At the start of the fifth year after the day on which this section comes into force, a comprehensive review of the provisions of this Act must be undertaken by a committee of the Senate, of the House of Commons or both Houses of Parliament that may be designated or established for that purpose.

Senator Pratte: Is the honourable senator aware that in the amendment there are two steps? There's the regional assessment, as per Bill C-69, which is the joint panel to conduct the regional assessment, and after that is completed, at year five there is the parliamentary review?

Senator Patterson: Yes, I'm aware of that, but we don't know how long that process is going to take. We don't know how easy it is going to be to obtain collaboration on a special committee with British Columbia, Alberta, Saskatchewan and any Indigenous governing body within the meaning of section 2 of the impact assessment act. This offers no comfort of an easy process forward for the Nisga'a, and worse, there's no guarantee that they will get any satisfaction out of this process.

The Hon. the Speaker: Do you have a question, Senator Griffin?

Hon. Diane F. Griffin: I have a question for Senator Patterson.

The Hon. the Speaker: Senator Patterson, will you take a question?

Senator Patterson: Yes.

Senator Griffin: Thank you.

Senator Patterson, would you comment on how this amendment provides more of a binding requirement on governments to consider the wishes of the Nisga'a Nation? I supported Senator Sinclair's amendment, but I am concerned about its non-enforceability. There's no legal commitment, only political. The parliamentary committee may not meet in five years, and the government isn't required to adhere to the recommendations from the committee if they advise modifying the moratorium.

For context, in my own experience when we were dealing with the Statistics Act, the government was required to do a review of the Statistics Act but seemed to forget to do so in spite of being legally required to.

Could you comment on how your amendment is complementary to the other amendment but provides more legal certainty for Indigenous communities respecting resource development?

Senator Patterson: I think my amendment is probably not in conflict with the amendment approved by this body today, but I welcome the opportunity to answer the question about how my amendment produces a binding requirement.

It does say the minister may establish regulations, and it may appear to be permissive in that regard, but the solemn honour of the Crown requires that Indigenous rights constitutionally protected under section 35 and expressed in the Nisga'a agreement must be respected by Canada. So if the Crown is to act honourably and respect the solemn rights constitutionally protected under section 35 for the Nisga'a in their modern agreement, then the minister will be required to respect their rights when they ask to assert those rights to lands they have settled in good faith with the Government of Canada.

That's what's powerful about this. If we vote in favour of my amendment, we're actually expressing our respect for the rights of Indigenous people, and we're serving notice on the Crown that if it is to act honourably, it must adjust its regime to respect the land rights of those rights holders. That's what makes it binding.

With respect, it's much more of a guarantee than is provided in Senator Sinclair's amendment. Thank you.

The Hon. the Speaker: On debate on the amendment.

Hon. Paula Simons: Honourable senators, I rise today to speak in support of this amendment by my colleague Senator Patterson. I had actually intended to offer a similar amendment of my own, but I am pleased instead to rise today to concur with my colleague across the floor.

When I first joined the Standing Senate Committee on Transport and Communications some seven months ago, I'm not going to lie, I volunteered for the committee primarily because of my long career in journalism and my interest in communications policy in the digital age. I had no idea that I would, along the way, be put in the unenviable position of holding the deciding vote in committee on Bill C-48.

My decision to vote against the bill in committee was an extremely difficult one. In April, I had the remarkable privilege of travelling to Prince Rupert and Terrace, British Columbia, for public hearings on the tanker ban. It was an extraordinary opportunity.

We heard from passionate witnesses, from First Nations leaders, from environmental scientists, from fisheries workers, from local mayors, from grassroots community activists, both Indigenous and non-Indigenous, who spoke powerfully in support of the bill and who spoke with moving, poetic eloquence

about the need to protect not just the waters of the northern B.C. coast but the vital salmon spawning areas of the stunning Skeena River.

I heard the emotion, the fear and the frustration in their voices, and I was deeply moved by their love for their lands and their waters. I saw first-hand just how beautiful and unique those landscapes and seascapes are.

So make no mistake, I do not stand here tonight as an industry shill or as someone who is cowering in fear of Twitter trolls. I haven't been harassed and I haven't been bullied into taking this position. I heard the voices of those passionate British Columbians who have fought long and hard for this tanker ban, and I understood their reasons. Indeed, I don't just honour their words; I share their concerns. This is an area that does indeed cry out for strict environmental safeguards and for a far better regional response system to deal with any possible pollution that exists now.

I also stand here today as a proud Albertan —

[*Translation*]

I am very proud to be an Albertan.

[*English*]

I stand here as a worried Canadian. I say to you that Bill C-48, as written, isn't just bad for Alberta and its oil industry, it is bad for our confederation.

• (2030)

Alberta is a landlocked province. The only way we can get our goods to Asian or European markets — our canola, wheat, lentils, beef and, yes, our oil — is by cooperating with our partner provinces in Confederation and with our federal government.

We entered Confederation in 1905 on that promise of being part of a larger united nation, a country where provinces help and support one another. Please, just as I tried to understand in British Columbia, try to understand the emotion, the fear and the frustration of Albertans who feel as though they are being told at every turn that they are not allowed to transport their most important export to new overseas markets and who feel that they are being told that they are not equal partners in our federal system.

It is absolutely right and appropriate that we take active measures to protect Canada's northwest coast from environmental degradation, but slamming the door in Alberta's face, imposing a permanent ban on allowing tankers to pick up oil from northern ports, especially while TMX is under review, that is a violation of the fundamental contract of Confederation itself. I fear it is giving aid and comfort to Alberta's long-dormant separatist movement, a once fringe element which has risen from the ashes in a particularly troubling and virulent form, a movement borne out of frustration and rage which is being stoked, exploited and manipulated by others for political ends.

As an Albertan and a passionately proud Canadian, I am deeply worried about legislation that plays into that separatist narrative.

Ever since we first started hearing witnesses on Bill C-48, I have been striving to find a practical, sensible Canadian compromise, a way forward that does not cut off all hope for Albertans but which, at the same time, protects the integrity of the Pacific Northwest ecosystem and respects the rights and wishes of the Coastal First Nations.

The most obvious path forward at first seemed to be a designated shipping lane, an ocean corridor that would allow tankers a straight shot from a specific port out to open sea so that oil could move safely to market without having tankers transit down the treacherous Queen Charlotte Sound or the Hecate Strait. We are not maritime cartographers, my friend. It doesn't seem logical for us as senators to take on the task of designating a specific marine corridor. We simply don't have the expertise or the authority.

That's when I realized it's not our job to be shipping lane surveyors. It's our job as senators to fight to uphold the Constitution, to fight, not just for my region, but for the good of the nation.

I return to the first-hand evidence we were privileged to hear when we were in Prince Rupert and Terrace. I return to the powerful words of the Nisga'a First Nation.

The Nisga'a territory lies north of Prince Rupert and north of Haida Gwaii. Indeed, it borders right up against the archipelago of southern Alaska. That's important to the argument made by Senator Patterson earlier because it means that if oil ever were to be exported at a future new port on Nisga'a land and then out through international waters straight through the Portland Canal, it would minimize the risk of contamination to the coastline further south.

When Bill C-48 was conceived and presented as a symbol of reconciliation, it did not, I suggest, respect the treaty rights of the Nisga'a Nation, which is a signatory to a modern treaty with Canada — as Senator Patterson said, the first of its kind in Canada. The Nisga'a, as he eloquently argued, believe they were not properly consulted as per section 35 of the Constitution. They insist that Bill C-48 abrogates their rights to economic self-determination and their rights to assess and develop infrastructure projects on their own treaty territory.

While we were in B.C., we heard from other First Nations who were divided on the bill, such as the Lax Kw'alaams, and the tribes who were ambivalent, such as the Metlakatla, who favour a short-term moratorium but not a permanent ban.

In contrast, the Nisga'a have consistently presented a united argument in opposition to the bill. Both Senators LaBoucane-Benson and Patterson have quoted from President Eva Clayton's letter, but I also to cite her testimony before our committee at the Terrace Best Western in April.

Now, I should be clear. President Clayton did not tell us that her nation wanted to see a pipeline run rough its territory. She did not say that the Nisga'a welcome oil supertankers in their

coastal waters. Instead, she made a simple, compelling argument — that the Nisga'a want a say in what happens on their territory, just as they want the right to engage in their own environmental evaluation of any specific future proposal.

I quote from President Clayton's testimony:

> Allowing the provisions of our treaty to assess any potential project on its merits would ensure that scientific evidence plays an essential role in assessing impacts and informing decision making, instead of the current approach which unilaterally and arbitrarily enacts a blanket tanker ban over a particular region of Canada.

If we grant to treaty nations some rights to self-government, we can't ignore those rights simply when it's no longer convenient or doesn't suit our political narrative du jour.

Is it in keeping with the spirit of reconciliation for the Government of Canada to say, in a somewhat patronizing and paternalist way, that's it's imposing a ban on this particular form of economic development on all First Nations along the coast, and it's imposing that ban whether the nations want it or not, for their own good?

The Nisga'a treaty may not be convenient to the government in this instance. It is a treaty written in black and white. I ask you: Is there a way to honour the spirit and the letter of the Nisga'a treaty while still protecting the coast and, at the same time, to send a clear message back home to Albertans that they are respected members of the Canadian family?

Certainly, the amendment made by Senator Sinclair last night, and spoken to so eloquently by Senators Pratte, McCallum, LaBoucane-Benson and Woo, gets us part of the way there. I was proud to stand tonight and vote for their amendment, but I don't believe it goes quite far enough. I believe Senator Patterson's elegant amendment helps us to get the rest of the way there.

Right now, the Nisga'a Nation does not have a working deepwater port on its lands, but it has the potential to develop one in the watershed of the Nass River, in the treaty territory known as the Nass Area.

If you'll allow me to cite from the Nisga'a Final Agreement:

> **"Nass Area"** means:
>
> a. the entire Nass watershed.
>
> b. all Canadian watersheds and water bodies that drain into portions of Portland Inlet, Observatory Inlet, or Portland Canal, as defined in subparagraph (c), and
>
> c. all marine waters in Pearse Canal, Portland Inlet, Observatory Inlet, and Portland Canal northeast of a line commencing at the Canadian border, midway between Pearse Island and Wales Island, and proceeding along Wales Passage southeasterly to Portland Inlet, then northeasterly to the midpoint between Start Point and Trefusis Point, then south to Gadu Point

The Nisga'a Nation owns and has control over development on Nisga'a lands. The nation also has comprehensive rights relating to consultation and environmental assessment over proposed developments in the rest of the Nass Area.

Those treaty rights are set out in chapter 10 of the Nisga'a Final Agreement, the Environmental Protection and Assessment chapter. Those rights are triggered anytime a potential project may reasonably be expected to have adverse environmental effects on residents of Nisga'a Lands or Nisga'a Treaty interests.

Therefore, be clear, Senator Patterson's amendment in no way means that environmental considerations will be ignored or overlooked, especially not when Bill C-69, as amended, comes into force. Rather, it would give this nation a chance to manage its own lands, waterways and economic future. We would be respecting the legal and moral rights of treaty title holders, while at the same time leaving open the possibility of future development and extending hope to the people of my province. We could honour the constitutional rights of the Nisga'a while simultaneously defending the fabric of Confederation.

If we stand together in this chamber tonight, we could send the House of Commons a strong message that we are looking at this bill in a thoughtful, nonpartisan way — not as Liberals, Conservatives or independents, but as Canadian senators dedicated to serving the best interests of all Canadians. Thank you.

An Hon. Senator: Bravo.

[*Translation*]

Hon. Lucie Moncion: Will the senator take a question?

Senator Simons: Of course.

Senator Moncion: My question has to do with the role of the federal government. I would like to draw your attention to the 1988 Supreme Court of Canada decision in *R. v. Crown Zellerbach Canada Ltd.*. In that case, the court ruled on a constitutional issue and found that ocean pollution is a matter of national concern and falls within Parliament's power to legislate in respect of the peace, order and good government of Canada.

According to the court, marine pollution, because of its extra-provincial and international character and implications, is clearly a matter of concern to Canada as a whole. Accordingly, in 2019, it is reasonable for the government to seek to reduce, as much as possible, the risk of a catastrophic spill in a pristine and rich ecosystem and for Fisheries and Oceans Canada to classify that ecosystem as an ecologically or biologically significant area, under the criteria set out in the Convention on Biological Diversity.

It also seems completely logical to me that, in 2019, the federal government would be looking to protect the ancestral rights of First Nations and the economic well-being of residents of British Columbia's north shore.

• (2040)

The rhetoric we've been hearing since the beginning has focused on the divide between Alberta and the western provinces and the rest of Canada. I don't think that was the goal with this bill. Here's my question. Knowing that Bill C-48 was an election promise, how —

[*English*]

Some Hon. Senators: Oh, oh.

Senator Moncion: I am asking the question. That's what I was doing.

[*Translation*]

How can the economic interests of the oil industry —

[*English*]

Some Hon. Senators: Oh, oh.

Senator Moncion: I am very polite and always let you speak. I'm asking that the courtesy be provided to me also tonight. Someone from your group just did and interrupted me.

The Hon. the Speaker: Order, please.

[*Translation*]

Your question please, Senator Moncion.

Senator Moncion: Right, here we go.

How can the economic interests of the oil industry and certain provinces take precedence over the environmental concerns Canadians have expressed?

[*English*]

The Hon. the Speaker: I'm sorry, Senator Simons, but your time has expired. Are you asking for more time?

Senator Simons: I'm very much asking for more time.

Senator Plett: Five minutes, could be more.

The Hon. the Speaker: Order. Is leave granted?

Hon. Senators: Agreed.

Senator Simons: Thank you. I feel there's a second question embedded in there, which deals with the issue of the Supreme Court decision. That speaks to precisely why Senator Patterson's amendment is needed. I think it's absolutely true that jurisprudence suggests that First Nations don't have the right to regulate the waters off their shores. Senator Patterson's amendment wouldn't give them that right. It would simply exempt, if you like, that particular area from the full force and effect of Bill C-48. That is one of the weaknesses that might be in the amendment we passed earlier today. The non-derogation clause, as you correctly point out, may not do the job because of precisely the reasons that you cited in that judgment.

That, I would suggest, is all the more reason to support Senator Patterson's amendment. It is the complementary part that goes with the amendment spoken to so eloquently by Senators Sinclair, Pratte, McCallum, LaBoucane-Benson and Woo last night. I think if we put these two pieces together, we would have the answer.

As to your other question, I don't think the oil industry has any right to dictate to the government the nature of its maritime pollution policy. What I'm asking is a subtler question: What is the price of Confederation that we are willing to pay by refusing to compromise? I come back to the most eloquent words of Senator Woo last night. He said we shouldn't be asked to choose between one extreme and the other. He was absolutely correct when he said that the rhetoric on both sides imagines consequences that are far exaggerated from what they are.

I'm going to come back to what Senator Woo said last night. We need to find a compromise. As much as I supported full-throatedly the amendment we voted on earlier today, I ask that the rest of you, whatever your party affiliation, seriously consider Senator Patterson's amendment, which I believe honours both the spirit of the treaty of the Nisga'a and also speaks to a swell of very disturbing alienation in Alberta. Having lived through the National Energy Program, I thought I'd seen this before, but in the last 24 hours there is a rough beast shuffling towards Bethlehem and I don't want to see it born.

Hon. Sandra M. Lovelace Nicholas: Would the honourable senator answer another question?

Senator Simons: Yes.

Senator Lovelace Nicholas: Thank you very much. Do you know who owns most of the oil industries and refineries on Nisga'a land?

Senator Simons: I'm afraid I don't. I didn't realize there were oil industries or refineries on Nisga'a land.

Hon. Murray Sinclair: Honourable senators, I rise to address the issue as to the compatibility of this particular amendment with the amendment that was passed last night by members of this chamber, because it has arisen in my mind that there are some issues of compatibility that should be brought to senators' attention.

One of the issues that clearly arises is that this process, which is identified in the amendment provided for in this amendment by Senator Patterson, clearly circumvents the consultation process that was contained in our amendment last night. We think, in a united way — on this side at least — as this being the advantage of the amendment. It is the requirement that there be scientific studies that were done on the impact of the legislation, as well as the impact of any project that might be utilizing the waters in the area.

In addition, we pointed out there were benefits associated to the current economies of the First Nations in the area that also needed to be taken into account.

My concern with regard to this particular amendment is the use of the word "may" in the first line, which allows the minister to make regulations if he so wishes. In doing so, the minister could act unilaterally. The unilateral behaviour of ministers in the past have not always been in the best interests of First Nations. I point that out. I'm concerned that this one appears to be an authority that the minister is being granted without there being any limitations placed upon the exercise of that authority. No requirement to consult, no requirement to engage with other communities, perhaps a suggestion that it might be done with the cooperation of the Nisga'a Nation, but no obligation on the part of the minister to consult with other First Nations that are going to be affected.

This particular amendment also creates a marine corridor. There's no question of that. The evidence that we have before us in this chamber is that the government has already gone on record. The minister has clearly said that they're not prepared to accept a marine corridor because, as the minister so perhaps inelegantly put it, it's like allowing a smoking table in the middle of a non-smoking restaurant.

If there were a spill in this particular area as a result of this permission granted to allow the corridor to be created, it would affect the fishing rights, the resource rights and tourism for the other communities that are directly interested in those elements of the industry and not necessarily the petroleum industry.

There is no requirement to appoint a process pursuant to the review process that we have created in the other amendment. It would appear that this particular amendment would allow more a stand-alone process with regard to the Nisga'a Nation.

As Senator Simons has acknowledged, there is no right of access in the Nisga'a Final Agreement Act that they have to the ocean waters. They have the right, of course, to control what goes on their lands, they have the right to construct on their lands, but they do not have the right to an access corridor, as might be suggested by this particular amendment.

I see there being some potential problems — and quite significant problems at that — if this particular amendment were to be adopted because it would be creating a conflict right in the legislation. I, for one, am going to be voting against it and I would encourage other senators to consider doing so as well.

Senator Patterson: Honourable senators, I will try and get two questions in here quickly. The first one is about what the senator has said is concern about the use of the word "may."

You're the jurist, but my understanding is that the use of the word "may" in connection with constitutional requirements, like the duty to consult and accommodate, is actually interpreted as a must. This amendment, would you not agree, in light of that jurisprudence, would bind the minister to develop regulations in full cooperation and consultation with the Nisga'a, whose comprehensive land claim is protected by the Constitution? Would you not agree with that?

• (2050)

Senator Sinclair: Thank you, senator, for the question.

The question of when "may" means "must" and "must" means "may" is a conversation on the head of a pin that has been going on for generations in the legal community, going back to when we used to use the word "shall" and not the word "must."

In order for the word "may" to actually mean "must," there has to be a prior, existing obligation in the particular legislation in question which requires the minister to do something. In the course of doing that, he may make regulations so that he can do that. There is no existing obligation in this particular bill that creates that necessary interpretation. So I don't necessarily agree with your interpretation in that regard.

The obligation to consult, of course, is becoming clearer and clearer with decisions of the Supreme Court of Canada. I think the obligation to implement the provisions of the Nisga'a Final Agreement Act might give an obligation to the minister to consult with regard to those areas affected by the final agreement, but the waterways outside of the territory are not one of them.

Senator Patterson: Does the fact that the minister has apparently ruled out an amendment — although there is some lack of clarity on that. Apparently he also said in another statement that he would be open to some amendments. Even if that's true, that the minister has apparently ruled out an amendment, are you saying we should listen to the minister and ignore the concerns of the Nisga'a? We should have obeisance to the minister?

Would it not be preferable to do the right thing for the Nisga'a and their constitutionally protected rights and not be governed by a minister who has made prejudgments about whatever amendments might emerge in this house?

Who do we owe our loyalty to, the Nisga'a or Minister Garneau?

An Hon. Senator: It's not either-or.

Senator Sinclair: Thank you, senator, for that question. I interpret it as a question even though it was really a point you were trying to make.

I want to point out that there are inconsistencies between your version of what the Nisga'a are saying and what we heard the Nisga'a say when we consulted with them. We actually spoke to them about the particular provisions in our amendment, and they expressed a willingness to accept the amendment that we had drafted because they know that they have to get along with their neighbours. They know that they have neighbours to the south of them who are going to be affected by the tanker ban. They know that they're going to be affected if there is any spillage from a tanker. They know that the tourism industry, the fishing industry from those communities and from their community as well are going to be affected by a tanker spill. Therefore, they were interested in the process that we identified needed to take place before there was any change in the tanker ban itself so that they would be able to cooperate with other communities to make sure it was done properly.

I understand you say that you spoke to the Nisga'a people, but that tells me you did not speak to the other nations, the coastal First Nations as well, and that concerns me.

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

Some Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Patterson, seconded by the Honourable Senator Stewart Olsen, that Bill C-48 be not read a third time, but that it be amended in clause 4 — may I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed, "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Having seen two senators rising, do we have an agreement on a bell?

One hour. The vote will take place at 9:54 p.m.

Call in the senators.

• (2150)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	McInnis
Batters	McIntyre
Black (*Ontario*)	Mockler
Boisvenu	Ngo
Busson	Oh
Carignan	Patterson
Dagenais	Plett
Deacon (*Nova Scotia*)	Poirier
Doyle	Seidman
Eaton	Simons
Griffin	Smith
Housakos	Stewart Olsen
Klyne	Tannas
LaBoucane-Benson	Tkachuk
MacDonald	Wells
Manning	White—33
Martin	

NAYS
THE HONOURABLE SENATORS

Anderson	Kutcher
Bellemare	Lankin
Boehm	Lovelace Nicholas
Boniface	Marwah
Bovey	McCallum
Campbell	McPhedran
Cordy	Mégie
Cormier	Mercer
Coyle	Mitchell
Dalphond	Moncion
Dawson	Munson
Deacon (*Ontario*)	Omidvar
Dean	Pate
Duncan	Petitclerc
Dupuis	Pratte
Dyck	Ringuette
Gagné	Saint-Germain
Galvez	Sinclair
Gold	Woo—39
Harder	

ABSTENTIONS
THE HONOURABLE SENATORS

Miville-Dechêne	Verner—2

• (2200)

THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Woo, seconded by the Honourable Senator Gold, for the third reading of Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast, as amended.

Hon. David Tkachuk: Honourable senators, before I get into my comments on the bill directly, I would like to say a few words that took place during the report stage debate. If I were to let them slip by without comment, I feel it would do actual harm to our future proceedings on this bill.

I did not solely write the report, honourable senators, nor did Conservatives, as many in here said and as Joan Bryden suggested in her article in the *National Post*. There were many people who contributed to the report, including Senator Simons, whose language Bryden cited as partisan. Anyone could have contributed to the report, and all the members on the committee had the opportunity to do so when the draft was presented to them in debate, to make changes if they wished. We did not allocate time.

They also had the opportunity to write a minority report. They chose not to. Here is what Senator Julie Miville-Dechêne wrote in an email to me on Friday, May 17.

> After talking to Senator Dawson this morning, we are in favour of submitting to the Senate only one committee report on the defeat of Bill C-48, as a report, I understand from our discussion yesterday you wish to write. Senator Dawson and I would like a chance to look at the draft and if possible meet with you on Monday, May 27, or before committee May 28. Our wish to vote on a report on Tuesday, May 28, so that it could be tabled in the Senate as soon as possible.

I agreed to everything she asked for. Yet she chose to complain about the report and the process in her speech on the report. She said:

> I decided not to spend hours trying to amend this long partisan biased report written by members of the committee who objected to the bill.

Yes, we objected to the bill. That's her choice, obviously. But to complain about the tone and not to avail yourself of the opportunity provided to you in committee to propose changes because you have another agenda is disingenuous, not to mention a dereliction of duty at the very least.

Hon. André Pratte: Going much too far accusing an honourable senator.

Senator McCallum: Please.

Senator Pratte: "Dereliction of duty." I think this is quite excessive, Your Honour.

The Hon. the Speaker: Honourable senators, earlier today, in the ruling on a point of order raised by Senator Plett, I made mention of the fact that we should try to be careful with the words that we use. Inflammatory words do not really help advance the debate. Obviously, if senators want to disagree and express their displeasure on issues and on legislation, that is appropriate, since this is a debating chamber. But I would ask senators to please be cautious about the use of inflammatory language.

Senator Tkachuk: "The chair turned down requests," Senator Galvez said, "to meet with the Subcommittee on Agenda and Procedures and made most of the decisions unilaterally."

We heard from mayors of indirectly affected regions and then mayors of directly affected regions. We talked a lot about division and separation.

I would invite all of you to visit the Transport Committee website and look at the schedule of hearings we held on Bill C-48, and you will see that we heard from a cross-section of witnesses. We heard from precisely five mayors in British Columbia, so-called directly affected regions, and five mayors in total in both Alberta and Saskatchewan, which is what she seems to think is the indirectly affected region. Well, I can tell you, living there, that Saskatchewan is directly affected by this bill, as is Alberta.

I'd like to add a few words to Senator Patterson's speech and the points he was trying to make about the bill itself.

I'm going to quote the environment minister. She provided publicly recently and I'm going to quote her:

> If you actually say it louder, we've learned in the House of Commons, if you repeat it, say it louder, if that is your talking point people will totally believe it.

That comes from the Minister of the Crown, the Minister of Environment.

I was reminded of these words from Canada's environment minister as I listened to Senator Harder's speech the other night in which he repeated what he has often said before:

> As you know, this legislation would formalize the long-standing oil tanker moratorium on Canada's north Pacific coast.

Maybe you should have said it a little louder because I still don't totally believe it and neither should Canadians.

First, as Senator Simons pointed out, this is not a moratorium. It is a ban. The lack of precision as to what words mean may explain why Senator Harder thinks he can convince us that Bill C-48 formalizes the voluntary tanker ban when it does nothing of the sort. He said Bill C-48 will have the effect of keeping tankers away from the northwest coast by removing any economic purpose for coming closer to the shore. No, Senator Harder, it is the voluntary tanker ban that has the effect of keeping tankers away from the coast. Formalizing a voluntary tanker ban would bring something that has the effect of doing that into force.

Bill C-48 does nothing of the sort. I would assert that by using the phrase "we have the effect of" to describe Bill C-48, Senator Harder is admitting as much and knows full well it doesn't formalize anything.

Senator Harder is fond of quoting Professor McDorman as well as the law firm of Norton Rose Fulbright. Let me also quote from them as well. As we wrote in our report, the professor told our committee:

> As a matter of commercial reality and good neighbourliness, you usually keep your ports open, but a country does have the capacity, as a matter of international law, to close ports to any and all vessels. As I understand it, that is what this bill would do. It closes the ports. It does not affect traffic in the waterway per se.

Norton Rose Fulbright in its brief on Bill C-48 wrote:

> Bill C-48 does not in any way convert the voluntary tanker ban exclusion zone into one which is enforceable at law. Neither the TEZ nor Bill C-48 keeps oil tankers which are not moving Trans-Alaska Pipeline system oil from transiting through the Canadian West Coast or territorial sea. Bill C-48 does not prevent any oil-laden tanker traffic in Canadians EEZ or territorial sea regardless of its size as long as the tankers do not call upon the port in the defined area of northern B.C.

What it does, and Senator Harder admits as much when he says tanker traffic won't have an economic purpose for coming close to the shore is to prevent landlocked Alberta and Saskatchewan oil from getting to market.

Don't tell me the TMX expansion, when it is completed, will do that. The port at Burnaby is too shallow to accommodate larger tankers needed today to export oil to eastern markets.

Honourable senators, we have talked past each other for some time now about why this is a good or bad bill. My main contention is that it is an unnecessary and overkill kind of bill. It is these things because there is no pipeline to bring oil to the port in that area, and it's unlikely to do so for years to come.

Senator Woo will be disappointed to hear that because I read that — I never knew this before — Senator Woo is a big proponent of Northern Gateway, or at least he was prior to arriving here.

It is these things — because there is no pipeline to bring oil to the port in that area, and it's unlikely to be one for years.

My point is that there is already in place a *de facto* moratorium on the economic purpose for tankers coming close to shore in the area. This bill is simply overkill, and it robs us of our future.

Let's talk about risk. Risk is part of life. You get up in the morning, and there is risk that you won't make it home at night. You send your kids to school and there is risk. We need to understand that risk is probability multiplied by consequence. That may be true, but people, many of them in this room, get on airplanes every day. As many have said before, they do so knowing there is a risk of an accident. The consequences for them and their families would be enormous, but if we don't get on planes, the business of the nation would grind to a halt, so we accept the risk for the greater good.

• (2210)

We do everything humanly possible to minimize risk, for sure. What we don't do is ban air travel, which is essentially the government's approach with this bill. The country did not get to where it is by refusing to take risks.

Bill C-48 is what Daniel Kahneman, a Nobel Prize winner in economics, described in his book *Thinking, Fast and Slow* as an enormous overreaction to a minor problem — not that a massive oil spill would be a minor problem, but the risk of one is quite minor. That risk has been vastly overestimated due to what he describes as:

> . . . an availability cascade: a nonevent that is inflated by the media and the public until it fills our TV screens and becomes all anyone is talking about.

In his discussion, the *Exxon Valdez* — an accident that Senator Harder trots out once again 30 years after it happened — is an initiating event. Kahneman further cites the work of Paul Slovic:

> Paul Slovic probably knows more about the peculiarities of human judgment of risk than any other individual. His work offers a picture of Mr. and Ms. Citizen . . . [assessing risk] guided by emotion rather than by reason, easily swayed by trivial details, and inadequately sensitive to differences between low and negligibly low probabilities.

Lest anyone here consider themselves above the average citizen, "Slovic argues . . . that the public has a richer conception of risk than the experts do."

I want to conclude with the remarks of another prominent thinker, Harvard Professor Steven Pinker, whom Trudeau actually liked and had in his office. Trudeau wrote on his Twitter account: "Great to spend time with one of the world's clearest and most vivid thinkers and fellow McGill alumnus S. A. Pinker today in Ottawa. Thanks for enlightening conversation."

Well, I hope they would have had that conversation about this bill. Of course, the word "enlightening" was a reference to Pinker's most recent book, *Enlightenment Now*, an appeal to reason and science. In his chapter on the environment, he wrote:

> The epitome of environmental insults is the oil spill from tanker ships, which coats pristine beaches with toxic black sludge and fouls the plumage of seabirds and the fur of otters and seals. The most notorious accidents, such as the breakup of the *Torrey Canyon* in 1967 and the *Exxon Valdez* in 1989, linger in our collective memory, and few people are aware that seaborne oil transport has become vastly safer.

It goes on to explain:

> . . . the annual number of oil spills has fallen from more than a hundred in 1973 . . .

— the decade where Senator Harder cites most of the studies he mentioned in his speech —

> . . . to just five in 2016 (and the number of *major* spills fell from thirty-two in 1978 to one in 2016.

Pinker points out:

> . . . even as less oil was spilled, more oil has been shipped . . . .

Finally, he points out:

> It's no mystery that oil companies should *want* to reduce tanker accidents, because their economic interests and those of the environment coincide: oil spills are a public-relations disaster (especially when the name of the company is emblazoned on a cracked-up ship) . . . .

There are economic consequences for the company and they have their own incentives to prevent spills. They don't need the government one, but that way flies in the face of the government's so-called commitment to globalization.

I'd like to move an amendment. I've said in this place before that I think the people should decide. My amendment postpones the coming into force of this act to December 31, 2020.

MOTION IN AMENDMENT NEGATIVED

Hon. David Tkachuk: Therefore, honourable senators, in amendment, I move:

> That Bill C-48, as amended, be not now read a third time, but that it be further amended on page 16 by adding the following after line 16:
>
> "**32 (1)** This Act comes into force on a day to be fixed by order of the Governor in Council.
>
> **(2)** An order made under subsection (1) may not be made before December 31, 2020.
>
> **(3)** If no order is made under subsection (1) that fixes a day for this Act to come into force that is before January 31, 2021, this Act is deemed never to have come into force and is repealed.".

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator MacDonald, that Bill C-48, as amended, be not now read a third time, but that it be amended — shall I dispense?

Hon. Senators: Dispense.

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: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: I see two senators have risen. Do we have agreement on a bell?

Hon. Senators: Now.

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Ngo
Batters	Oh
Boisvenu	Patterson
Carignan	Plett
Dagenais	Poirier
Doyle	Seidman
Eaton	Smith
Housakos	Stewart Olsen
MacDonald	Tannas
Martin	Tkachuk
McInnis	Verner
McIntyre	Wells
Mockler	White—26

NAYS
THE HONOURABLE SENATORS

Anderson	Klyne
Bellemare	Kutcher
Black (*Ontario*)	LaBoucane-Benson
Boehm	Lankin
Boniface	Lovelace Nicholas
Bovey	Marwah
Busson	McCallum
Campbell	McPhedran
Cordy	Mégie
Cormier	Mercer

Coyle	Mitchell
Dalphond	Miville-Dechêne
Dawson	Moncion
Deacon (*Nova Scotia*)	Munson
Deacon (*Ontario*)	Omidvar
Dean	Pate
Duncan	Petitclerc
Dupuis	Pratte
Dyck	Ringuette
Gagné	Saint-Germain
Galvez	Simons
Gold	Sinclair
Griffin	Woo—47
Harder	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (2220)

The Hon. the Speaker: Resuming debate on Bill C-48.

Some Hon. Senators: Question.

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

Some Hon. Senators: No.

The Hon. the Speaker: On debate, the Honourable Senator MacDonald.

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Woo, seconded by the Honourable Senator Gold, for the third reading of Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast, as amended.

Hon. Michael L. MacDonald: Honourable senators, I'd like to join the debate on Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast.

It was my hope that it would not be in this circumstance, given the committee's extensive study and the report it provided to this chamber which advised against proceeding with this divisive legislation and endorsing the incomprehensible thinking that shapes it. I'll get to the substance of the bill in a minute, but I'd like to share my thoughts on the process that got us here.

I have been a member of the Transport and Communications Committee since entering the Senate in 2009. I was the deputy chair for some time, and I have participated in many studies. The review of Bill C-48 was thorough. It was one of the more complete and objective assessments of government legislation during my years on the committee. Not only did we receive a broad range of testimony here in Ottawa, but we took our committee to northern B.C., Edmonton and Regina to hear from a diverse array of witnesses and communities that would be impacted by this legislation. In total, we heard from 139 witnesses.

In the Senate, we task committees to conduct in-depth reviews of legislation, collect evidence, act on it and return with a recommendation to this chamber. It's part of the parliamentary process, and the Transport Committee had fulfilled its parliamentary role as expected.

Rarely does the chamber act in the manner as it has lately, ignoring a report and dismissing the recommendation of one of its committees. Some senators said they didn't like the tone of the report. According to their comments, and as evident from the vote on the report, some Trudeau-appointed senators of the ISG felt the report was too critical of the government. All but one voted to overrule the committee. We now find ourselves at third reading because the ISG refused to take the advice or respect the work of a Senate committee that it controls. What a telling display of independence.

Apparently, the new independent Senate, as the mainstream media likes to call it, is just great until — heaven forbid — ISG members at committee decide to vote the same way as Conservative members; then surely there must be a mistake. Independence is now folly. The parliamentary process is suddenly deficient and somehow compromised.

Although the ISG has ultimate control of the committee with a clear majority of the membership, the report not to proceed with the bill is now portrayed by the government's apologists as nothing more than a nefarious Tory plot, even though the official opposition does not control the committee. Instead, the committee's work is said to be too partisan. Now we are accused of being dysfunctional, even by senators who never sat at the committee table or attended a hearing. These are not arguments; these are but lame excuses from those who feign independence and meekly capitulate to the Trudeau government's whimsical approach to serious national issues. And Bill C-48 is a serious matter.

Some senators may not have liked the tone of the report from the committee or the result of the vote, but the substance of the report was factual in stating the long list of reasons why it was advised not to proceed with the bill. It is admittedly not a flattering report, but there is nothing in the bill that serves the national interest. Indeed, it actively works against it. Yes, the report was critical of the government's proposed legislation, and for good reason.

Canada is a trading nation. Canadian exports, particularly in natural resources, have been the lifeblood of Canada and the colonies that preceded it for hundreds of years.

Canada has by far the longest coastline in the world. No other country comes close. But we are a northern country with winter conditions that shut down the St. Lawrence Seaway and the Great Lakes for many months, making our northern coastline completely inaccessible and creating drift ice in the late winter and early spring on most of the East Coast.

But we have two stretches of coastline both east and west that are completely accessible every day of the year. One is the southern and western shore of Nova Scotia running westward from the super port at the Strait of Canso to the Bay of Fundy in the province of New Brunswick, and the other is the coastline of British Columbia. Any responsible Government of Canada should be ensuring that the ice-free deepwater ports on both coasts are used to the maximum benefit of all Canadians, particularly in the export of Canadian goods. The supporters of this bill maintain that this tanker ban only formally puts in place something that already exists.

Senator Harder made this assertion as well in his remarks to the Senate. But this is simply not true. The present moratorium ensured that American vessels loading at the terminus of the Alaskan pipeline and sailing to American ports could not sail along the western Canadian coastline to deliver its product. In short, they could not use our coastline as their highway. Instead, they would have to sail at least 70 nautical miles west of the Dixon Entrance, Queen Charlotte Sound and Vancouver Island. That is a reasonable accommodation, since these American vessels are delivering American oil to American refineries that are easily accessed by the alternative route.

The Tanker Exclusion Zone never applied to tankers travelling to or from Canadian ports. It was never meant to stop Canadian port activity. Bill C-48 would stop the export of Canadian oil from a northern Canadian port directly westward to overseas refineries. Bill C-48 constitutes a domestic tanker ban of a sort which exists nowhere in the world.

The greater Prince Rupert and Port Simpson area of northern B.C. represents the finest deepwater anchorage on the West Coast of Canada, at least that is the conclusion of the federal government's own report. In a comprehensive study, the Government of Canada assessed 26 West Coast ports to determine which had the most favourable conditions for risk management, particularly when shipping petroleum. Not only was the Prince Rupert area deemed the least risky port for this purpose, but it also had the advantage of immediate, unimpeded ocean-going access to the Pacific trade routes and the Asian market. Significantly, the riskiest and lowest-ranked port in this study was Burnaby in the Lower Mainland, where a pipeline presently exists and plans have been approved for a second pipeline.

If this government was truly sincere about managing the risks associated with the movement of persistent oil in Canadian water, why isn't it unveiling a comprehensive program that applies to the entire country? Shouldn't the government instead be promoting measures that aim to reduce tanker pressure in the congested waters of the Lower Mainland and instead be encouraging the growth of infrastructure in the greater Prince Rupert area?

The statistics show that the greatest tanker pressure by far is found on the East Coast of Canada. Over 100 million metric tonnes of heavy oil regularly transits the Bay of Fundy and the Gulf of St. Lawrence to supply refineries in New Brunswick and Quebec. If Canada were to encourage the building of a pipeline to feed petroleum to these eastern refineries, all of that risk could be taken out of the water. No more foreign tankers from Kazakhstan and Algeria taking their heavy oil through the ice in the Gulf of St. Lawrence or the strong tides in the Bay of Fundy. That would not only be a huge ecological win for the country but to our economic advantage as well.

Arguments about social licence preventing such a scenario are contrived. North America is honeycombed with petroleum pipelines, especially in eastern North America. The naysayers insist that Quebec would never approve a pipeline, although it has substantial pipeline infrastructure, and polls consistently show that Quebecers, like all Canadians, believe the movement of petroleum via pipeline is the safest and best way to transport oil.

• (2230)

The naysayers also conveniently ignore that the movement of oil by pipeline across provincial borders falls completely under federal jurisdiction, as was recently reconfirmed by the Supreme Court in regard to the TMX pipeline challenge by the socialist government in British Columbia.

With the reversal and expansion of Line 9 in Quebec almost four years ago, the Quebec use of Canadian oil in its refineries increased from 8 per cent to almost 45 per cent. Did the naysayers notice any difference to the quality of life in Quebec? Did this decision negatively impact Quebec in any measurable way? Of course not.

But the Government of Canada isn't capable of bringing forth any serious and comprehensive plan for the country to consider. Instead, the Trudeau government wants to prevent Canadians from potentially benefiting from the maritime advantages available to our country on the West Coast. They prefer to pretend that the northern coastline of British Columbia should be treated as if it is some bizarre variety of provincial park open to all forms of shipping, including petroleum, except when you have to export it in the quantities needed to create profit, wealth, jobs and economic opportunities for Canadians.

Adding to the outrage is the fact that this bill does not actually ban tanker traffic. Foreign vessels could still traverse the passage freely in accordance with international law. The only thing that this bill will do is prohibit the loading and offloading of products and ports within the exclusion zone. In other words, the only thing Bill C-48 does is prevent the oil-producing provinces of Western Canada from getting their products to market. The Government of Canada is deliberate and thoughtless in landlocking Alberta's and Saskatchewan's oil resources.

Why would the Government of Canada propose that strategically important and world class, ocean-going shipping ports in northern British Columbia be artificially restricted in their usage and development? Why would any Government of

Canada pursue such a questionable course? With all of the economic downside and negative implications for national unity, it defies logic.

Some claim this policy was part of the Liberal election platform. It was not. It was a remark that Mr. Trudeau needlessly volunteered at a public meeting in B.C. in September 2015. To those who insist this was a promise that should be kept, I ask, what difference do promises make to this government? They promised to bring people together, but they have spent four years dividing Canadians. They promised to reform the electoral system but abandoned that when they couldn't put in the fix to their electoral advantage.

They promised to help the middle class, and they have, but unfortunately, all the middle class beneficiaries are in the United States because of this government's incompetent management of our petroleum industry. They also promised three years of $10 billion deficits annually and a balanced budget in year four. Instead, the four-year deficit total will be more than $75 billion. So much for Liberal promises.

Louis St. Laurent once said that election promises are like cream puff pastries; more air than substance. But St. Laurent was a prudent manager of the Canadian economy and a patriotic Canadian. He would be appalled at the reckless spending of this government, critical of its resource management, and he would be firmly opposed to the shortsighted and unwarranted provocation to national unity.

Bill C-48's proponents claim that this particular coastline is subject to a number of concerns so unique that it requires special attention, concerns that magically do not exist on the East Coast of Canada.

Let's then review the arguments being put forward by the proponents of this misguided piece of legislation. One claim is that the northern coastline of British Columbia is so pristine that natural economic development should be curtailed. It's true that much of the northern shore of British Columbia is sparsely populated and largely undeveloped, but that doesn't mean there isn't constant commercial traffic. There is a lot of it, big ships too, like cruise vessels and ferries. Canada has no shortage of relatively pristine shoreline. There's lots of it on the East Coast as well.

But the exaggerated claims of the uniquely pristine nature of the West Coast ignore the fact that all shorelines everywhere are subject to passing sea traffic, plus flotsam and jetsam, and the Pacific Ocean is full of discarded garbage. Over 90 per cent of the plastic in the world's oceans come from river systems in Southeast Asia, the Indian subcontinent and Africa. If people truly want a pristine coastline anywhere, we will first have to start with cleaning up the oceans.

The proponents also claim that tanker traffic will unduly threaten the West Coast fishery. I have a natural appreciation for this sentiment. I grew up in one of the oldest fishing communities on this continent. Nobody wants to threaten any viable fishery in any part of the country. That's why we manage risk with proper vessel construction, coupled with well-trained captains, all supported by available high-quality pilotage service and modern navigation technology. Do these regulations, skills, services and technology somehow neither apply nor exist on the West Coast of Canada?

The value of the East Coast fishery is about $3 billion annually, which is eight times the $350 million value of the West Coast fishery. Yet the East Coast fishery safely manages the import and export of over 280 million metric tonnes of persistent oil annually, while the Lower Mainland of B.C. handles just over 6 million metric tonnes annually. The other 32 million metric tonnes shipped through B.C. waters is American oil down for American refineries in American vessels.

The Trudeau government would discriminate against its own industry, its own investors, its own communities, its own economy in our own backyard and in our own country.

The successful risk management of both a significant fishery and the movement of petroleum has long been established on the East Coast of Canada. The arguments that these risks are unmanageable on the West Coast simply don't hold up under critical examination.

Of course a large oil spill will be unwelcome in northern B.C., but it would be no more welcome in Vancouver, Saint John, Montreal or Quebec City. A bad oil spill would be a challenge and a mess to deal with no matter where one occurred on our coastlines. We all understand that. The real issue is about risk management, and the conditions for risk management in northern British Columbia are as good as it gets anywhere in Canada.

We keep hearing about the *Nathan E. Stewart* as an example of what can happen on the north coast of B.C. The *Nathan E. Stewart* was an American-owned and operated articulated tug barge that went aground in 2016, lost a lot of fuel and made a mess.

The Hon. the Speaker: I'm sorry, Senator MacDonald, your time has expired. Are you asking for five more minutes?

Senator MacDonald: Five more minutes, please.

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

Some Hon. Senators: Agreed.

An Hon. Senator: No.

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

Some Hon. Senators: Agreed.

An Hon. Senator: No.

The Hon. the Speaker: I believe I'm hearing a "no." Is it agreed, honourable senators?

Some Hon. Senators: Agreed.

An Hon. Senator: No.

The Hon. the Speaker: I'm sorry, Senator MacDonald, but I heard a "no."

Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Woo, seconded by the Honourable Senator Gold, that the bill, as amended, be read a third time.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: I see two senators rising. Do we have an agreement on a bell?

Senator Plett: Thirty minutes.

The Hon. the Speaker: The vote will take place at 11:07. Call in the senators.

• (2300)

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

YEAS
THE HONOURABLE SENATORS

Anderson
Bellemare
Boehm
Boniface
Bovey
Busson
Campbell
Cordy
Cormier
Coyle
Dalphond
Dawson
Deacon (*Nova Scotia*)
Deacon (*Ontario*)
Dean
Duncan
Dupuis
Dyck
Gagné
Galvez
Gold
Griffin
Harder
Klyne
Kutcher
LaBoucane-Benson
Lankin
Lovelace Nicholas
Marwah
McCallum
McPhedran
Mégie
Mercer
Mitchell
Miville-Dechêne
Moncion
Munson
Omidvar
Pate
Petitclerc
Pratte
Ringuette
Saint-Germain
Sinclair
Woo—45

NAYS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Black (*Ontario*)
Boisvenu
Carignan
Dagenais
Doyle
Eaton
Greene
Housakos
MacDonald
Manning
Martin
McInnis
McIntyre
Mockler
Ngo
Oh
Patterson
Plett
Poirier
Seidman
Simons
Smith
Stewart Olsen
Tannas
Tkachuk
Wells
White—29

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (2310)

CRIMINAL CODE
YOUTH CRIMINAL JUSTICE ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Campbell, for the third reading of Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, as amended.

The Hon. the Speaker: Resuming debate on Bill C-75. 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.

An Hon. Senator: On division.

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

IMPACT ASSESSMENT BILL
CANADIAN ENERGY REGULATOR BILL
NAVIGATION PROTECTION ACT

BILL TO AMEND—MESSAGE FROM COMMONS—CERTAIN SENATE AMENDMENTS CONCURRED IN, DISAGREEMENT WITH CERTAIN SENATE AMENDMENTS AND AMENDMENTS

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

Thursday, June 13, 2019

ORDERED,—That a message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts, the House:

agrees with amendments 1(b)(i), 1(c)(vi), 1(g)(iv), 1(g)(v), 1(h)(iii), 1(h)(iv), 1(i)(i), 1(i)(iii), 1(k)(x), 1(o)(iv), 1(p)(ii), 1(q)(i), 1(q)(ii), 1(r)(i), 1(t)(i), 1(t)(ii), 1(t)(iii), 1(u)(i), 1(u)(ii), 1(v)(i), 1(v)(iii), 1(w)(i), 1(w)(ii), 1(w)(iii), 1(y)(iii), 1(y)(iv), 1(ab)(iv), 1(ac)(i), 1(ad), 1(ae), 1(af)(i), 1(af)(iii), 1(ai)(i), 1(aj)(ii), 1(ak)(ii), 1(ak)(iii), 1(al), 1(an)(ii), 1(aq), 1(ar), 1(as), 1(at)(i), 1(at)(ii), 1(au)(i), 1(au)(ii), 1(aw)(i), 1(aw)(ii), 1(ax), 1(ay)(i), 1(bb), 1(bc), 6(l), 6(o)(i), 6(p)(i), 6(p)(ii), 6(q), 6(r), 10, 11(a), 11(d)(i), 11(e)(ii) and 16 made by the Senate;

respectfully disagrees with amendments 1(a)(i),1(a)(ii), 1(a)(iii), 1(a)(iv), 1(b)(ii), 1(c)(i), 1(c)(ii), 1(c)(iii), 1(c)(v), 1(d)(i), 1(d)(ii), 1(d)(iii), 1(e)(i), 1(e)(ii), 1(g)(i), 1(g)(iii), 1(h)(i), 1(h)(ii), 1(h)(v), 1(i)(ii), 1(j)(i), 1(j)(ii), 1(j)(iii), 1(k)(i), 1(k)(ii), 1(k)(iii), 1(k)(iv), 1(k)(v), 1(k)(vi), 1(k)(vii), 1(k)(viii), 1(l)(iii), 1(l)(iv), 1(m)(i), 1(m)(ii), 1(m)(iii), 1(m)(iv), 1(m)(v), 1(m)(vi), 1(n)(i), 1(n)(ii), 1(n)(iii), 1(n)(iv), 1(n)(v), 1(o)(i), 1(o)(ii), 1(o)(iii), 1(p)(i), 1(p)(iii), 1(r)(ii), 1(s)(i), 1(s)(ii), 1(v)(ii), 1(x), 1(y)(ii), 1(z)(i), 1(z)(ii), 1(z)(iii), 1(aa)(i), 1(aa)(ii), 1(ac)(ii), 1(ac)(iii), 1(ac)(iv), 1(ag)(ii), 1(ag)(iii), 1(ag)(iv), 1(ag)(vi), 1(ag)(vii), 1(ag)(viii), 1(ah)(i), 1(ah)(ii), 1(ah)(iii), 1(ah)(iv), 1(ah)(v), 1(ai)(ii), 1(aj)(i), 1(aj)(iii), 1(ak)(i), 1(am), 1(an)(i), 1(an)(iv), 1(av)(i), 1(av)(ii), 1(ay)(ii), 1(ay)(iii), 1(az)(i), 1(az)(ii), 1(ba), 6(a), 6(b), 6(c), 6(d)(i), 6(d)(ii), 6(e), 6(f), 6(g)(i), 6(g)(ii), 6(g)(iii), 6(h)(i), 6(h)(ii), 6(h)(iii), 6(i)(i), 6(i)(ii), 6(i)(iii), 6(i)(iv), 6(j)(i), 6(j)(ii), 6(k), 6(m)(i), 6(n), 6(o)(ii), 6(s), 7, 8, 9, 11(b), 11(c)(i), 11(c)(ii), 11(d)(ii), 11(e)(i), 12(a), 12(b), 13, 14(a), 14(b), 15(a), 15(b), 17(a), 17(b) and 17(c) made by the Senate;

proposes that amendment 1(c)(iv) be amended by replacing the text of the amendment with the following:

> "(b.1) to establish a fair, predictable and efficient process for conducting impact assessments that enhances Canada's competitiveness, encourages innovation in the carrying out of designated projects and creates opportunities for sustainable economic development;";

proposes that amendment 1(f) be amended by deleting subsections (4.1) and (4.2);

proposes that amendment 1(g)(ii) be amended by deleting the amendments to subsection 9(1) and deleting subsection 9(1.1);

proposes that amendment 1(k)(ix) be amended by replacing the text of the amendment with the following:

> "sessment of the project that sets out the information or studies that the Agency requires from the proponent and considers necessary for the conduct of the impact assessment; and";

proposes that amendment 1(k)(xi) be amended by replacing the text of the amendment with the following:

> "(1.1) The Agency must take into account the factors set out in subsection 22(1) in determining what information or which studies it considers necessary for the conduct of the impact assessment.
>
> (1.2) The scope of the factors referred to in paragraphs 22(1)(a) to (f), (h) to (l) and (s) and (t) that are to be taken into account under subsection (1.1) and set out in the tailored guidelines referred to in paragraph (1)(b), including the extent of their relevance to the impact assessment, is determined by the Agency.";

proposes that amendment 1(l)(i) be amended by replacing the text of the amendment with the following:

> "(3) The Agency may, on request of any jurisdiction referred to in paragraphs (c) to (g) of the definition jurisdiction in section 2, extend the time limit referred to in subsection (1) by any period up to a maximum of 90 days, to allow it to cooperate with that jurisdiction with respect to the Agency's obligations under subsection (1).
>
> (4) The Agency must post a notice of any extension granted under subsection (3), including the reasons for granting it, on the Internet site.
>
> (5) The Agency may suspend the time limit within which it must provide the notice of the com-";

proposes that amendment 1(l)(ii) be amended by renumbering subsection (7) as subsection (6);

proposes that amendment 1(o)(v) be amended by replacing the text of the amendment with the following:

"(2) The Agency's determination of the scope of the factors made under subsection 18(1.2) applies when those factors are taken into account under subsection (1).";

proposes that, as a consequence of Senate amendment 1(q)(ii), the following amendment be added:

"1. Clause 1, page 24: Delete lines 8 and 9";

proposes that amendment 1(r)(iii) be amended to read as follows:

"(iii) replace lines 20 to 26 with the following:

(8) The Agency must post on the Internet site a notice of the time limit established under subsection (5) and of any extension granted under this section, including the reasons for establishing that time limit or for granting that extension.

(9) The Agency may suspend the time limit within which it must submit the report until any activi-";

proposes that amendment 1(r)(iv) be amended by deleting section 28.1;

proposes that amendment 1(y)(i) be amended by replacing the text of the amendment with the following:

"of reference and the Agency must, within the same period, appoint as a member one or more persons who are unbiased and free from any conflict of in-";

proposes that amendment 1(z)(iv) be amended by replacing the text of the amendment with the following:

"net site — establish the panel's terms of reference in consultation with the President of the Canadian Nuclear Safety Commission and the Agency must, within the same period, ap-";

proposes that amendment 1(z)(v) be amended by replacing the text of the amendment with the following:

"President of the Canadian Nuclear Safety Commission.

(4) The persons appointed from the roster must not";

proposes that amendment 1(aa)(iii) be amended by replacing the text of the amendment with the following:

"net site — establish the panel's terms of reference in consultation with the Lead Commissioner of the Canadian Energy Regulator and the Agency must, within the same period, ap-";

proposes that amendment 1(aa)(iv) be amended by replacing the text of the amendment with the following:

"Lead Commissioner of the Canadian Energy Regulator.

(4) The persons appointed from the roster must not";

proposes that amendment 1(ab)(i) be amended by replacing the text of the amendment with the following:

"referred to in section 14.

50 (1) The Minister must establish the following rosters:";

proposes that amendment 1(ab)(ii) be amended by replacing the text of the amendment with the following:

"(2) In establishing a roster under paragraph (1)(b), the Minister must consult with the Minister of Natural Resources or the member of the Queen's Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the Nuclear Safety and Control Act.

(3) In establishing a roster under paragraph (1)(c), the Minister must consult with the member of the Queen's Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the Canadian Energy Regulator Act.";

proposes that amendment 1(ab)(iii) be amended to read as follows:

"(iii) replace lines 30 and 31 with the following:

opportunity to participate meaningfully, in the manner that the review panel considers appropriate and within the time period that it specifies, in the im-";

proposes that amendment 1(af)(ii) be amended to read as follows:

"(ii) replace lines 20 to 23 with the following:

(a) determine whether the adverse effects within federal jurisdiction — and the adverse direct or incidental effects — that are indicated in the report are, in light of the factors referred to in section 63 and the extent to which those effects are significant, in the public inter-";

proposes that, as a consequence of the amendment to amendment 1(af)(ii), the following amendment be added:

"1. Clause 1, page 41: Replace lines 25 to 27 with the following:

(b) refer to the Governor in Council the matter of whether the effects referred to in paragraph (a) are, in light of the factors referred to in section 63 and the extent to which those effects are significant, in the public interest.";

proposes that amendment 1(af)(iv) be amended by replacing the text of the amendment with the following:

"the Minister under section 59, the Minister, in consultation with the responsible Minister, if any, must refer to";

proposes that amendment 1(af)(v) be amended to read as follows:

"(v) replace lines 36 to 39 with the following:

whether the adverse effects within federal jurisdiction — and the adverse direct or incidental effects — that are indicated in the report are, in light of the factors referred to in section 63 and the extent to which those effects are significant, in the public interest.";

proposes that amendment 1(af)(vi) be amended by replacing the text of the amendment with the following:

"(1.1) For the purpose of subsection (1), responsible Minister means the following Minister:

(a) in the case of a report prepared by a review panel established under subsection 44(1), the Minister of Natural Resources or the member of the Queen's Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the Nuclear Safety and Control Act;

(b) in the case of a report prepared by a review panel established under subsection 47(1), the member of the Queen's Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the Canadian Energy Regulator Act.

(2) If the report relates to a designated project that includes activities that are regulated under the Canadian Energy Regulator Act, the responsible Minister must, at the same time as the referral described in subsection (1) in respect of that report is made,

(a) submit the report to the Governor in Council for the purposes of subsection 186(1) of that Act; or

(b) submit the decision made for the purposes of subsection 262(4) of that Act to the Governor in Council if it is decided that the certificate referred to in that subsection should be issued.";

proposes that amendment 1(ag)(i) be amended to read as follows:

"(i) replace lines 6 to 9 with the following:

whether the adverse effects within federal jurisdiction — and the adverse direct or incidental effects — that are indicated in the report are, in light of the factors referred to in section 63 and the extent to which those effects are significant, in the public interest.";

proposes that amendment 1(ag)(v) be amended to read as follows:

"(v) replace lines 19 to 22 with the following:

(b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are significant;";

proposes that amendment 1(an)(iii) be amended by renumbering subsection 94(1) as section 94;

proposes that amendment 1(ao)(i) be amended by replacing the text of the amendment with the following:

"95 (1) The Minister may establish a committee – or autho-";

proposes that amendment 1(ao)(ii) be amended by replacing the text of the amendment with the following:

"(2) The Minister may deem any assessment that provides guidance on how Canada's commitments in respect of climate change should be considered in impact assessments and that is prepared by a federal authority and commenced before the day on which this Act comes into force to be an assessment conducted under this section.";

proposes that amendment 1(ao)(iii) be amended by replacing the text of the amendment with the following:

"may be, must take into account any scientific information and Indigenous knowledge — including the knowledge of Indigenous women — provided with respect to the assessment.";

proposes that amendment 1(ap) be amended by replacing the text of the amendment with the following:

"meaningfully, in a manner that the Agency or committee, as the case may be, considers appropriate, in any assess-";

proposes that amendment 1(at)(iii) be amended by replacing the text of the amendment with the following:

"(a.2) designating, for the purposes of section 112.1, a physical activity or class of physical activities from among those specified by the Governor in Council under paragraph 109(b), establishing the conditions that must be met for the purposes of the designation and setting out the information that a person or entity — federal authority, government or body — that is referred to in subsection (3) must provide the Agency in respect of the physical activity that they propose to carry out;

(a.3) respecting the procedures and requirements relating to assessments referred to in section 92, 93 or 95;";

proposes that amendment 2 be amended by replacing the text of the amendment with the following:

"site — establish the panel's terms of reference in consultation with the Chairperson of the Canada-Nova Scotia Offshore Petroleum Board and the Agency must, within the same period, ap-";

proposes that amendment 3(a) be amended by replacing the text of the amendment with the following:

"tablish the panel's terms of reference in consultation with the Chairperson of the Canada–Newfoundland and Labrador Offshore Petroleum Board and the Agency must, within the same period, appoint the";

proposes that amendment 3(b) be amended by deleting subsection (3.1);

proposes that, as a consequence of the amendment to amendment 3(b), the following amendment be added:

"1. Clause 6, page 94: Replace lines 32 and 33 with the following:

Petroleum Board.";

proposes that amendment 4(a) be amended to read as follows:

"(a) On page 95, replace lines 33 to 36 with the following:

(b.1) a roster consisting of persons who may be appointed as members of a review panel established under subsection 46.1(1) and

(i) who are members of the Canada-Nova Scotia Offshore Petroleum Board and who are selected by the Minister after consultation with the Minister of Natural Resources, or

(ii) who are selected by the Minister after consultation with the Board and the Minister of Natural Resources;";

proposes that amendment 4(b) be amended to read as follows:

"(b) On page 96, replace lines 3 to 7 with the following:

(d) a roster consisting of persons who may be appointed as members of a review panel established under subsection 48.1(1) and

(i) who are members of the Canada–Newfoundland and Labrador Petroleum Board and who are selected by the Minister after consultation with the Minister of Natural Resources, or

(ii) who are selected by the Minister after consultation with the Board and the Minister of Natural Resources;";

proposes that amendment 5 be amended by replacing the text of the amendment with the following:

"8.1 (1) Subsection 61(1.1) of the Act is amended by adding the following after paragraph (a):

(a.1) in the case of a report prepared by a review panel established under subsection 46.1(1), the Minister of Natural Resources;

(2) Subsection 61(1.1) of the Act is amended by adding the following after paragraph (b):

(c) in the case of a report prepared by a review panel established under subsection 48.1(1), the Minister of Natural Resources.";

proposes that, as a consequence of Senate amendment 6(l), the following amendment be added:

"1. Clause 10, page 208: Replace line 39 with the following:

section 37.1 of that Act;";

proposes that amendment 6(m)(ii) be amended by replacing the text of the amendment with the following:

"within 90 days after the day on which the report under section 183 is submitted or, in the case of a designated project, as defined in section 2 of the Impact Assessment Act, 90 days after the day on which the recommendations referred to in paragraph 37.1(1)(b) of that Act are posted on the Internet site referred to in section 105 of that Act. The Governor in Council may,";

proposes that, as a consequence of the amendment to amendment 6(m)(ii), the following amendment be added:

"1. Clause 10, page 208: Replace line 7 with the following:

ter the day on which the Commission makes that recommendation or, in the case of a designated project, as defined in section 2 of the Impact Assessment Act, 90 days after the day on which the recommendations referred to in paragraph 37.1(1)(b) of that Act are posted on the Internet site referred to in section 105 of that Act, either approve";

proposes that, as a consequence of Senate amendment 1(bb), the following amendment be added:

"1. New clause 36.1, page 281: Add the following after line 24:

36.1 For greater certainty, section 182.1 of the Impact Assessment Act applies in relation to a pending application referred to in section 36.".

ATTEST

Charles Robert
The Clerk of the House of Commons

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

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

[*Translation*]

INDIGENOUS LANGUAGES BILL

TWENTY-FIRST REPORT OF ABORIGINAL PEOPLES COMMITTEE ADOPTED

The Senate proceeded to consideration of the twenty-first report of the Standing Senate Committee on Aboriginal Peoples (Bill C-91, An Act respecting Indigenous languages, with amendments), presented in the Senate on June 13, 2019.

The Hon. the Speaker: Honourable senators, unfortunately, an error has found its way into the French version of the twenty-first report of the Standing Senate Committee on Aboriginal Peoples concerning Bill C-91, which was introduced earlier today and distributed to senators.

Honourable senators, the first paragraph states "sans amendement," or without amendment, but it should have stated "avec l'amendement suivant," or with the following amendment.

[*English*]

It has been corrected and new copies are being distributed.

Hon. Lillian Eva Dyck moved the adoption of the report.

She said: Honourable senators, I want to speak briefly to some of the amendments passed by the Standing Senate Committee on Aboriginal Peoples. On the whole, the amendments passed strengthen the bill and better enable Indigenous peoples to reclaim, revitalize, maintain and strengthen their own languages.

Of particular attention are a series of amendments that now include access to services and programs in Indigenous languages where there is sufficient demand and access. This was a main concern from witnesses during the committee's pre-study of C-91, particularly for Inuit witnesses. Specifically mentioned now are programs and services pertaining to education, health and the administration of justice.

In addition, the committee passed an amendment that required the minister to review and report to Parliament on the availability and quality of federal government services provided in Inuktuk in Canada.

In order to avoid duplication with the new Indigenous languages commissioner created by the act and language commissioners of the provinces and territories, the committee passed an amendment that sought to avoid overlap and duplication and better facilitate coordination.

The committee also passed amendments to more clearly outline the powers and jurisdiction of Indigenous government bodies in relation to Indigenous languages as recognized and affirmed by section 35 of the Constitution. Thank you.

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.

An Hon. Senator: On division.

(Motion agreed to, on division, and report adopted.)

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

THIRD READING

Hon. Murray Sinclair: Honourable senators, with leave of the Senate, I move third reading of Bill C-91, An Act respecting Indigenous languages, as amended.

He said: Considering the hour and the fact that much of what has to be said with regard to the bill has been said at second reading and also in the report, I want to draw your attention to the fact that this bill is considered quite important to First Nations, Metis and Inuit communities in Canada.

• (2320)

A great deal of time has been spent by the committee in studying the provisions of the bill and amendments have been made to try to improve it. A great deal of cooperation occurred with Senator Patterson, I and others to ensure that the concerns of the Inuit were brought forward in consideration of this bill, and I think the result of the amendments has been that the bill has been improved.

The importance of language cannot be overstated, and I've already spoken about that. It is one of the issues that most young people growing up take for granted because they learn it almost from the time of birth, through song, through actions and through listening to conversations between their parents.

For Inuit, Metis and First Nations children that has not been the case, largely because of the influence of Canadian society, residential schools and other social impacts that they have experienced. But now there is a revitalization of culture and language going on, and I think this bill does a great deal to encourage that to continue.

I want to close by saying that tonight is game 6 for the Toronto Raptors, as you know, and they have adopted the slogan "We the North" for their championship run. Many Canadians are gathered around their television sets watching the game tonight. A number of Sudbury students, in fact, are currently sitting in front of the channel at home watching the game and they are saying that slogan in their Indigenous language, Anishinaabemowin, which translates to *Kiinwi Giiwedinong*. Because of their growing interests in the language and their assistance from their teachers, language revitalization is a growing phenomenon in Indigenous communities and this bill will help that to continue. Thank you.

Hon. Dennis Glen Patterson: Honourable senators, in light of the hour, I will try to be brief in speaking to Bill C-91 on third reading.

I am a father and grandfather of Inuit beneficiaries, and I know that language plays a crucial role in how individuals define their identity, preserve their culture, customs and traditions, express their community's history and maintain relations with others. Mother languages are perhaps among the strongest symbols of cultural and group identity.

The ability to work, live and access services in Indigenous languages is also about dignity and independence. It is concerning to me that statistics show the use and transmission of the Inuktuk language is on the decline.

Honourable senators, we had many witnesses who shared why the protection and revitalization of Indigenous language was so important to them. I have to say that given the significance of this bill, I am disappointed that this government left it to the dying days of this Parliament and has had to rush it through. The Prime Minister promised to bring this bill forward two years ago, before the Assembly of First Nations chiefs, and only now at this late hour are we examining this legislation.

Fortunately, the committee did a pre-study, which allowed us to move it along, and it was made clear through the pre-study that this bill as originally drafted had several significant flaws. I will speak briefly on this.

The government did pride itself on having worked hard to co-develop this legislation, but one of the three Aboriginal groups in Canada, the Inuit, was very clear to the committee that the process had fallen far short of fulfilling the government's commitment to develop distinction-based legislation.

It's important to note that we have tried to address some of these oversights and problems in committee, and I am also pleased that we did good work despite the time pressures.

I would like to highlight some of the amendments adopted in committee that addressed many of the concerns raised by Inuit, such as help to ensure support for the provision of government services and programs in an Indigenous language where numbers warrant. Mechanisms to ensure initiatives seeking to deliver key services related to education, health care and the administration of justice in cooperation with provinces and territories would also be eligible for federal funding support.

I'm pleased that the committee agreed to also recognize the importance of Inuktuk to Inuit Nunangat, and appropriate funding levels based on a series of principles, including the use and vitality of a language and the objective of reclamation, revitalization maintenance or strengthening of all Indigenous languages of Canada in an equitable manner.

I do want to note that the approach of the committee was collegial on all issues, which was very welcome. I believe that the committee did truly work together to carefully craft each amendment.

Numerous witnesses also raised concerns about the lack of mandatory funding provisions in this bill. The committee's excellent work and pre-study report did result in government appending a Royal Recommendation to the bill, enabling the department to access new money through the regular Treasury Board procedures. This was a huge improvement for this bill. And I have to say it was important because Budget 2019 proposed to invest $333.7 million over five years, starting in 2019-20 with $115.7 million per year ongoing. Many witnesses told us this is not adequate funding to do the significant work required. The committee adopted a set of guiding principles to help clarify what adequate and sustainable funding should mean.

I want to also recognize that this bill is significant in that it recognizes and affirms languages to be part of the rights guaranteed under section 35 of the Constitution.

I won't go over the testimony of NTI President Aluki Kotierk and Minister David Joanasie of Nunavut, or National Chief Perry Bellegarde, but I do believe that we have significantly addressed many of the concerns that they expressed before the committee.

These changes that are reflected in this amended bill resulted directly from the recommended changes brought forward by Inuit and other Indigenous groups. Minister Rodriguez told our committee that:

> . . . when I introduced the Indigenous language act last month, I spoke about the urgent need for it because, according to UNESCO, most of the 90 Indigenous languages spoken in Canada are now endangered. . . . It's the horrifying result of decades of government discrimination against Indigenous people. Although we cannot change the past, we can — and we must — change the future. We have an opportunity to do this right now with this bill, but it's a race against time.

In closing, honourable senators, it is my hope that this government honours its commitment to better the lives of Indigenous people through support for language protection and revitalization. I hope that in this race against time the minister sees fit to accept all the amendments passed unanimously by the Standing Senate Committee on Aboriginal Peoples.

It is my hope that we take the time to do this right because, as the minister also said, this law is not for us. It is for all Indigenous people in Canada and, above all, for their children and grandchildren. Thank you. *Qujannamiik*. *Nakurmik*. *Koana*. *Taima*.

• (2330)

Hon. René Cormier: Honourable senators, I rise tonight in support of Bill C-91. I will be very brief. To show support, I will read two small texts. The first one is a poem written in 1971 by the Mi'kmaq poet from Nova Scotia Rita Joe. That work by itself justifies the adoption of Bill C-91:

I lost my talk
The talk you took away
When I was a little girl
At Shubenacadie school
You snatched it away;
I speak like you
I think like you
I create like you
The scrambled ballad, about my word.
Two ways I talk
Both ways I say.
Your way is more powerful.
So gently I offer my hand and ask
Let me find my talk
So I can teach you about me.

The last one is for me to pay tribute to the Mi'kmaq people from the Atlantic region who helped the Acadians when we arrived and to show them my support I will read this:

Mawi Amgoes petjitaieg, nige daan telowitasig Nova Scotia, na aimogep.
Geginamoiegep daan del mimatjimg aag sasewoltigup.
Maw logotigup, ag mooh negow oitje tel nemitogup gogei, pasna na mooh sapotaosultiwegpen moog apogenemoiweg.
Welalieg ootjit na, aag telimolnog, aimotieg otjit gilow-Getjitoeg geto melgi gelnemog eg telisotimowo aag daan teli ulnoltiog.
Aimeg telatigeg Canada *tetogsiog*.
Melgi gelnemog daan teli Unoltiog.

Thank you. *W'elaalin'*.

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

BILL RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

TWENTY-SECOND REPORT OF ABORIGINAL PEOPLES COMMITTEE ADOPTED

The Senate proceeded to consideration of the twenty-second report of the Standing Senate Committee on Aboriginal Peoples (Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families, with amendments and observations), presented in the Senate on June 13, 2019.

Hon. Lillian Eva Dyck moved the adoption of the report.

She said: Honourable senators, I'm going to make a few brief remarks about the amendment passed by the Standing Senate Committee on Aboriginal Peoples just today.

The committee passed an amendment that broadened the definition of child and family services by including adoption services, reunification services, and post-majority transition services.

The committee passed an amendment to deal more clearly with any conflict or inconsistency in this legislation, and the provision of Nunavut legislation in relating to child and family services. It allows for the territorial legislation that provides a level of service for an Indigenous child that meets or exceeds the level of service provided by Bill C-92, that the territorial law will prevail.

The committee passed an amendment that recognizes and affirms the inherent right to self-government in the body of this act.

The committee passed an amendment that provides greater accountability of health care facility, health care provider and social workers in regard to their action before removing the child from his or her family.

The committee also passed an amendment that if a child is at risk of being placed on the basis of the socio-economic condition of the child's parent or care provider, positive efforts must be taken to remediate any neglect.

The committee passed an amendment that required the minister to establish an advisory committee to advise and assist the minister on matters concerning child and family services that relate to Indigenous children and to individuals to whom those services are provided.

The committee also passed an amendment requiring the minister, when undertaking the five-year review of the act, must specifically study the adequacy and methods of funding and assess whether the funding has been sufficient to support the needs of Indigenous children and their families.

Finally, the committee passed an amendment to include a mention of the unique circumstances and needs of Indigenous parents in the preamble. Thank you.

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

(Motion agreed to, on division, and report adopted.)

The Hon. the Speaker: When shall this bill as amended be read a third time?

THIRD READING—DEBATE

Hon. Patti LaBoucane-Benson: Honourable senators, with leave of the Senate, I move third reading of Bill C-91, An Act respecting Indigenous languages, as amended.

She said: Honourable senators, I begin tonight by acknowledging both the traditional land of the Algonquin peoples as well as my Métis ancestors.

I'm pleased to offer these final thoughts on Bill C-92.

Honourable senators, in 2019, the child welfare system remains a colonial artifact of the residential school system. Service provision is still enabled by the Indian Act. That is the status quo.

In 1950, there were almost no Indigenous children on the child welfare caseload because they were all at residential schools. However, in the early 1960s, the government realized that the residential school experiment was not working because the assimilation agenda was failing. Indigenous children were leaving residential schools without a connection to the broader Canadian society. They were not assimilated.

Many children were also leaving residential schools with significant mental health issues connected to the colonization of their identity, lack of training and self-management, and the physical, sexual, emotional and spiritual abuse that many suffered at the hands of school staff.

The government turned its assimilation tactic from residential schools and it landed squarely on child welfare and adoption. They believe that the permanent placement of Indigenous children into non-Indigenous families would complete their mission of assimilation and the eradication of Indigenous culture. The federal government transferred jurisdiction of child welfare to the provinces. Indigenous child welfare policies and practices were founded on the assumption that for Indigenous children to thrive they needed to be raised and educated in euro-Canadian society, a belief that is connected at its core to the colonial assumption that Indigenous people are primitive and unable to care for themselves.

Both adoption and residential schools proved to be hostile environments for Indigenous children. They were not raised with a nurturing adult who could be trusted. The Truth and Reconciliation Commission report described the children as being starved for attention, becoming adults with no experience of healthy family relationships to draw on and now in making this intergenerational case, because many Indigenous children grew up and they passed on their sense of identity confusion, isolation, hopelessness and the inability to form trusting relationships to their children. This is what we call historic trauma. It places the trauma of colonization, including residential schools, into an intergenerational context and helps us to understand the over-representation of Indigenous children and families in the child welfare system across our country.

Colleagues, the truth is that while the colonial assumptions that inform child welfare policy have remained mostly intact, the practices that expressed these ideas have morphed over the years. Since the 1960s children have been apprehended due to the issues of community-wide structural inadequacies that individual parents cannot rectify.

A 2016 report revealed that the worst poverty is experienced by Indigenous children.

• (2340)

It stated that across Canada, 51 per cent of status First Nation children live in poverty and if we look only on reserves, that number rises to 60 per cent. As a social indicator of health, children who experience persistent poverty are at higher risk of suffering health problems, developmental delays and behaviour disorders. They tend to attain lower levels of education and are more likely to live in poverty, experience homelessness and incarceration as adults.

What has been our response to this shameful reality? Rather than lifting Indigenous families out of poverty with housing, income and employment supports, our society has chosen to blame them for the economic policies of the Indian Act and pay other families to provide foster care.

In the process, we have privileged assimilation into Western culture and community over the Indigenous child's connection to their family and culture. We've done this under the guise of the best interest of the child. For 60 years, child welfare has been a catch-all system for the ongoing multi-systemic failure to understand, support and create space for the healing of Indigenous families. Rather than provide culturally competent mental health services for parents that address historic trauma, we have blamed families for their illness and addictions and taken their children.

Apprehension has been used as a default response for the lack of adequate housing on First Nations and in remote communities, a punishment for families who live in communities with poor drinking water, roads that are impassable for four months of the year and other infrastructure neglects that have plagued First Nations and remote communities for decades.

Although many provinces have already created policies that prevent apprehension solely on the basis of poverty, without supports to families that address poverty in historic trauma and mental health issues, Indigenous children continue to be apprehended at alarming rates. Because communities have not been fully supported to build the capacity for kinship care and other community-based placements for their children, they continue to be placed in non-Indigenous foster care.

The goal of Bill C-92 is to take a significant step forward in the process of changing this history, to repatriate jurisdiction over children's services to Indigenous peoples, to ensure the implementation of minimum standards that seek to decolonize child welfare practice and to put preventative service in place that will support Indigenous families to raise their own children.

To be crystal clear, though no one advocates for leaving children to languish in poverty with their family, rather, we must all call on the provinces and the federal government to work in good faith with Indigenous communities to ensure that coordination agreements are created in a timely way and they bring housing, income support and mental health departments and their funding to the table.

If governments create coordination agreements that continue to focus only on intervention and ignore prevention, nothing will change and we will have failed Indigenous children yet again.

As the Yellowhead Institute stated, without adequate and sustainable funding agreements, Indigenous people will be left to administer their own poverty.

These agreements need to be creative and well resourced to support families to break the cycle of historic trauma, to create the space for on-the-ground healing and true reconciliation. Why should we expect anything less for Indigenous children who are gifts from the Creator and our hope for the future?

Honourable senators, I want to thank the Standing Senate Committee on Aboriginal Peoples for their hard work on Bill C-92. From our pre-study to drafting reports and the clause-by-clause consideration yesterday, I am so grateful for every member's demonstrated commitment to improving the bill and, by extension, the lives of Indigenous children and families. Our work was nothing less than collegial and focused, and we were efficient largely due to the fantastic work of the clerks and the library of Parliament staff. I want to thank them for their unwavering support during our very thorough study of the bill.

You may remember that I reported our pre-study report influenced three significant changes to the bill in the other place. However, while this bill is a significant step forward from the Indian Act, the legislation remains imperfect. The committee has recommended further amendments to the bill, including acknowledging the inherent right to self-government of Indigenous peoples, the remediation of families' socio-economic conditions that led to child neglect, as well as the establishment of an Indigenous advisory committee to assist the minister in this work. To be honest, the disentangling of provincial jurisdiction from Indigenous child welfare and reducing the over-representation is a complicated process.

I anticipate that I will be working on this piece of legislation for many years to come. I invite you to help me.

Honourable senators, I finish my work as sponsor with a message of gratitude. It has been an honour to steward this important bill through the Senate. *Hiy hiy*.

Hon. Dennis Glen Patterson: Honourable senators, may I put it on the record that the Toronto Raptors have just won the NBA championship. I know that was out of order, Your Honour. I hope you'll forgive me.

I am pleased to rise on Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families.

As I stated at second reading, as the critic of the bill, I strongly agree with the intent of the bill.

Improving the child welfare system and ensuring the health and best interests of our Indigenous children is at the very core of any bill pertaining to child and family services.

What concerns me about this bill is the way in which the government has chosen to advance this legislation. I would like to reiterate my disappointment again with the fact that this government left this bill until the end of this session, thus failing to afford the issues it raises, the adequate study and scrutiny it deserves. Fulsome discussion and cooperation with Indigenous governing bodies is required to find well thought-out solutions to address the continued suffering of children and families due to a broken colonial system.

Anticipating the short time frame in which to dispose of this bill due to its delayed introduction, your committee conducted a pre-study. The witnesses who appeared revealed some significant challenges with the legislation, some of which we have tried to address in committee, while others are simply beyond our ability to resolve.

The recent letter to senators, shared by Senators McCallum and McPhedran that outlines outstanding concerns related to the Association of Manitoba Chiefs, serves to reinforce my belief that while a lot has been achieved, more time and analysis would have yielded better results. Without the significant changes

introduced in this chamber, this bill would have done a disservice to the children and families for whom this legislation was drafted.

Much like Bill C-91, I was also disappointed to hear in clear testimony that this bill failed to respect the co-development process that is so often touted as a triumph by this government. A number of witnesses called into question the adequacy of consultations with Indigenous groups.

For example, according to the brief submitted to the committee by the Chiefs of Ontario:

> The federal government is claiming that Bill C-92 was "co-developed". We disagree. Bill C-92 was not co-developed in any legitimate sense of the word.
>
> The initial stage was "engagement sessions" held with various First Nations representatives in summer and fall of 2018. This was a weak or at least routine form of consultation. General input was gathered but Canada made all the final decisions.
>
> The drafting stage, from December 2018 - February 2019, was exclusive, rushed and secretive. Chiefs of Ontario participated in the Legislative Working Group that Canada convened at that time, but we were excluded from any actual drafting. Our representatives had the opportunity to review and comment on one draft, in an extremely short time frame in January. When we saw the bill introduced on February 28th , we saw that our comments had been mostly ignored.
>
> If any of our First Nation members claimed to have "co-developed" a document with Canada in this way, surely the Government of Canada would beg to differ.
>
> Words like "co-development" suggest equal partnership and consent. Before using that kind of language, or supporting its use, there should be agreement on the process and its outcome.

Professor Cindy Blackstock had a similar perspective. In her opinion, the government failed to include Indigenous opinions and voices when drafting this bill. She stated before the committee:

> When I saw a draft of the bill, provided feedback and, like many others, echoed the need for funding, that didn't appear in the next draft. The actual decision-making about what went into the bill was done by the government itself. It did not include any First Nations or, to my knowledge, Metis or Inuit people in the drafting of the bill, nor did they allow us to see a second draft of the bill in order to be assured that some of the major elements that we felt were preconditions for success were integrated. I know they say it was co-developed but that was not my experience of it.

• (2350)

It is disappointing that the government has so badly failed to properly and effectively work with Indigenous groups, that it has not really listened to their representatives in the drafting of this bill.

Equally disappointing is that the government-dominated committee in the other place chose to ignore most of the amendments brought forward by the progenitor of this initiative. I remember being on a call last summer with former Minister Jane Philpott. She discussed how important the issue of Indigenous children in care was to her and promised to work collaboratively with Indigenous people and the Senate to craft a bill that struck at the heart of the problem.

She actively engaged with committee members to organize engagement sessions and round tables so as to properly understand current gaps in the legislation and failed policies that were leading to the over-representation of Indigenous children in the public child welfare system.

So it would seem common sense to me to carefully consider her suggested amendments to this bill as the main interface with stakeholders over the final six months of her time as Minister of Indigenous Services Canada.

Yet, most of her amendments were dismissed out of hand, with the other place refusing to accept over a dozen amendments. This was them failing over a dozen times to incorporate the legitimate concerns brought to the government in good faith during the engagement and co-development processes. This failure has had consequences for this legislation, and the bill, as a result, in my submission, came far short of the declaratory objectives.

Thankfully, this is the chamber of sober second thought. By being ready to correct oversights, the Senate can provide an opportunity to witnesses who may not have had a chance to appear before the other place to instead be heard in the Senate committee. We are charged in that place to represent the voices of minorities and regions, and I believe that our work is vital to finding ways to improve legislation. I know we take seriously our duty to address the issues brought before us.

That is why I chose to support and reintroduce amendments that did not pass in the other place, but that were largely supported by evidence from our committee proceedings. Some amendments reflected those brought forward by stakeholders to our committee directly, some amendments were introduced by the NDP members, some by Ms. May, and many were originally introduced by Dr. Philpott in the other place.

I believe the work our committee did on this bill is a shining example of why the work of the Senate is important and relevant.

Many of these amendments were supported by everyone but the Liberals. To be clear, these amendments received support across partisan lines and were supported by NDP, Conservative, Green and independent members. The rationale behind these amendments was rooted in witness testimony and genuine concern for Indigenous children and their families. But these concerns were dismissed out of hand by the government majority on the committee.

The amendments, I would remind my colleagues, sought to address issues such as vague funding principles, an all-too-narrow definition of child and family services, that excluded important issues such as post-majority support, prenatal care and adoption, as well as issues surrounding jurisdiction.

So once again we are faced in this bill with an issue surrounding funding, and once again we are faced with a question of how the government will determine what qualifies as adequate funding levels.

There is also an added complication. Unlike Bill C-91, the government chose not to include a Royal Recommendation in the bill before us. That leaves the federal department constrained to work only with money that already exists in various funding envelopes. The minister cannot access new money. Since we are unable to add a Royal Recommendation in this chamber, the absence of one made it imperative that we include strong principles for future funding as requested by numerous witnesses.

I was pleased that among some of the positive amendments the committee was able to make included provisions for reporting back to Parliament on the adequacy of funding measures by the minister every five years. According to the amendment, this must be done in cooperation with an advisory committee, with members appointed in consultation with Indigenous governing bodies.

It was the hope of this committee that inclusion of this amendment would help ensure the funding levels are adjusted to meet the needs that arise and that recommendations are based on direct input from Indigenous people.

The committee will work with the minister to "specifically study the adequacy and methods of funding and assess whether the funding has been sufficient to support the needs of Indigenous children and their families." This provides a measure of assurance that the government will be compelled to provide the resources that will be required.

We also heard from witnesses that the current definition in the bill of child and family services is simply too narrow. The existing provincial and territorial legislation that governs the provision of child and family services includes varying and too often vague definitions of child and family welfare services.

A lack of clear definition may result in limitations to the types of services that First Nations may choose to exercise jurisdiction over and could lead to delays and denials of vital services for Indigenous children and families. This was pointed out by the brief submitted by Carrier Sekani Family Services.

Cindy Blackstock also called for a definition of child and family services that includes a wider range of services, including post-majority care services and adoption services.

Based on these concerns, an amendment was brought forward in committee that added to the definition of child and family services, important elements such as adoption, reunification and post-majority transition services. Incorporating this broadens and makes more inclusive the concept of child and family services, as called for by witnesses.

I was very pleased the committee supported the principle behind that amendment, which I was privileged to introduce, and provided useful insights into how to improve it. The proposed expansion of the definition, as subamended by the committee, passed unanimously, which is why I hope the government will trust the work of the committee as we seek to improve the legislation.

Many of my colleagues will know that I am very focused on advancing the concerns of my region. I believe that it is one of my duties as only one of two parliamentarians representing Nunavut in Ottawa. That is why I sought to address concerns that we heard from the Government of Nunavut about its concerns that Bill C-92 could undermine the work that has gone into creating carefully crafted Nunavut-specific legislation that was truly co-developed by the Inuit of Nunavut.

That was taken care of in an amendment, and I thank the committee for their support. Our amendment aimed to reduce jurisdictional conflict between provisions in the bill and current legislation that governs child and family services in Nunavut.

My thanks to Senators Sinclair and LaBoucane-Benson who were very supportive and helpful in these discussions. I believe we came up with a final amendment to clause 5 that will work very well to address concerns by the Government of Nunavut.

The minister has declared a willingness to consider amendments. I only hope that this commitment is a real one as the amendments put forward underscore how deeply all senators on the committee care about this issue and how much work has gone into trying to improve this bill in keeping with what witnesses have told us. While we have often had sharp differences on other bills, on the matter of child and family services there has been strong collegiality and willingness to work together in our committee to truly improve the situation for our Indigenous children.

That is why I would urge senators to support the bill as amended.

Thank you.

(*At midnight, pursuant to rule 3-4, the Senate adjourned until later this day at 9 a.m.*)

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