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OFFICIAL REPORT
(HANSARD)

Wednesday, June 19, 2019

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Wednesday, June 19, 2019

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

Prayers.

SENATORS' STATEMENTS

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, I received a notice from the Facilitator of the Independent Senators Group who requests, pursuant to rule 4-3(1) that the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Jacques Demers, who will retire from the Senate on August 25, 2019.

I remind senators that pursuant to our rules, each senator will be allowed only three minutes and they may speak only once.

Is it agreed that we continue these tributes under Senators' Statements to have up to 30 minutes for tributes, after which Senator Petitclerc will speak on behalf of Senator Demers, pursuant to rule 4-3(4)?

Any time remaining after tributes would be used for other statements.

Hon. Senators: Agreed.

[*Translation*]

TRIBUTES

THE HONOURABLE JACQUES DEMERS

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, I am pleased to say a few words in tribute to our colleague, the Honourable Jacques Demers, who will be retiring from the Senate in August.

For nearly 10 years, Senator Demers was a valued member of the Senate of Canada, and he was always held in high esteem by those who knew and worked with him. On behalf of all of his Conservative friends and all senators, I would like to extend our best wishes to Senator Demers and his family.

[*English*]

At a time when our country is celebrating the glory of an NBA championship, we are reminded once again of just how difficult it is to achieve the top prize in any professional sport.

[*Translation*]

As we know, Jacques Demers led the Montreal Canadiens to Stanley Cup victory in 1993. He was also personally honoured with the Jack Adams Award for NHL Coach of the Year in 1987 and 1988, making him the only coach to win this award two years in a row.

Honourable senators, words can never express what Jacques Demers represents for Montreal and the province of Quebec. The least I can say is that he is deeply idolized. People just feel like they know him, either because they saw him behind the players' bench for so many years, or because they welcomed him into their living rooms when he was working as a hockey analyst for RDS.

After being appointed to the Senate of Canada in August 2009, Senator Demers became a valuable member of our Senate "team." You may remember that he was originally on the "blue" team as a Conservative. Senator Demers said he would work as hard in the Senate as he did behind the bench, and he was true to his word. He has been a diligent member of numerous Senate committees, including the Standing Senate Committee on Social Affairs, Science and Technology. His natural curiosity and open mind served him well in his work as a senator, and he was proud to represent the province of Quebec.

Our colleague has been through a lot in his life. He spoke openly with Canadians about the abuse that he and his family suffered at the hands of his father. He spoke about his journey to literacy, a secret only his wife Debbie knew. Jacques Demers drew on those difficult times in his life to help others. Among other things, he gave a portion of the proceeds from the sale of his 2005 autobiography to literacy programs and shelters for battered women and children.

[*English*]

This action is indicative of the type of man Jacques Demers is — always looking to give support, to encourage and draw out the best in others, in the best tradition of all great coaches.

[*Translation*]

Honourable senators, I'll close by saying a few words directly to our colleague.

Senator Demers, I know that you're watching us today. I hope that you know how much respect and affection we have and will always have for you. No matter how many obstacles you encounter, I hope that you will take comfort in knowing that we are there by your side. I wish you a long retirement filled with happy moments in which you are surrounded by the people you love. Each and every one of your colleagues in the Senate wishes you and your family all the best in the future. We are all behind you, Coach.

[*English*]

God bless you, Jacques.

[*Translation*]

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable senators, on behalf of the independent Senate Liberals, I'd like to join my colleagues in paying tribute to our dear friend and colleague, Senator Jacques Demers.

We're all familiar with his accomplishments in the hockey world, notably his leading the Montreal Canadiens to win the Stanley Cup in 1993. He was an exceptional coach for nearly 15 years, and twice won the Jack Adams Award for NHL Coach of the Year.

[*English*]

But he also has a history of coaching hockey in my home province of New Brunswick. He was head coach of the AHL's Fredericton Express, which was affiliated with the Quebec Nordiques for its first two seasons in 1981 and 1983. In his second year, he took that team to first place in its division. As a result, he won the AHL's Louis A.R. Pieri Memorial Award as coach of the year.

Our paths first crossed in person when he was involved with the hockey community in Saint John, New Brunswick. The Express were originally supposed to play out of Saint John but an issue with respect to the Lord Beaverbrook Rink prevented them from having the team there. Senator Demers had already moved to town, and not one to sit idle, he spent the first two months in Saint John coaching a midget AAA hockey team. One of those former players recalled Coach Demers' impact on the team. Jacques took over the program, made us all dress up with a shirt and tie, and gave us a whole new dimension. We started winning under Jacques' leadership. His influence made us realize we weren't going to get kicked around anymore.

• (1410)

At the time, he lived in Quispamsis, New Brunswick, a neighbouring community to my hometown of Hampton. I was very pleased when he joined us in the Senate and we became closer neighbours on the eighth floor of the Victoria Building.

He took to his new duties in the Senate with the same skill and professionalism that brought him so much success in the hockey world. I recall his moving speech in this chamber when he divulged his own personal challenges with literacy. He became a great advocate for literacy, and his personal story inspired others to work toward improving their own literacy skills.

[*Translation*]

Senator Demers, my dear friend, we miss your wisdom and your dynamic presence, but your legacy will always live on here in the Senate. On behalf of the Senate Liberals, I wish you and your spouse, Deborah, and your entire family all the best.

I'd like to add special thanks to his assistant, Line Tessier, for her support over the years. Thank you.

Hon. Senators: Hear, hear!

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Senator Jacques Demers was my neighbour on the eighth floor of the Victoria Building too. I feel very privileged to pay tribute to Senator Demers today.

His rise to fame and his National Hockey League career were certainly remarkable, but Jacques Demers is also a senator with exceptional human qualities. Many adjectives come to mind: he is a good man, enthusiastic, fiery at times, a team player and, without a doubt, a courageous man. He has proven that over and over throughout his lifetime, and he continues to do so now.

Born into a poor and disadvantaged community, illiterate for much of his life, he made up his mind to learn how to read and understand more than just letters. Having served as a role model to hockey fans everywhere, he turned his attention to supporting literacy. His courage in telling his own story so candidly helped many Quebecers in the same situation understand that they are not alone and that learning is worth it. I'm convinced that his contribution to the cause changed lives.

Then he became a senator, with all that entails with regard to literacy. What a hat trick, Senator Demers!

I was struck once again by his courage during the shooting of October 22, 2014. There was a meeting of the Conservative group that morning. We heard shots ring out but didn't know what was happening in the parliamentary precinct. We were all very scared. My instinct was to hide under the chairs, but that wouldn't have offered much protection. Everyone ran toward the doors, but they were locked.

Then, Senator Demers took me by the arm and reassured me by saying that everything would be all right. He was exceptionally calm and demonstrated a great deal of self-control. He then told me, with that smile of his, "Don't worry, Madame Bellemare, I'll protect you." I will never forget that for the rest of my life.

I share this anecdote with you because it paints a picture of who Senator Demers is in my eyes: a brave and courageous man. Jacques Demers showed courage when he decided to become a non-affiliated senator in January 2016. The following spring, Senators Demers, McCoy, Wallace, Ringuette, Rivard, and I formed the Independent Senators Group. Our goal was to promote an independent, non-partisan, and effective Senate, one that ensured the right to equality of all senators, no matter what group they belong to, and a Senate of which Canadians would be proud. I thank him for believing in this grand plan to modernize the Senate.

Hockey coaches have to show courage and leadership. Coach Demers: mission accomplished. The time has come, Senator Demers, for you to hang up your skates. I wish you a happy retirement; you've earned it.

Hon. Senators: Hear, hear!

[*English*]

Hon. Leo Housakos (Acting Deputy Leader of the Opposition): Honourable senators, I was not planning to rise, but how could I not when we are paying tribute to a great Quebecer, Montrealer and Canadian?

Senator Demers, as we all know, came to this place a little bit alien to politics, but he always understood the fundamental principle of politics was representing his region and representing people. If there was anyone who loved people, it is Senator Jacques Demers. He was someone who came to this place with a lot of leadership skills. He learned quickly about communication and team play in politics.

I want to share some memories of Jacques. At the end of the day, we all remember him as a public figure who never said no to anybody. If you wanted an autograph, you got a "yes." If you wanted a pair of tickets or a jersey for a worthy cause, you got a "yes." I had the privilege of hosting with him a couple of functions for autism, where we co-chaired and raised funds for such a worthy cause. When it came particularly to causes for kids, Jacques Demers has a heart the size of this country. He always said "yes," and he always rose to the occasion. Even when he was too tired to sign an autograph, he signed did it with a smile. That's Jacques Demers.

I remember a few years back when my younger son was playing in a peewee AA regional championship tournament. I approached Senator Demers humbly and asked, "Would you be kind enough to come to the game and perhaps, near the end of the game, present the trophy to the winning team on the ice?" He said, "Absolutely. What time is the game?" I said, "It starts at two o'clock, but it will be wrapping up around four, so why don't you come around 10 to four?"

Jacques showed up at 1:30. He went into both dressing rooms, met both teams and gave both teams a pep-talk. He stayed there arduously for two hours, teaching me a little bit about a 2-1-2 forecheck and various variations of it. It was helpful for someone who had experience in politics but who was only a minor league hockey coach. That was my thrill with Jacques Demers. He stayed there until the end of game, got on the ice, shook the hand of every child and gave them their medal. That is Jacques Demers. That spoke volumes. That's a great parliamentarian and a great Canadian.

He learned about politics very quickly. We all know about his personal challenges and how he overcame them when it came to his challenges around literacy. By the end of day, I can say there are not many parliamentarians who are as bilingual, literate and articulate as Jacques Demers. He speaks from the heart. He has a great mind. His experiences in life have allowed him to become an outstanding senator.

I had the privilege of sitting next to him. I have learned a lot from him about life and hockey. We wish him well. He has had some health challenges. He will not be blessing us any longer in this place, but for sure, he is not done. He is a fighter; we all know he is. I'm sure he will continue to fight and make great contributions. I pay that tribute to Jacques Demers. Thank you, Jacques, for all you have done. God bless you.

Hon. Senators: Hear, hear.

[*Translation*]

Hon. Éric Forest: Honourable senators, Senator Demers will soon be retiring from the Senate. I unfortunately didn't have the opportunity to work with him in this place, but I did cross paths with him during my decade in the hockey world. I think Jacques Demers is well respected both in and out of this chamber because he is great humanitarian. I'm pleased to have the opportunity to thank him for his contribution.

When Jacques' unconventional journey brought him to the Senate in 2009, he chose to dedicate his time here to standing up for the least fortunate and advancing the cause of literacy. He became involved with a number of charitable organizations working in the area after publishing his biography in 2005, in which he revealed his big secret. His perseverance, strength of character and selflessness inspired countless people.

• (1420)

In the Senate, as in everyday life, Senator Demers stayed true to himself and acted according to his principles and values, which are at the heart of his contagious leadership.

We'll especially remember his courage in supporting Senator Lapointe's bill against video lottery terminals, which are predominantly found in low-income neighbourhoods.

It was always essential for him to be a good team player, but he also knew how to set limits and remain true to his beliefs.

Canadians will especially remember that, before he walked on the Senate's red carpet, he walked on the Montreal Canadiens' red carpet, but never on the logo, since that would be a sacrilege. The man Quebec affectionately calls "Coach" is the last coach to lead the Montreal Canadiens to their most recent Stanley Cup, 26 years ago now.

Senator Demers, we thank you for your service to the public. You're an excellent ambassador for the upper chamber, the causes you supported and Canada as a whole. We'll all remember that day in April 2016 when your life was turned upside down, leading you to re-examine your priorities. Please know that your perseverance continues and will continue to inspire Canadians. We wish you all the best in the future and send our greetings to your loved ones. Thank you.

[*English*]

Hon. Jim Munson: Honourable senators, I can still see Jacques Demers in the other chamber, sitting across from me, with that smile on his face every day. I have my Habs pin on today that Coach gave me early in his career in the Senate. He said I could call him Coach. He said we could all call him Coach. That was a wonderful thing.

He was an incredible NHL coach, World Hockey Association Hall of Famer, head coach of the Quebec Nordiques, the St. Louis Blues, the Detroit Red Wings and the Tampa Bay Lightning. Then it was the Montreal Canadiens, the Stanley Cup, 1992-93 — the last time a Canadian team won a Stanley Cup.

During that series, I had moved back to Canada from China with my sons. We were sitting at home, and I convinced my sons, then 5 and 8 years old, that I also played for the Montreal Canadiens. Never did I imagine being a senator, let alone a senator sitting in the same chamber as both hockey greats Jacques Demers and Frank Mahovlich, the Big M.

Dreams do come true, colleagues. Those were fun times. It was no surprise that during that time, there was also a bell ringing taking effect. Believe it or not, we rang bells in those days. It was during that time, because the hockey season was at the same time or the Stanley Cup playoffs, we would talk hockey while the bells rang. We found it convenient to be sitting in the Senate or elsewhere talking about a trade, a penalty shot, a call or a playoff run.

It didn't take long for us to connect on hockey and other issues, because sports are important to me. We talked about the Special Olympics movement, that sports can be transformative, build confidence and change lives, being part of a team and having good role models. That is what he was: a role model, a mentor. It can make a positive difference in a person's life. Coach knew that. I know that Jacques Demers has made that difference in many players' lives through his leadership and involvement in hockey.

Something very important happened in here. You might remember Senator Joyce Fairbairn, her literacy cause and how good she was with that. She and Jacques connected immediately and she helped him along the way. Not being able to read did not stop Jacques Demers from convincing Canada and the world that you can do anything you want in this country or anywhere. Jacques was that man. Senator Fairbairn was an ally for him in the Senate through that triumph.

Honourable senators, when I think of Coach, I see his big smile and I think of a man who treats everyone with respect and dignity. He treats everyone like a winner.

I love this Montreal Canadiens pin. It goes right up there with my Senate pin, although sometimes perhaps a little higher. Maybe one day they will win the cup again. It reminds me of what Coach Demers believes in, and I want to thank him for his wisdom.

I don't for the life of me know how this got here; I know you are not supposed to have props. He came here wearing a blue uniform, but I always felt Jacques Demers looked better in red.

Thank you, honourable senators.

[*Translation*]

Hon. Claude Carignan: Honourable senators, it's my turn to take a few minutes to pay tribute to our colleague and friend, Jacques. We all have our own stories to share, and obviously, I do as well. In 2010-11, my office was in the Victoria Building. Offices are assigned by seniority and since I was appointed on the same day as Jacques, our offices were next to each other.

We would get visitors from time to time. One day, I had three visitors from my region, businessmen who came to Ottawa to attend an Ottawa Senators hockey game. During that meeting, my assistant had the great idea of seeing whether Jacques would come and say hello to my guests. As you can imagine, he naturally and enthusiastically agreed and showed up in my office. As soon as they saw him my three guests were like kids at Christmas. They were star-struck.

That's the effect Jacques Demers has on people who meet him for the first time. He's so kind and humble and yet larger than life. He's a living legend, as much in Quebec as in the rest of Canada.

I consider it a privilege to have been appointed to the Senate on the same day as him, to have served alongside him and to have worked in close collaboration with him. When I was the Leader of the Government in the Senate, I could always count on him to be a loyal and tireless team player. He was as good a team player as he was an inspiring leader. He was honest and straightforward, and we could always rely on him to tell the truth.

On several occasions during our Conservative caucus meetings, he rose as the Coach to scold us when we didn't keep our sticks on the ice, buck us up when we were thrown against the boards or congratulate us when we scored.

Jacques is caring, passionate, authentic and profoundly human. In short, he's a role model for us all.

When I turned 50, my friends organized a surprise party for me, and they made sure to invite Jacques, knowing how much I looked up to him. On his own initiative, Jacques got me a custom Canadiens jersey with my name and the number 50 stitched on the back. Like the visitors I mentioned earlier, I was like a kid at Christmas. It was a gift I will cherish for the rest of my life.

Colleagues, illness took our friend away from us three years ago, and we've been deprived of the pleasure of his company ever since. In spite of everything, Jacques is keeping his spirits up and being brave. He will be reaching retirement age this summer. We are grateful for his contribution and for this 10-year season in the Senate. As he heads into the playoffs, we just want to say goodbye, Coach, and thanks for everything.

[*English*]

Hon. Michael Duffy: Honourable senators, we have heard many well-deserved words about our retiring colleague, so I will be brief about the Honourable Jacques Demers. The word "honourable" is defined in the dictionary as "worthy of honour," and that is the correct description of our retiring colleague, the coach.

Jacques Demers was an independent senator even before the term began to be used in the chamber. He worked collaboratively with senators on all sides of the chamber. He was my seatmate, my coach and my friend, especially during that dark period when the reputations of innocent senators were being destroyed for

purely political reasons. I believe that was why he, and several others we all know, abandoned partisan politics to sit as an independent. The Senate is a better place for his service and Canada is a better country in so many ways because of his generosity and his vision.

I'm pleased to join all senators in wishing "mon coach" Jacques and his family a long, healthy and happy retirement.

• (1430)

Hon. Fabian Manning: Honourable senators, I'm pleased today to have the opportunity to join with my colleagues here to pay tribute to a friend of ours in Senator Jacques Demers, or as most people refer to him — and I do as well — as the coach.

First impressions are always lasting impressions. There is no doubt that I was impressed from the first day that I met the coach. He spoke from the heart, he was a force to the people around him, and in a world where you could be anything, he chose to be kind, humble and genuine.

Everybody has a story to tell about the coach. I certainly have several. I'll tell you one. I had never been to an NHL hockey game in my life, and everybody was talking about hockey. One day I said to the coach, "Is there any chance of getting a couple of tickets? I don't want free tickets. I'm going to pay for them. I want to make sure that I have a good seat when I go to Montreal to see the game."

A couple of days later he came back with a couple of tickets that I purchased from him. I took my daughter to the game in Montreal. I have to say, it was the thrill of a lifetime. I had never been to anything like it. It was a game between Toronto and Montreal. It was more fun the hour before the game than it was at the game, but it was absolutely amazing. I'd never seen anything like it before.

When we came back, my daughter sent the coach a thank you card and thanked him for the opportunity to go. Several months later, he came over to me with an envelope for my daughter. He said, "Bring that home to Heather. Don't open it. It's a gift for Heather." I brought it home, and here was a ticket for two of us to go to another game in Montreal, compliments of the coach. We went again, and it was another thrill of a lifetime.

He called my house about four years ago and left a message on my phone for Heather, our daughter, and my daughter refuses to erase the message. It's still on our home phone. It just shows the effect he has on seniors, youth and everyone that he came across and met.

I want to express my thank you to Jacques Demers for being a friend, somebody who reached out and gave us all advice at different times. I remember sitting around the caucus table when times were tough or rough, and he would bring everybody together with his coaching skills and teach everybody about life's lessons and how important it was to work together. I consider it a great privilege to have known and worked with him.

A friend of mine was coming to Ottawa and he wanted to meet the coach and get a picture with him. He arrived at the front door of Centre Block wearing a big Montreal Canadiens jersey. We came in, and the coach was so willing at all times, even if it was only a matter of three or four minutes of giving him a heads-up that somebody wanted a picture or an autograph, whatever the case was, he was one of the most willing and friendly people I've met since I came to Ottawa.

As in any organization, sometimes there are people who leave and you don't really miss them a whole lot, but I have to say very sincerely, from the bottom of my heart, that I have missed Senator Jacques Demers since the day he left here. He left a lasting impression. He was a great friend, Montrealer, Quebecer, and most important of all, he was a great Canadian.

Hon. Senators: Hear, hear!

[*Translation*]

EXPRESSION OF THANKS

Hon. Chantal Petitclerc: Honourable senators, the Honourable Coach Demers has asked me to speak on his behalf.

Before I begin, however, I'd like to share an anecdote that came to mind as I was listening to you. I, too, would like to illustrate just how much of a legend Jacques Demers has become in Quebec.

You've talked about the importance of Senator Demers and the role he's played in your lives. Your anecdotes remind me that, when I was returning from Barcelona in 1992 with my very first medal from the Paralympic Games, at a time when Paralympic sports weren't all that well known, I was asked if I'd agree to give an interview on RDS. That was a really big deal for me at the time. I was very excited and I thought my father would likely be very pleased to hear that I was going to be on RDS for my first interview. My father's first reaction was to say, "You're so lucky, you're going to meet Jacques Demers"! That speaks volumes about what Jacques Demers means to Quebecers.

It is a great pleasure and privilege for me to read the message from the Honourable Jacques Demers, who is watching us right now.

[*On behalf of the Hon. Jacques Demers*]

> Mr. Speaker, honourable senators, it is with great emotion that I address the chamber today, for the last time.
>
> As the buzzer sounds the end of my period in the Senate, today I wish you farewell. Ten years have passed since I was appointed, and I feel privileged to have had the opportunity to sit in this upper chamber, the Senate. I am blessed to have had the fortune to count you among my friends and colleagues. The journey was difficult at times, but I always had your help, support and, above all, your respect. With the benefit of your knowledge and skills I was able to acquit myself of my duties. Parliamentary life, with its unique challenges, is very different from life in the sports world. Each of you, in your own way, have given me something that I will fondly remember.

I want to thank all the support staff, our Senate pages who do a fantastic job, the maintenance staff, and the bus drivers who often made me laugh with their comments and advice for the Montreal Canadiens. To all those who make our work more enjoyable, to the cafeteria staff and to our helpful messengers, and also to all those who work behind the scenes, thank you very much.

The past three years have been very difficult, and I have made it through thanks to the determination and support of Line Tessier, my associate and right-hand woman for the past 10 years. She encouraged me to keep going and to remain positive, allowing me to stay on track. Line has more than 35 years of experience in Parliament, and I would like to take this opportunity to congratulate her on celebrating 25 years at the Senate this past April. I also want to thank her for her loyalty, professionalism, thoughtfulness in the face of my current situation, unwavering dedication and unconditional support. Line was indispensable to me over the course of my 10 years in politics, and I will never be able to thank her enough.

My dear colleagues and friends, it was an honour to sit and work with you. As this period of my life comes to an end, I move into retirement.

Senator Petitclerc, thank you for your boundless generosity and for agreeing to speak on my behalf today.

I thank each and every one of you from the bottom of my heart.

Your coach, Senator Jacques Demers.

Thank you, Coach.

Hon. senators: Hear, hear!

[*English*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Julia Deans and Elizabeth Wilson. They are the guests of the Honourable Senator McPhedran.

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 Connor Scott and his family. They are the guests of the Honourable Senator Boyer.

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 Kimberley Roper and Elspeth Burris. They are the guests 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

SPEAKER OF THE SENATE

PARLIAMENTARY DELEGATION TO ARGENTINA, CHILE AND PERU, AUGUST 28-SEPTEMBER 7, 2018—REPORT TABLED

The Hon. the Speaker: Honourable senators, I ask for leave to table, in both official languages, the report of the Parliamentary Delegation of the Senate, led by the Speaker of the Senate, that travelled to Argentina, Chile and Peru from August 28 to September 7, 2018.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

PARLIAMENTARY DELEGATION TO MALAYSIA, MARCH 10-13, 2019—REPORT TABLED

The Hon. the Speaker: Honourable senators, I ask for leave to table, in both official languages, the report of the Parliamentary Delegation of the Senate, led by the Speaker of the Senate, that travelled to Malaysia from March 10 to 13, 2019.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

• (1440)

[*English*]

STUDY ON THE POTENTIAL BENEFITS AND CHALLENGES OF OPEN BANKING FOR CANADIAN FINANCIAL SERVICES CONSUMERS

THIRTY-SECOND REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE TABLED

Hon. Douglas Black: Honourable senators, I have the honour to table, in both official languages, the thirty-second report of the Standing Senate Committee on Banking, Trade and Commerce

entitled *Open Banking: What it Means for You* 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 Black (*Alberta*), report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

[*Translation*]

MACKENZIE VALLEY RESOURCE MANAGEMENT ACT CANADA PETROLEUM RESOURCES ACT

BILL TO AMEND—TWENTY-FIRST REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE PRESENTED

Hon. Rosa Galvez, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Wednesday, June 19, 2019

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

TWENTY-FIRST REPORT

Your committee, to which was referred Bill C-88, An Act to amend the Mackenzie Valley Resource Management Act and the Canada Petroleum Resources Act and to make consequential amendments to other Acts, has, in obedience to the order of reference of Monday, June 17, 2019, examined the said bill and now reports the same without amendment but with certain observations, which are appended to this report.

Respectfully submitted,

ROSA GALVEZ
Chair

(*For text of observations, see today's* Journals of the Senate*, p. 5094.*)

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

Hon. Margaret Dawn Anderson: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(b), I move that the bill be placed on the Orders of the Day for third reading later this day.

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

Hon. Senators: Agreed.

(On motion of Senator Anderson, bill placed on the Orders of the Day for third reading later this day.)

CANADA-FRANCE INTERPARLIAMENTARY ASSOCIATION

ANNUAL MEETING, APRIL 8-12, 2019—REPORT TABLED

Hon. Jean-Guy Dagenais: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-France Interparliamentary Association (CFIA) respecting its participation at the 47th annual meeting of the CFIA, held in Gard and Alpes-Maritimes, France, from April 8 to 12, 2019.

[*English*]

NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT ON STUDY OF NATIONAL SECURITY AND DEFENCE POLICIES, PRACTICES, CIRCUMSTANCES AND CAPABILITIES WITH CLERK DURING ADJOURNMENT OF THE SENATE

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

That the Standing Senate Committee on National Security and Defence be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate, between June 21 and August 1, 2019, a report relating to its study on Canada's national security and defence policies, practices, circumstances and capabilities, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Senate.

[*Translation*]

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

COMMITTEE AUTHORIZED TO DEPOSIT REPORT ON STUDY OF ISSUES RELATING TO FOREIGN RELATIONS AND INTERNATIONAL TRADE GENERALLY WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. Paul J. Massicotte: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I move:

That the Standing Senate Committee on Foreign Affairs and International Trade be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate, a report relating to its study on physical security at Canada's missions abroad, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

BUSINESS OF THE SENATE

Hon. Pierre J. Dalphond: Honourable senators, I ask for leave of the Senate that Motion No. 524 on the Notice Paper be brought forward and called now, and, if leave is granted, I move the motion that will allow us to sit tomorrow morning at nine o'clock to consider the Judicial Accountability through Sexual Assault Law Training Act proposed by Ms. Ambrose.

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

Some Hon. Senators: No.

The Hon. the Speaker: I hear a "no." I'm sorry, Senator Dalphond, leave is not granted.

QUESTION PERIOD

NATURAL RESOURCES

TRANS MOUNTAIN PIPELINE

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. Yesterday, as expected, the federal government once again gave its final approval to the Trans Mountain Expansion Project, the pipeline it bought in 2018 with $4.5 billion of taxpayers' money.

As feared, the announcement contained no timelines for when construction will begin, when the pipeline will be in service or even when the permits will be sought and obtained. As the government acknowledged yesterday, it will have to obtain additional regulatory approvals before construction can begin, including approval from the National Energy Board, approval under the Indian Act and the Fisheries Act, and permits under the Species at Risk Act, just to name a few.

Senator Harder, how can the Prime Minister say that shovels will be in the ground this construction season when the government has not even established timelines for obtaining all these permits and regulatory approvals?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. I think the first thing I would say is that the announcement yesterday is very welcome for the Canadian energy sector and very important for Canada. The initiative is one that obviously has been complex and taken a period of time to review. I was pleased to see that former Supreme Court Justice Iacobucci issued the statement he made with respect to the consultations that had been ordered by the courts.

The Government of Canada, together, of course, with the corporation, is committed to having shovels in the ground in this construction season. The appropriate approvals for that construction are already being sought, and the commitment of the government has been clear and forthright.

Senator Smith: Thank you, Mr. Leader.

In May 2018 when the government announced the purchase of Trans Mountain from Kinder Morgan, Minister Morneau said that the agreement guaranteed the resumption of work for the summer construction season. It didn't.

Last July it was reported that about 1,100 permits would be needed for the construction phase of this project. Before the federal government purchased the pipeline, just over 700 permits had been sought. After this government bought Trans Mountain, only one permit had been applied for.

Senator Harder, Canadians have good reason to be skeptical of the government's ability and desire to actually get this pipeline built. Can the government at least provide taxpayers with a date for when construction will begin in Burnaby?

Senator Harder: Again, honourable senators, the Trans Mountain Corporation, which is the corporate entity responsible, has obviously responded positively to the announcement, has work in place and is laying out a compliance regime that will allow construction to be initiated in this construction season.

• (1450)

[*Translation*]

Hon. Jean-Guy Dagenais: My question is for the Leader of the Government in the Senate. Inconsistent ideas and broken promises seem to have become your Prime Minister's trademark. In the span of just a few days, he adopted a motion declaring a national climate emergency while also allocating $9 billion to develop the Trans Mountain pipeline. Furthermore, he made that announcement without having kept his promise to consult First Nations and come to an agreement with them, while also encroaching on British Columbia's provincial jurisdictions.

This looks like a giant political football that could lead to other conflicts and costs that will have to be borne by Canadians. What really stood out for me is that he said the Trans Mountain pipeline would be developed without any increase in oil production. This needs to be taken more seriously.

Can you explain for us by what sleight of hand the Prime Minister will ensure that our export capacity increases while production stays the same in Alberta? Has he reached some kind of secret agreement with oil producers or the Alberta government to make such a statement?

[*English*]

Senator Harder: I thank the honourable senator for his question. He'll know that the objective of this project is to ensure that not only are Canadian exports of our natural resources — in this case, oil — destined to grow, I'm informed that, as a result of this initiative, it is estimated to generate $73 billion in increased revenues for producers over 20 years.

Government revenues, meanwhile, are expected to increase by $46 billion over the project's construction and first 20 years of operation. As the Prime Minister noted, the additional corporate tax revenue alone could be around $500 million per year once the project is fully operational. I would also draw attention of the house to the commitment made to utilize such funds for clean energy transition to a less carbon-intense economy.

We are in a period of transition in a global economy to a less carbon-intense environment. We must be cognizant of climate change and our desire to move appropriately to meet our global commitments. That does not mean we cannot, at the same time, utilize the resources we have to ensure that the world is able to move off of more carbon-intense sources of energy as we contribute what we have to that global transition.

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES BILL

Hon. Yuen Pau Woo: Honourable senators, I would like to address my question to the Government Representative in the Senate. Senator Harder, in May 2016, then Minister of Indigenous and Northern Affairs, the Honourable Carolyn Bennett, announced that Canada would support fully and without qualification the UN Declaration on the Rights of Indigenous People.

More recently, she said the government is moving forward on a number of key legislative initiatives to implement the UN declaration and that Bill C-262 was part of that plan. However, Bill C-262, as we all know, is languishing on the Senate Order Paper. It now runs the risk of not being debated, let alone being voted on.

Senator Harder, can you tell us what the government is going to do about Bill C-262 and, more broadly, what will it do about the implementation of the UN Declaration on the Rights of Indigenous People?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. It's an important one. As I've stated in the chamber, the government supports Bill C-262, as well as other items of nongovernment business.

Senators will recall that I spoke in support of Bill C-262 at second reading. As Government Representative, I voted for the bill on second reading. However, for reasons that we understand, the Senate has not been able to get Bill C-262 and other items of nongovernment business for quite some time. Government business has appropriately been the chamber's priority in recent weeks. We have not found agreement on all sides to resolve other business.

Honourable senators, it's become clear to me that, at this stage, there is not a collective will to find an agreement to get to Bill C-262 and other items of non-government business. Regrettably, I simply do not see a path forward. While it is disappointing that private members' business has not been able to get to the finish line, those who have been here over the course of many parliaments would acknowledge that the situation we face is not unique at the end of any parliament.

Therefore, on behalf of the government and the Prime Minister, I've been authorized to formally announce in this chamber that, in the forthcoming election, the Liberal Party of Canada will campaign on a promise to implement, as government legislation, the UN Declaration on the Rights of Indigenous Peoples when it forms the government again in October. The Government of Canada will thereby intend to bring forward legislation introducing UNDRIP and ensuring its expeditious consideration, review and passage. Introducing government legislation to implement UNDRIP will be a platform commitment that Canadians will be able to vote on in the election in October.

Some Hon. Senators: Hear, hear!

NATIONAL REVENUE

CANADA REVENUE AGENCY—TAX GAP

Hon. Percy E. Downe: Honourable senators, my question is for Senator Harder.

Senator Harder, the Senate did not want the Canada Revenue Agency reviewing itself. That is why it passed Bill S-243 requiring the Parliamentary Budget Officer to conduct an independent analysis of the tax gap – the difference between what is owed and what they actually collect. Unfortunately, that bill was defeated in the House of Commons. We only have the Canada Revenue Agency's self-review, another one of which was released earlier this week.

Even so, by the Canada Revenue Agency's own admission, the four limited analyses they have conducted to date have yielded an estimated tax gap of up to $23.8 billion in unpaid and uncollected taxes.

The question is: Why won't the Government of Canada allow the Parliamentary Budget Officer to perform an independent analysis of the tax gap so Canadians will know how much money is not being collected by the Canada Revenue Agency?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question and his dogged persistence on this issue, as well as a certain bridge. Let me respond by saying that the Government of Canada and certainly the Minister of National Revenue are committed to ensuring that there is not only fair treatment in the tax code but that all taxpayers pay what is appropriate for their income.

The honourable senator references the report that was just tabled. That's the fifth public report on this matter. Based on that report, I'm informed that it is estimated that the recent audits of corporate tax contributors who haven't paid appropriate levels has yielded an additional $6.1 billion. While there obviously continues to be a tax gap, the vigilance and determination of the government is clear. The additional revenues beyond those that are normally and routinely contributed to by corporate interests are being pursued.

Senator Downe: I have a supplementary question, if I could, Senator Harder.

The Canada Revenue Agency has not co-operated with the Parliamentary Budget Officer, notwithstanding the law that they must. The good news is that Statistics Canada has co-operated, to a large degree. I understand the PBO will be producing a report later this week; I suspect the figure for the tax gap will be even higher.

Honourable senators, a truly independent analysis will prove that the agency has underestimated the amount of the tax gap, but even they admit it could be up to $23.8 billion. For the sake of comparison, that is more than the combined budgets of the Departments of Agriculture, Heritage, Citizenship and Immigration, Environment, Fisheries and Oceans, Health Canada, Natural Resources, Justice, Transport and Veterans Affairs.

Honourable senators, imagine a Canada where everyone benefits from a Canada Revenue Agency that has a plan of action and a commitment to actually collect the billions of dollars of additional tax dollars owed to Canada. When will the Government of Canada force the Canada Revenue Agency to do their job and collect all those taxes owing for the benefit of all Canadians?

Senator Harder: I thank the honourable senator for his question. I just want to underscore that this government has increased the capacity of CRA to pursue tax audits, to pursue delinquent accounts and tax evaders. The increased revenue reflects that. I'm not saying for a moment that there is not more work to be done. I certainly will raise to the attention of the minister responsible the concerns of the honourable senator. I think it's important for us to recognize that significant progress has been made in the last four years.

• (1500)

[*Translation*]

PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

CORRECTIONAL SERVICE OF CANADA—INDIGENOUS REHABILITATION PROGRAMS

Hon. Pierre-Hugues Boisvenu: My question is for the Government Representative in the Senate. Senator Harder, over a month ago, following the publication of an article in *La Presse*, I informed you that certain inmates in Quebec prisons are declaring themselves to be Indigenous. Some of those inmates include Hells Angels leaders, who may be from Ste-Catherine Street in Montreal or from Quebec, but they definitely never lived on reserve. These inmates are benefiting from rehabilitation programs designed specifically for Indigenous offenders, while Indigenous offenders are being turned away because there is no space available.

One Indigenous man who was interviewed by *La Presse* said that he had attended healing circles where 15 of the 18 participants were not Indigenous.

In the past month, have you had the opportunity to find out more about this unacceptable situation from Correctional Service Canada? If so, did CSC promise to remedy this situation, as requested by Ghislain Picard, Chief of the Assembly of First Nations of Quebec and Labrador?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. It is a follow up to questions he asked on similar matters earlier. I will, of course, bring this subject to the attention of the minister. I didn't see the article to which the honourable senator is referring and I would be happy to report back.

[*Translation*]

Senator Boisvenu: Senator Harder, considering the overrepresentation of Indigenous people in the Canadian prison system and knowing that there are programs designed specifically for their community, will you commit to contacting Chief Ghislain Picard in order to ensure that his intervention request is dealt with by the Minister of Public Safety in a timely manner and to ensure that this completely unjustified practice is no longer tolerated?

[*English*]

Senator Harder: I believe it's my responsibility to bring this to the attention of the minister for action.

[*Translation*]

INFRASTRUCTURE AND COMMUNITIES

INFRASTRUCTURE BANK

Hon. Claude Carignan: My question is for the Leader of the Government in the Senate. Leader, on June 11, I asked you questions about the Infrastructure Bank's operations. To one of my questions you responded, "this is a bank that operates at arm's length".

In a written response tabled in the other place, Department of Finance officials admitted to meeting staff at the Infrastructure Bank at least eight times between October and December 2018 to push the bank to invest in the VIA Rail high-speed train project.

Senator Harder, if the bank operates at arm's length, as you say, why are Finance officials involved in the funding of a VIA Rail project, which is part of the Transport portfolio?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. It is not at all surprising that the officials responsible in the Department of Finance for infrastructure and investment wouldn't wish to bring to the attention of the Infrastructure Bank projects that it believes are meritorious. Independence does not mean spawned in isolation. It simply means that decision-making is the responsibility of the board of directors.

[*Translation*]

Senator Carignan: Why not leave it to Via Rail to deal with this?

[*English*]

Senator Harder: Yes.

[*Translation*]

JUSTICE

JUDICIAL SELECTION PROCESS

Hon. Claude Carignan: Leader, the Trudeau government recently announced that it was launching the appointment process to replace outgoing Supreme Court of Canada Justice Clément Gascon. However, in recent weeks, media outlets reported on Justice Joyal from the Manitoba Court of Queen's Bench as a candidate, seemingly with the sole purpose of discrediting former Minister Jody Wilson-Raybould. The Prime Minister refused to investigate these leaks.

Leader, how is the government ensuring that the selection process for the next Supreme Court justice remains confidential?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I want to assure the honourable senator that the Government of Canada is committed to such confidentiality, and that's the process by which the nomination and selection process has been launched.

[*Translation*]

Senator Carignan: What assurances can you provide candidates that their names will not be used by the government for partisan purposes?

[*English*]

Senator Harder: I think the honourable senator will recognize that the appointment process itself is one of integrity.

QUESTION OF PRIVILEGE

SPEAKER'S RULING RESERVED

The Hon. the Speaker: Honourable senators, before proceeding to Orders of the Day, I have received a request from another senator to allow further consideration of the question of privilege raised by Senator Marshall. Although this is not common practice, it is not unprecedented, and I will allow it in the current case. Therefore, we will now hear any new arguments on the question of privilege.

Hon. A. Raynell Andreychuk: Thank you, Your Honour. I rise to speak to the question of privilege raised by Senator Marshall regarding e-mails provided to the Senate Ethics Officer in the course of an inquiry under the Ethics and Conflict of Interest Code for Senators. For the benefit of all senators, as Chair of the Standing Senate Committee on Ethics and Conflict of Interest, I am rising to speak to this matter on behalf of the committee to provide information about the code as it relates to this question of privilege.

We are doing so to underscore that the inquiry process under the Code must remain confidential to guard its integrity and to protect everyone involved, including the senator who is the subject of the inquiry. As information about an inquiry has now been made public, the required confidentiality has not been maintained.

Let me state at the outset that neither I nor the members of the committee have specific knowledge as to the e-mails requested or received by the SEO, the process by which any e-mails were provided, or how they may be used in the SEO's inquiry. Further, neither I nor the committee seek to presume or prejudge the outcome of any inquiry of the Senate Ethics Officer or Your Honour's ruling in respect of this question of privilege. I note that the committee will be seized of the relevant inquiry report once it is completed and it has no advance knowledge of its contents.

Senators, the *Ethics and Conflict of Interest Code for Senators*, which binds all Senators, the Senate Ethics Officer and any person participating in an inquiry process requires confidentiality from everyone. Specifically subsection 48(8) of the Code states that:

> Any person participating in the inquiry process is expected to respect its confidential nature and to cooperate with the Senate Ethics Officer.

Further, the SEO, when conducting an inquiry is required under subsection 48(6) of the Code to:

> . . . conduct an inquiry confidentially and as promptly as circumstances permit.

Subsection 48(4) of the Code empowers the Senate Ethics Officer:

> . . . to send for persons, papers, and records . . .

This may include e-mails of senators which are stored on servers of the Senate administration. There is a process by which the Steering Committee of the Standing Committee on Internal Economy, Budgets and Administration, more commonly known as CIBA, may release documents under the control of the administration to the SEO.

Under the *Senate Administrative Rules*, Division 2:00, Chapter 2.06, section 9(1):

> The Senate Administration shall refer to the Steering Committee any request for access to unpublished records or un-published information
>
> (a) about the Senate, a Senator or a former Senator; or
>
> (b) in which a Senator or former Senator is identifiable.

• (1510)

This process is not administered by the SEO or the Standing Senate Committee on Ethics and Conflict of Interest for Senators.

The committee is of the view that any privileges that senators may have with respect to their e-mails may be limited by the Code. The interest of a senator in knowing that their records are shared must be weighed against the obligation of the SEO to conduct an inquiry promptly and confidentially and the need to protect the senator who is the subject of an inquiry.

Upon the completion of the next inquiry report of the Senate Ethics Officer, the committee will be able to examine the particulars of any procedural matters. Until then, I would encourage all senators to examine the Code and their obligations under it, including in respect of confidentiality.

I trust this information will be of assistance to you, Your Honour, in considering this question of privilege.

Hon. Elizabeth Marshall: Thank you, Your Honour. I would like to respond to that. I wasn't here for the beginning. I saw the announcement on the Senate Ethics Officer's website. It says that, "in carrying out an inquiry, the Senate Ethics Officer has the power to send for persons, papers, and records," which he did, and which I provided. I also provided records that he was not aware that I possessed. Whatever I had I gave to him.

I think that if the "persons, papers and records" also include e-mails, I hope my Senate colleagues are aware of this in the future so that they will know that really, your e-mails are an open book.

The other point I would like to make, Your Honour, and to my colleagues, I don't think I should have had to learn about this out in the hallways through the grapevine. I think that somebody in the Senate — and I don't know whether Senate leadership or Senate administration, but for someone to have to just sneak up and tell me this, and to become aware that my colleagues knew of it, I think that is absolutely disgraceful.

I think that the way the Senate Ethics Officer is carrying out his investigation — he might be a Senate Ethics Officer, but the manner in which he is carrying it out is unethical. He should have told me. I was cooperating, and he should have told me. The last e-mail — the last correspondence I had from that office was to thank me for my cooperation and assistance.

Honourable colleagues, there is nothing I can do for myself. Be aware, your e-mails are open to the Senate Ethics Officer, and I would say now probably to other offices of Parliament. Thank you, Your Honour.

Hon. Leo Housakos (Acting Deputy Leader of the Opposition): Your Honour, I also want to be brief on this debate. What I find particularly disturbing with this whole exercise is that the Senate Ethics Officer has taken it upon himself to make requests of e-mails and documentation in the course of an inquiry, an investigation of a senator, which is one thing. As we all know, as senators, when the Senate Ethics Officer carries out an investigation, he informs the senator in question that he is carrying out an investigation. But when he reaches out in the course of an investigation on a senator, in another senator's e-mail files, when that particular senator has cooperated with the Senate Ethics Officer, has met with the Senate Ethics Officer, and yet he chooses to go to steering of Internal Economy to get access to any senators' e-mails who are not formally under investigation, because from what I understood from the question of privilege from Senator Marshall, she has not been informed by the Senate Ethics Officer that she is under investigation.

If the Senate Ethics Officer has the capacity to reach into the Code and into our personal e-mails, our Senate e-mails when senators are not under investigation, that is something that we should all be very concerned about.

Hon. Marilou McPhedran: Thank you very much, Your Honour. I want to bring a somewhat different perspective into this discussion for consideration.

I think it's very important to bear in mind, if I understand what Senator Marshall was outlining to us when she first spoke of this, that the contact with you, Senator Marshall, was as a result of an ongoing investigation. I think we have to also bear in mind that in a self-regulating institution such as the Senate, where we undertake to conduct our own oversight, we also need to make sure that when we do that, we are following rigorous standards and procedures for a full and complete investigation.

I would like to draw an analogy to some other self-regulating institutions. Unlike the Senate, all other self-regulating professional organizations generally follow published public legislation in terms of what procedures are allowed. One of the serious practical aspects of trying to conduct a thorough investigation is it is not good practice, it is not reasonable to give notice ahead when you are trying to gather evidence.

We are human. We may be senators but we are human. There are too many possibilities that there could be — and in no way am I speaking specifically to you, Senator Marshall, on this. But the nature of an investigation, the procedures that need to be followed so that it can be a thorough investigation require that evidence needs to be accessed. There are many examples. Those who are in law enforcement or in other aspects of regulation will know there are many examples in self-regulating institutions where there are investigations of this nature, where there has been prior notice, evidence has disappeared for one reason or another.

This is a very practical consideration in being able to say that in this institution, that we do allow procedures that will enable the fullest possible investigation.

I also think it's relevant for us to bear in mind, for the most part, we are using publicly funded, publicly provided devices for our communications. When we do that, we are doing that as senators. For our institution to be able to conduct a full and fair investigation, access to our files, to our communications through publicly funded, publicly provided devices seems to me to be reasonable.

Senator Marshall: Can I ask Senator McPhedran a question?

The Hon. the Speaker: I'm sorry, Senator Marshall. I'm looking for input into your question of privilege that will help me. We can't turn it into a debate because it's not a forum for that. If you have something, Senator Marshall, at any time that you wish to add that you think can be of assistance to me on your question of privilege, feel free to comment.

Senator Marshall: I'm sorry, I would like to add. I think that one of the big issues I had with this situation is that people in the Senate knew and never told me, that I had to find out through the grapevine. I think that that's a disgraceful way for the Senate, a big institution like the Senate, to operate. That somebody did not have the courtesy to say to me, somebody in authority to say to me, "Excuse me, Senator Marshall, I think you should be aware of this."

Instead, everybody went on their merry way and said nothing, until somebody was kind enough to tell me something through the grapevine.

Hon. Percy E. Downe: Thank you, Your Honour. I'll be very brief. I was disturbed yesterday when Senator Marshall first raised her issue and her opening words were about the tone of the investigation at the beginning. Then she followed that up with what actually happened to her. I was not aware of this policy, either, and it may be something we want to look at as to what the rules and restrictions are. If all the e-mails were exposed, can they look at everything? How do they sort them?

• (1520)

For example, I receive confidential e-mails from CRA employees about things they think are outrageous in the agency so I can follow them up on behalf of the public. They are whistle blowers, if you will, people who are, in some cases, anonymous and in other cases are not. They are very brave individuals because they would lose their jobs in many cases.

They are not giving me confidential tax information; they are talking about policies that are wrong in the agency. This is a serious concern if we have to start working, as many in the federal government do, to get around the Access to Information Act and Privacy Act by going with disposable notes, not writing things down and having two individual BlackBerrys. It's a serious problem.

I am very concerned about what Senator Marshall said. She doesn't need me to speak to her integrity and professional credentials, but we should all know she is a chartered accountant by experience. She is the former Auditor General of Newfoundland and Labrador, a former MLA and a former cabinet minister. I worked with her for years on the Internal Economy Committee. She has the highest integrity possible and I'm deeply disturbed by what I heard today that happened to her.

Hon. Senators: Hear, hear!

Hon. Sabi Marwah: Thank you, Your Honour. On this particular situation, I will not comment on the specifics of the situation because it is bound by the confidentiality of the steering committee. However, I would say that a situation where a request was made to CIBA, to steering or to administration in this matter for records — any records — the first thing we would do is get the advice of a law clerk. The second thing we would do is make sure we in steering followed the rules of the *Ethics and Conflict of Interest Code* scrupulously, and basically those are the two things we would follow.

In terms of advising senators, we are bound by the code of confidentiality that is in the *Ethics and Conflict of Interest Code*, so if we do not like that, I suggest we not debate that issue. We should change the *Ethics and Conflict of Interest Code* and update it to eliminate what we don't like and what we consider unreasonable.

Thank you.

The Hon. the Speaker: I would like to thank all senators for their input into this very important issue and this important question that Senator Marshall has raised. I will continue to take the matter under advisement.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: consideration of messages from the House of Commons, third reading and second reading of bills in the order that they appear on the Order Paper with the exception of the message from the House of Commons on Bill C-69, which will be the last of these items called, followed by all remaining items in the order that they appear on the Order Paper.

[*English*]

OIL TANKER MORATORIUM BILL

MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS—DEBATE ADJOURNED

The Senate proceeded to consideration of the message from the House of Commons concerning 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

Tuesday, June 18, 2019

ORDERED,— That a message be sent to the Senate to acquaint Their Honours that, in relation 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, the House:

agrees with amendment 1 made by the Senate;

proposes that, as a consequence of Senate amendment 1, the following amendment be added:

"1. Clause 2, page 1: Add the following after line 15:

Indigenous peoples of Canada has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982. (peuples autochtones du Canada)";

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

"32 (1) During the fifth year after the day on which this section comes into force, a review of the provisions and operation of this Act must be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that is designated or established for that purpose, including a review of the impact of this Act on the environment, on social and economic conditions and on the Indigenous peoples of Canada.

(2) The committee referred to in subsection (1) must submit a report of the results of the review to the Senate, the House of Commons or both Houses of Parliament, as the case may be, on any of the first 15 days on which the Senate or the House of Commons, as the case may be, is sitting after the report is completed.".

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

That, in relation 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, the Senate:

(*a*) agree to the amendment made by the House of Commons to its amendment 2; and

(*b*) agree to the amendment made by the House of Commons in consequence of Senate amendment 1; and

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

The Hon. the Speaker: It is moved by Senator Harder seconded by Honourable Senator Bellemare:

That in relation 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 —

May I dispense? Did I hear a no? Do you want me to read the whole thing, Senator Mercer?

That in relation 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, the Senate

(*a*) agree to the amendment made by the House of Commons to its amendment 2; and

(*b*) —

Some Hon. Senators: Dispense.

The Hon. the Speaker: I have already heard a no on my request for dispense.

— agree to the amendment made by the House of Commons in consequence of Senate amendment 1; and

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

On debate, Senator Harder.

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I rise to speak to this motion that the Senate concur in the message received from the House of Commons in relation to Bill C-48, legislation to formalize the oil tanker moratorium on Canada's North Pacific coast in the areas of Haida Gwaii and the Great Bear Rainforest.

I would, again, like to thank Senator Mobina Jaffer for her dedication as sponsor of this bill.

The government has carefully considered the Senate amendment to Bill C-48. At our third reading debate, Senator Sinclair outlined the rationale underlying the amendment. He said:

> I too have concerns about the bill because it does constitute what appears to be an absolute ban on tanker traffic in an area, for good reason that might be applicable today, but I'm not so sure it will be applicable in the future. When it comes to how we can improve the bill, one of the options I want to talk to the chamber about is whether we might consider allowing for communities to change their minds at some point in the future and if they all agree that the ban should be lifted, then we would allow the bill to say so.

Senators, the government has now accepted this amendment in part, providing for a mandatory parliamentary review in five years. That review would take place at a committee of the House of Commons, the Senate or of both Houses of Parliament. The specified purpose of this parliamentary review will be to consider the impact of this legislation on the environment, social and economic conditions and on the Indigenous peoples of Canada.

In this past Parliament, the Senate has shown how fulsome and flexible our committee proceedings can be, including studies involving travel and multiple committees.

In considering the Senate amendment, the other place has decided not to initiate a regional economic environmental assessment within 180 days. On Monday, Mr. Terry Beech, the Parliamentary Secretary to the Minister of Transport, outlined the reasons for this decision in the other place. The main reason for the government's chosen approach is to give some respite and peace of mind to the people of the North Pacific coast, particularly the section 35 constitutional rights holders, in relation to the environmental integrity of their territory and their fisheries.

In past decades, these communities have experienced an extended and repetitive series of expensive and sometimes divisive consultations over essentially the same question of whether to accept heavy oil shipments in their region.

A non-comprehensive list of these reviews includes the Senate Transportation Committee study of C-48, in 2019; Transport Canada's consultations with committees and stakeholders, held in 2016 and 2017 prior to the introduction of Bill C-48; the Canadian Environmental Assessment Agency and the National Energy Board panel review of the Enbridge Northern Gateway Pipeline proposal, held between 2010 and 2012; the Natural Resources public review panel on the Government of Canada moratorium on the offshore oil and gas activities in the Queen Charlotte region of British Columbia, in 2004; the B.C. scientific review of the offshore oil and gas moratorium, in 2002; the joint Canada-B.C. West Coast Offshore Exploration Environmental Assessment Panel, in 1986; the federal West Coast Oil Imports Inquiry, in 1977 and the House of Commons special committee on environmental pollution, from 1970 to 1971.

As Mr. Beech noted in his remarks, it is also important to consider that many of these reviews were led by regulators and officials, not politicians. These reviews were scientific and technical in nature and did not resolve the fundamental political disagreement over this issue.

In support of the motion before us, Chief Marilyn Slett, President of Coastal First Nations, has indicated that the people she represents are currently suffering from what she described as "consultation fatigue." Chief Slett indicated her people desire the several years of calm and reflection afforded by this message. In addition, Chief Slett has expressed her gratitude to senators for the core idea in the amendment and the effort it represents to achieve greater consensus.

In five years, with parliamentary study required by the message before us, parliamentarians from both chambers will have the opportunity to hear again from experts, stakeholders and constitutional rights holders after a reasonable period of time in this context.

The House of Commons and Senate committees will then be able to make recommendations, including potentially proposing new legislation or regulatory changes based on that review.

On that point, I would also note that C-48 creates a government authority to amend the schedule of persistent oils through regulation. This could happen further to or outside of the proposed review schedule and would provide government with the flexibility to respond to any scientific and technological developments related to shipping, marine safety and spill response.

In addition, I would note on the government's behalf that the message before us also contains a Senate policy contribution to Bill C-69.

• (1530)

In that bill, as senators know, in the incidental honour of Wayne Gretzky, the government has accepted or modified 99 amendments. One of those proposals has similarly been added to this bill to provide greater legal clarity. The purpose of this change to Bill C-48 is to provide added certainty that the statutory definition of "Indigenous peoples of Canada" has the same legal meaning as the definition of "Aboriginal peoples" in subsection 35(2) of the Constitution Act, 1982. This is another Senate improvement to the bill. In that vein, I would add to the record my view that many senators have done work of the absolute highest quality in discharging their role in relation to this government bill.

In passing Bill C-48, I hope we will be able to keep in mind this government's policy is a piece of a bigger picture of the government's energy and environmental framework. In the government's view, economic development and environmental protection go hand in hand. Yesterday, the Prime Minister made a major announcement in relation to this economic and environmental policy. As you know, cabinet has now approved the Trans Mountain Expansion Project. This project will provide Canada's regional and national economies with greater access to tidewater for Canadian energy products, including access to global markets for oil from Alberta and Saskatchewan.

This project will create middle-class jobs across Canada, and the company plans to have shovels in the ground this construction season. The Prime Minister also indicated that every dollar the federal government earns from this project will be invested in Canada's clean energy transition.

As Canadians work to transition to renewable energy, it makes sense to transport Canadian oil by pipeline because it is safer and more efficient than rail. In addition to TMX, the government has supported two other pipeline projects for Alberta and Saskatchewan energy that will move Canada's oil resources to foreign markets. That is Line 3 and the Keystone XL to the United States.

The government believes these new oil pipelines, in concert with its other policies, will grow and support our national and regional energy economies. Within this suite of policies, the government strongly supports LNG Canada's now approved $40 billion liquefied natural gas pipeline to Kitimat in northern B.C. That project represents the largest private sector investment in Canadian history and will produce an economic boom for Canada's resource and construction economy, including many inland Indigenous communities and businesses.

As Senator Cordy told the chamber at second reading, the LNG pipeline will give Canada the fastest route to Asia for North American gas. This will allow Canadian gas to reach Tokyo from Kitimat in eight days versus 20 days from the United States Gulf. These LNG production, pipeline and marine terminal facilities will create approximately 10,000 jobs at the peak of construction.

Again, as Senator Cordy told this chamber, the project will eventually generate billions of dollars in direct government revenues. This investment in the energy sector will include hundreds of millions of dollars in construction contracts for Indigenous businesses.

In addition, this project will have the lowest carbon intensity of any large-scale LNG facility globally.

Geographically, the LNG pipeline will be located in the heart of the area affected by Bill C-48. People in the region largely support the LNG project and are excited that the project will help Asian markets get off coal and burn cleaner fuel, supporting international efforts to mitigate climate change.

Going forward, LNG will be a big part of the energy future of Canada.

As a final point on the government's policy to develop and export Canada's energy resources, I would reference what many witnesses at the Transport Committee, including the Government of British Columbia, saw as a compromise between energy interests in Alberta and the risk of a spill on the north Pacific coast; that is, that if lighter value-added petroleum projects can be refined in Canada, there is openness to opportunities in the Pacific north. North coast communities see refined products as a path forward.

While developing Canada's national and regional energy economies, the government has also put in place the strongest environmental policies in Canadian history. At the heart of these policies is the carbon tax. This is a financial incentive that will change consumer behaviour for the better. In fact, 70 per cent of Canadians will get more money back than they pay through the carbon tax. This incentive will contribute to people buying more efficient vehicles and travelling in ways that are better for the environment. The carbon tax is central to our national credibility as Canada takes an international leadership role in fighting climate change and mitigating the acceleration and mass extinction of the planet's animals and other life.

Bill C-69 is also a critically important piece of this overall goal, as Canada develops an environmental assessment process that respects economic and environmental interests.

The Senate has worked overtime in giving its thoughts to strike the right balance, again with the government having accepted or modified so many Senate amendments.

The government has taken other positive steps to protect the environment in this Parliament, including recently with Bill C-55 on marine protected areas and Bill C-68 with respect to the restoring of fish habitat and stocks. Again, that last bill was much improved by our work in the Senate.

Honourable senators, on behalf of the government, I thank you all for the excellent work that has been done to review Bill C-48. I ask you to support the motion before us to concur in the decision of the other place so that the policies in this suite can go forward together.

Hon. Douglas Black: Will Senator Harder take a question?

Senator Harder: Yes.

Senator D. Black: I noticed with interest, Senator Harder, that the government's principal rationale, it would appear, for extending a five-year period — let's say it could be reviewed in five years — of the tanker ban was that there was a concern for the "respite and peace of mind" of folks who live on the northern coast.

Senator Harder, what do you have to say and what does the government have to say in respect of the "respite and peace of mind" of the proponents of the Eagle Spirit Pipeline, which is now foreclosed, or Albertans who are seeking needed and additional access to Asian markets?

Senator Harder: Senator, I thank you for your question and your "persistent oil" on this subject.

Let me simply say that the existing moratorium is still in place. What we are doing is providing a legislative basis for that moratorium. The Government of Canada is continuing to support pipelines, as I indicated, with respect to both the United States and the TMX pipeline. We are seeking to achieve a balance that responds to the preoccupation of Canadians with respect to environmental integrity while at the same time ensuring the economic interests particularly of the natural resource sectors in Alberta and Saskatchewan can move forward. That is the balance the Senate is being asked to endorse, not just with this bill but with the other bills we have had and still have before us.

Senator D. Black: Thank you very much. I understand that is the balance the Government of Canada believes it can achieve through this, but, Senator Harder, it's now well-known to senators that the markets that Canadian energy needs to access are the Asian and Indian markets. While we are hopeful that Line 3 and Trans Mountain will advance, there is no certainty of that. We also know that just brings products to the Southern U.S.; that does not solve the essential problem confronting Alberta. All the tanker ban does, as I think we can all agree, is ensure that the ability to get Canadian energy to Asian markets is simply postponed, if not eliminated.

Senator Harder: That would be the case, senator, except you would know that the LNG market is, in fact, an Asian market. Let's not conflate the two. There is an openness, going forward with this major LNG investment, to achieve that.

Let's also acknowledge that the global oil market is somewhat fungible in the sense of displacing higher-intense carbon-emitting energy with lower-intense carbon-emitting energy. This is a policy going forward that seeks the balance, and that balance of this government is a policy choice I, for one, endorse.

Hon. Richard Neufeld: Would Senator Harder take another question?

Senator Harder: Certainly.

Senator Neufeld: I listened carefully. I didn't listen to all your speech, but Senator Black certainly covered the important parts about the moratorium.

• (1540)

Senator Harder, you referred quite a number of times to an LNG pipeline. Are you aware that it is not a pipeline? There are two parts to this. There is a pipeline that comes from northeastern British Columbia to the north coast, and then there is a plant that manufactures the LNG. What comes down in the pipeline is natural gas, not LNG. It's a matter of how you put those words forward.

Are you aware that it's not LNG that goes through the pipeline and it's actually natural gas and gets manufactured on the coast?

Senator Harder: I am indeed and I've —

Senator Neufeld: Don't wave your hands; he should be saying it right.

Senator Harder: I am indeed, senator. In fact, I have been party to corporate interests that have participated in the LNG market.

Hon. Yuen Pau Woo: Honourable senators, the last time I spoke on Bill C-48 was on the amendment of Senator Sinclair. I was pleased the amendment was passed in the Senate and that Bill C-48, as amended, was sent to the other place.

On Monday, we received the message from the other place, which accepted part of the amendment but not other aspects of it. I was disappointed that parts of the amendment we proposed were not accepted. I listened carefully and read carefully the explanations that were given by the government as to why they did not accept the amendment in its entire form.

I quote the Parliamentary Secretary to the Minister of Transport, Mr. Terry Beech. He says:

> . . . there is consultation fatigue, particularly among communities living in northern B.C. and with coastal First Nations, after many years of reviews and studies. . . .
>
> At the end of the day, many of the scientific questions about whether or not it is safe or advisable to move crude oil in tankers off this particular coast are endlessly debatable. There is no reason to believe that yet another lengthy and expensive study would bridge these differences of opinion, especially one starting so soon after the coming into force of Bill C-48. . . .
>
> At some point, a decision needs to be taken based on the best evidence available and using the best judgment of parliamentarians about what is fair and reasonable, taking into account the wider Government of Canada approach on energy and the environment and on reconciliation with First Nations.

Honourable colleagues, this is not a statement about more evidence to support the position the government has taken. It is not a statement about more evidence to refute the position that our amendment sought to put forward. It is a policy statement. It is a policy choice of the government, and policy choices, colleagues, are normative.

It is, of course, the right of the Senate and our duty to come up with alternate policy choices when we are given a bill from the government or any other source, and if we see an alternate policy choice to be preferable, to put that forward, as we have done in the amendment that we sent to the other place.

It is quite right for us, on policy choices, to voice our different opinion, but it is not clear to me that on differing policy choices we should insist on our choice if the government has given a different position.

This is especially true when we have an election coming up. The policy choice that the Liberals have made will inevitably become a platform choice. Indeed, it has already become a platform choice for the election to come. And so close to an election, I do not believe it is our job to interfere with what is essentially a policy and a platform choice of the government that will surely be contested vigorously by other parties.

This is why, colleagues, I am inclined to not insist on our amendment. I am inclined to support the motion of Senator Harder that we accept the message, we send the bill to Royal Assent and we let the government stand on this bill and its chances in the election to come.

Thank you.

Hon. David Tkachuk: I have a question.

The Hon. the Speaker pro tempore: Would you accept a question, Senator Woo?

Senator Woo: Yes, I will.

Senator Tkachuk: Senator Woo, I mentioned this in my speech, but did you not support the Northern Gateway pipeline project which went through the Port of Kitimat?

Senator Woo: I have supported the access to tidewater for many years in order for our stranded assets to be able to find markets, other than in North America, so that they can capture greater premiums which they are not currently capturing by exporting only to the United States.

Senator Tkachuk: When you were appointed to the Senate, there was some controversy about the fact that Nathan Cullen, who was a member of Parliament at that time, was critical of your support for Northern Gateway. Were you not a supporter of the Northern Gateway pipeline before you were appointed to the Senate and especially before this particular bill? Yes or no?

Senator Woo: I have always supported access to tidewater, but as we all know, colleagues, the feasibility of any one pipeline is a function of a number of other pipelines going to the coast and also a function of overall supply of oil to the global market.

The oil market is changing very rapidly. Barely 10 years ago, I remember the debate in energy among energy economists. It was whether we were reaching peak oil supply. Today we are debating whether we have approached peak oil demand. I do not know if, in fact, peak oil demand has arrived. However, I do know that any proponent of a second pipeline to the West Coast will have to look seriously at the feasibility of that project now that it appears TMX will go ahead.

Senator D. Black: Would Senator Woo take a question?

Senator Woo: Yes, of course.

Senator D. Black: I suppose we could have debates around what we heard at the Transport Committee. I think it is a conclusion, as indicated by the Associate Deputy Minister of Transport, that to support this tanker ban, there is scientific evidence. And there is no comparative tanker ban in the world, and certainly not in Placentia Bay, the Bay of Fundy or any other place in Canada.

I assume from your comments, Senator Woo, that the best available evidence you are relying upon is "consultation fatigue."

Senator Woo: I'm afraid, Senator Black, you misunderstood my comments. I support the amendment that would have allowed for a regional assessment to look at the environmental, economic and social impacts of tanker traffic and related activities off the coast of the northern B.C. That would have been my preferred approach.

I said in my remarks a little while ago that the message from the other place does not present fresh evidence that a tanker ban is justified. It does not provide fresh evidence that we should lift the tanker ban. It simply states a policy preference.

The government has said, "We have so much information out there, our constituents are tired of information and this is the decision we are going to take." We can disagree with the decision, but it is the policy choice of the government.

There is an election coming in a few months. This has already become a burning election issue. Let them stand on it. We should not stand in the way of a policy choice that the government has made because they are the elected government.

Senator D. Black: That's an interesting philosophic conversation you have launched. I would simply say to that: Even if the policy is wrong, Senator Woo?

Senator Woo: That's where we can have an interesting discussion and debate because there is some evidence, as was highlighted by Senator Harder's speech. There have been a number of studies going back, I believe, to the 1970s, to suggest that an oil tanker spill could be devastating for the region.

You will recall from my own speech on the amendment to Bill C-48 barely two weeks ago that I described the risk of a catastrophic oil spill as equally hypothetical to the risk of stranding assets from northern Alberta because both were imaginary at this stage.

• (1550)

I still hold that position. The government has decided that they think the risk of an oil tanker spill is real. They want the moratorium to be in place. This is a policy choice that they have made. This is their right. I wish we had more evidence. I wish the government would take the time and effort to collect more evidence before putting in place a permanent ban, but this choice they made is for them to be responsible for, and we should not stand in their way.

Hon. Scott Tannas: Senator Woo, one last question. Given what you have said — and I find it has reason; the election is coming, and nothing will happen between now and the end of an election — would it be reasonable for us to expect, then, assuming there is a change of government and we have a government that is also proposing to repeal it, that you would stand in your place and support that?

Senator Woo: Senator Tannas, I said in my speech that it is the job of the Senate to consider alternate policy choices, to debate those policy choices, and sometimes to put forward those alternate policy choices to any government bill that comes before us.

If a new government were to have in its platform that it wants to repeal this bill, they are entitled to do so. When the bill comes here, it is still our job to challenge that bill, as we have challenged Bill C-48. But if we get to the stage after third reading, after amendments, and the government of the day says, "This is my preference" and it doesn't violate the Constitution, it does not violate minority rights and it is not egregious in its treatment of minorities and other constituencies, we should yield to the view of the government.

Hon. Dennis Glen Patterson: I would like to ask Senator Woo a question. May I?

Senator Woo: Of course.

Senator Patterson: Senator Woo, it's interesting that you should talk about minority rights and infringing on those rights because when you and I debated Bill C-48 some weeks ago, I think there was a respectful difference of opinion about my amendment and my attempt to protect the rights of the Indigenous rights holders, the Nisga'a Nation. I suggested that Senator Sinclair's proposed amendment was not acceptable to the Nisga'a, and I believe you expressed some doubts about that.

Are you aware of a letter sent June 13 to Senator Sinclair from President Clayton of the Nisga'a Nation rejecting the amendment, saying it does not address any of the critical issues the Nisga'a Nation has continued to raise? She rejected the non-derogation clause and went on to also ask that proposed section 3.2 of Senator Sinclair's amendment be removed entirely, as it reflects unconstitutional infringement of Indigenous rights.

Senator Woo: I have not seen that letter. What I am aware of is that there is some disagreement about whether the treaty rights of Nisga'a would in fact be violated by this ban insofar as they deal with activities that some have argued are outside of the scope of the treaty.

I am happy to defer to the experts who have articulated this view. I know that if the Nisga'a feel strongly that their rights are in fact being violated, they will pursue legal action on this matter. I believe they have said they would do so. We should watch that case very closely to make sure that, in fact, their rights are not violated.

Hon. André Pratte: Honourable senators, as you know, the House of Commons has rejected the heart of the Senate's amendment to Bill C-48, the oil tanker ban bill. Let me remind you that this amendment was composed of three parts: a regional assessment as provided by the new impact assessment act, Bill C-69, to be launched six months after entry into force, the terms of which would have been negotiated by the federal government, the Governments of B.C., Alberta and Saskatchewan and the concerned First Nations; two, a five-year parliamentary review; and three, a non-derogation clause to affirm and protect Indigenous rights. The government has accepted the non-derogation clause and the parliamentary review but rejected the regional impact assessment.

Non-derogation clauses are significant but standard in federal legislation that affect Indigenous peoples. A lack of one in Bill C-48 appears to have been a glaring omission. As many of you know, parliamentary reviews have one major flaw: They may not be held at all, even if they are required by law. Five years is a long time, and parliamentarians may simply lose interest in a particular issue.

Furthermore, in the context of Bill C-48, a parliamentary review could not yield the scientific evidence and the extensive consultation provided by an impact assessment.

The regional assessment was the crucial part in the amendment moved by Senator Sinclair. Its appeal was due to the fact that it promised to fill a void noted by many witnesses in committee, that rigorous evidence is missing.

Why does the northern coast of B.C. warrant greater protection than other coasts in Canada? Is the area more susceptible to tanker disasters than other navigable waters? To what extent does modern technology reduce the risks of an oil spill? Are there other ways to protect the northern coast of B.C. besides an outright ban? These are some of the questions that a regional impact assessment would have provided solid answers to.

The tanker ban is a radical policy, an axe where a scalpel was required. It pits one region of the country against another, and in my view, ignores the national interest, which consists of protecting the environment, yes, but also of providing our natural resources and access to world markets. The national government's challenge is to find a balance, not to put all its weight on one side of the equation.

Some would say that yesterday's decision regarding the Trans Mountain pipeline resolves the matter. I disagree. Trans Mountain, if it is built in a timely manner, will obviously help, but it is neither a final nor a sufficient response to the problem of Canada's landlocked natural resources.

Because a majority of senators believe that Bill C-48 was not a balanced piece of legislation and would be harmful for the country, we searched for compromises acceptable to senators from all regions, notably to Indigenous senators. Some proposed a corridor. The government said no. Some proposed a sunset clause. The government rejected that.

Finally, we proposed a regional impact assessment. This amendment should have appealed to the government. First, it allowed the ban to go forward. Second, regional assessment, as proposed by Senator Sinclair's amendment, would help reconcile the concerned First Nations, federal government and provinces involved in the present dispute.

Finally, the concept of regional assessment originates in the government's own Bill C-69.

[*Translation*]

Let's be clear about what the situation was one week ago when Senator Sinclair came up with this amendment. If not for the amendment, it seemed very likely that Bill C-48 would be defeated in the Senate. The government wouldn't have been able to pass its bill banning tankers on British Columbia's north coast.

Honourable colleagues, in view of all this, I must say that I feel some frustration today, to put it mildly. However, the issue today is not about how we channel our collective disappointment. Our decisions must be based on reason rather than emotion. Should we insist on our amendment? What are the consequences of our decision in this matter?

[*English*]

The government has provided several reasons for its decision. Most are technical in nature and could have been easily overcome; political will can move mountains.

The government also says that the Coastal First Nations were consulted and that they suffer from review fatigue regarding the tanker ban, that they deserve a break and some peace of mind. I'm quoting.

With utmost respect, it is difficult to comprehend how our compromised proposal, which would have allowed the tanker ban to go ahead, would have disrupted First Nations' peace of mind more, for instance, than the next election. The tanker ban, because it is a very controversial policy, will always be subject to a certain level of political uncertainty.

• (1600)

Many of us believe, and this is the government's position, that the Senate should almost always defer to the House of Commons when legislation reflects a commitment made during an election campaign. This position is based on the Salisbury Convention with which you are familiar.

I would note two things. One, the modern applicability of the convention has been challenged in Canada but also in the United Kingdom. Things have changed considerably since The Salisbury-Addison Convention was concluded in the 1940s. For instance, the executive branch is much more powerful than it once was. Also, as Lord Strathclyde noted in 1999:

> . . . the House [of Lords] of the Salisbury convention does not exist any more.

The same could certainly be said of the Senate of Canada.

Lord Rippon of Hexham stated:

> The doctrine . . . [the Salisbury doctrine] . . . should apply only where . . . a party has made its policy perfectly clear at a General Election.

This is at issue here. The tanker ban was not mentioned in the Liberal's national platform. The commitment was made in British Columbia but was rarely mentioned in other parts of the country. Therefore, it cannot be said that Canadians as a whole voted in favour of a tanker ban on the northern coast of B.C. This election commitment is not equal to cannabis legalization or infrastructure spending. The government's mandate on this matter is unclear and weak.

[*Translation*]

A year ago, we were in a very similar situation during the debate on Bill C-45, the cannabis legalization bill. The Senate proposed a number of amendments, including one about home cultivation that many of us felt was particularly important. The government rejected the amendment, and we found ourselves facing the same dilemma: Should we insist on the amendment or not? I'd like to quote what I said back then:

> . . . we should examine everything we do with the lens of the Senate's reputation and credibility. The Senate's credibility is fragile, as you know. The serious work done on Bill C-45 . . .

— and the same certainly applies to Bill C-48 and Bill C-69 —

> . . . has contributed to its enhancement, but any faux pas at this stage could risk the modest gains that we have made. Insisting should be reserved for relatively rare cases where the issue is of special importance related to our constitutional role, where we are prepared to lead a serious fight and see its completion, when a significant part of public opinion is or could be on our side, although there could be exceptions, and where there are realistic prospects of convincing or forcing the government to change its mind.

[*English*]

Honourable senators, I humbly submit these are four criteria which may guide us in such a situation. Let us apply these criteria to the present case.

One: Is this issue of special importance related to our constitutional role? To this, I answer "yes" without hesitation. The proposal for a tanker ban has become a national unity issue. Two regions of the country are at loggerheads. The Senate can and should take action. In addition to the interests of regions, national unity and the protection of our Constitution is unequivocally part of our mandate.

Two: Are we prepared to lead a serious fight and see its completion? In my mind, insisting once and folding the second time around is a waste of time and energy. When we decide to insist on an amendment, we should be ready and willing for a long fight with the House of Commons. Although I do sense that many are disappointed by the government's intractability, I have not heard many yet say we should resort to heavy artillery.

Three: Could a significant part of public opinion be on our side during a confrontation with the other place? This is crucial because it determines (a) whether we can win such a tug of war, and (b) whether the legislative impasse will help or hurt the Senate's reputation. In the present case, frankly, I doubt that a majority of Canadians would follow us. Most would see in a clash between the Senate and the House of Commons another example of the unelected upper house's abuse of power. The only effect of that would be to damage the Senate's reputation.

Four: If we don't have public opinion on our side, we will not convince cabinet to change its mindset. We have tried to convince the government with reason and have appealed to compromise. The exercise has proven fruitless.

Only the prospect of a fall in the polls could persuade them to take a different road. I believe this will not happen with Bill C-48. It is the Senate that will lose points in the polls.

Although it pains me to arrive at this conclusion, the tanker ban bill fails on three of the four criteria I set out last year.

Honourable senators, the temptation to thump our fists on the table is strong. But when we vote on such a serious issue, we should put our emotions aside and follow the voice of reason.

[*Translation*]

In French, there are two different words for compromise. The first, "compromis," is honourable and essential. The second, "compromission," means an arrangement made out of cowardice or pure self-interest. "Compromission" means compromising your principles.

Having already agreed to make several compromises on Bill C-48, are we now at the point of compromising our principles? Of accepting the unacceptable? I don't think so.

Don't forget that in five years, we will be undertaking a parliamentary study of the oil tanker ban on B.C.'s north coast.

Furthermore, thanks to the efforts of the Senate, Indigenous rights are clearly asserted and protected in this bill. These may be modest gains, but they exist, and that in itself is significant.

[*English*]

I am not in agreement with Senator Harder's amendment. It is an amendment which takes out the heart of the Senate's amendment — its most important part. However, I am also convinced that although I do not like this conclusion, I believe it is unassailable that the Senate should not insist on the main amendment that it put forward. As I outlined earlier, I'm firmly convinced that the Senate would not prevail in such a confrontation with the other place.

I was appointed to the Senate to defend my region while taking into account the national interests — to protect minorities, to promote and guard national unity, of course — but I was also appointed to the Senate to participate in Senate reform. When the Prime Minister called me three years ago to discuss my appointment to the Senate, I only asked him one question: "Will the new senators be independent?" He answered, "Yes, absolutely."

Senator Plett: "As long as they vote my way."

Senator Pratte: I understood this to mean that I could and I should vote my conscience.

Today, both my conscience and my convictions regarding Senate reform lead me to the same conclusion, even though I am still convinced that the government wasted an extraordinary opportunity when they rejected the "Sinclair compromise." I am also certain that the Senate reform project, to which we are all participating, could be weakened, if not at risk, by an ill-advised and prolonged confrontation with the other place.

A day will come, honourable senators, when this Senate will take the extraordinary step of seriously engaging in a clash with the other place. A day will come when one particular issue will appear so important in the eyes of the house of sober second thought that we will be determined to wage such a historic battle. A day will come; I'm convinced of this. However, honourable senators, this is not the day. Thank you.

Hon. Percy E. Downe: Honourable senators, when there are contentious bills like this one before the Senate, there is often a view afoot that if the Senate exercised the powers it was given at Confederation in 1867 to defeat government legislation, it would either be a major crisis or certainly an affront to democracy.

It has been repeated over and over that it is not the role of the appointed upper chamber to block legislation passed by the elected House of Commons, especially when it is legislation for which a government has an explicit election mandate.

• (1610)

This would be important if it were historically true, but in the Senate, between 1867 and 2015, 129 common bills were defeated, 50 of which were government bills. Many more government bills during that period were held up in committee or died on the Order Paper and were never allowed to advance to a vote.

Notwithstanding the Senate's refusal to pass government bills, the country has not had a constitutional crisis or collapse of our parliamentary system. Bills have been defeated in the Senate even when the government had an explicit election mandate.

For example, in the 1993 federal election, then Opposition Leader Jean Chrétien said that, if elected, he would cancel the planned changes made by the previous government regarding Toronto Pearson Airport. Mr. Chrétien promised during the 1993 election an independent review of the Pearson redevelopment project. He said during the campaign:

> I'm warning everyone if we become the Government, it will be reviewed and if legislation to overturn the deal is introduced, we will pass the legislation.

What happened? Mr. Chrétien won the 1993 election and became Prime Minister; he reviewed the deal; it was decided that legislation was needed; legislation was introduced in the House of Commons and passed but was defeated in the Senate of Canada — notwithstanding the clear election promise and the mandate Prime Minister Jean Chrétien received from the Canadian public by winning the 1993 election. That was as clear an election promise as you can make, and still the Senate defeated the legislation.

Maybe the words of Canada's first Prime Minister were top of mind for the senators who defeated that legislation. As we all know, Sir John A. Macdonald said:

> There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatsoever were it a mere chamber for registering the decrees of the Lower House.

What happened after the Pearson Airport agreement, Bill C-28, was defeated? The government was upset and annoyed, but Canada did not fall into chaos.

It has also been repeated that senators can't — and should not — vote down any government bill they dislike simply because of differences of ideology or politics, because it is not the job of the Senate to block the democratic will of the voters.

Well, colleagues, tell that to the women of Canada when restrictive abortion legislation was defeated in 1991 by the Senate of Canada after passing in the House of Commons. The government of Prime Minister Brian Mulroney had the legislation passed in the House of Commons, but it was defeated in the Senate.

It is also worth noting that the Conservative women senators who voted against the legislation were all appointed to the Senate by Prime Minister Mulroney — the Prime Minister who was trying to get the legislation passed. The Senate said "no" to the House of Commons, and some members of a partisan political party caucus stood their ground and voted the way they believed was correct. That, colleagues, is what a real independent Senate looks like.

Hon. Senators: Hear, hear!

Senator Downe: What about other examples in the history of Canada and of the Senate when the Senate could have voted differently but chose not to? One example, among many, that comes to mind is the War Measures Act during the FLQ crisis.

Did the Senate make the correct decision at the time or just the popular one, and did the Senate fail to exercise its responsibilities?

Faced with intense public pressure, I understand why senators voted as they did; however, senators, like judges, who have tenure until the age of 75, have job security for a reason: to vote without fear or favour.

Colleagues, notwithstanding the public pressure, we have to ask ourselves the question: Is the Canadian Senate here to go along to get along, or is it here to have votes and decisions to stand the test of time?

During difficult moments in the life of our nation, how important is it for the Senate to stand its ground in the face of successive governments urging quick passage of their legislation? Governments always want their legislation passed, and passed quickly. Promises are made to address problems at a later date, but I always wonder why we would pass up the opportunity to fix problems now.

In addition to defeating government bills, the Senate over the years has simply delayed bills and not allowed any votes to occur. Some bills would not be sent to committee; some bills in committee would never come out; and some bills were never allowed to have a final vote.

Before the rules were changed in recent years, this was much easier to do. For example, when Allan J. MacEachen was the Senate Liberal leader in the 1980s and 1990s, bills were held up on a variety of topics, including merging the Canadian Council and the Science and Humanities Research Council, and the redistribution of Commons seats for the 1997 election. These bills were abandoned by the government due to opposition in the Senate.

Also, a major bill on unemployment insurance died in the Senate, and a new transportation act never advanced because of opposition in the Senate — again, no vote.

Added to this list of bills that were held up are laws on drug patents, refugees, copyrights and energy initiatives; the list goes on and on. The most famous of these is when the Senate refused to proceed with the vote on the Canada-U.S. Free Trade Agreement until after the federal election. When it became an issue in the federal election, the government won and the Senate immediately passed it.

After the clear election mandate, the Senate passed the bill. Given that we are currently less than 100 days to the call of the next election, it could be argued that we should ask the government to receive a mandate from Canadians for Bills C-48, C-69 and others.

Some Hon. Senators: Hear, hear.

Senator Downe: Colleagues, it's the easiest populist statement to make in Canada to be critical of the appointed Senate. The question is asked: How dare they? And fill in the blank.

However, some day Canadians may elect a Prime Minister with the same character and traits as the current U.S. President Donald Trump, at which point Canadians may look for the counterbalance that the Fathers of Confederation wanted the Senate to perform, and wonder why the Senate has been neutered by the recent precedent of not defeating government bills, and has become nothing more than a rubber stamp.

I mentioned earlier a quote from John A. Macdonald:

> There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. . . .

The key words for me are "when it thought proper." That is a decision that each individual senator has to determine on every vote and every bill. I wanted to add historical context to that discussion with these remarks. Thank you, colleagues.

Hon. Leo Housakos (Acting Deputy Leader of the Opposition): Honourable senators, I'm pleased I didn't take the adjournment at the time and that Senator Downe got to speak.

We're not often on the same page on votes, but we are on the same page in terms of the role of this institution. Now I would like to take adjournment of the debate.

(On motion of Senator Housakos, debate adjourned.)

ACCESS TO INFORMATION ACT
PRIVACY ACT

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS AND NON-INSISTENCE UPON SENATE AMENDMENTS—DEBATE

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts

Tuesday, June 18, 2019

ORDERED,— That a Message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts, the House:

agrees with amendments 1, 2, 4, 5(b), 6, 7, 8(b), 9, 10, 11, 13, 14(b), 15(a), (b) and (d), 16, 17, 18, 19 and 20 made by the Senate;

respectfully disagrees with amendments 3 and 12 because the amendments seek to legislate matters which are beyond the policy intent of the bill, whose purpose is to make targeted amendments to the Act, notably to authorize the Information Commissioner to make orders for the release of records or with respect to other matters relating to requests, and to create a new Part of the Act providing for the proactive publication of information or materials related to the Senate, the House of Commons, parliamentary entities, ministers' offices including the Prime Minister's Office, government institutions, and institutions that support superior courts;

as a consequence of Senate amendment 4, proposes to add the following amendment:

1. New clause 6.2, page 4: Add the following after line 4:

"6.2 The portion of section 7 of the Act before paragraph (a) is replaced by the following:

7 Where access to a record is requested under this Act, the head of the government institution to which the request is made shall, subject to sections 8 and 9, within 30 days after the request is received,".

proposes that amendment 5(a) be amended to read as follows:

"(a) on page 5, delete lines 31 to 36;

(a.1) on page 6, replace line 1 with the following:

"13 Section 30 of the Act is amended by adding the";";

as a consequence of Senate amendment 5(a), proposes to add the following amendments:

1. Clause 16, page 7: Replace line 37 with the following:

"any of paragraphs 30(1)(a) to (e), the Commissioner".

2. Clause 19, page 11: Replace line 28 with the following:

"any of paragraphs 30(1)(a) to (e) and who receives a re-".

proposes that amendment 8(a) be amended by deleting subsection (6);

proposes that amendment 14(a) be amended by replacing the text of the English version of the amendment with the following: "the publication may constitute a breach of parliamen-";

respectfully disagrees with amendment 15(c) because providing the Information Commissioner with oversight over proactive publication by institutions supporting Parliament and the courts has the potential to infringe parliamentary privilege and judicial independence.

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

That, in relation to Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts, the Senate:

(*a*) agree to the amendments made by the House of Commons to Senate amendments, including amendments made in consequence of Senate amendments; and

(*b*) do not insist on its amendments to which the House of Commons has disagreed; and

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

He said: Honourable senators, I rise to speak to the message concerning Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts.

First, I want to thank the Standing Senate Committee on Legal and Constitutional Affairs for their very thorough and careful study of this legislation, and to Senator Ringuette, the bill's sponsor, who played such an important role in the Senate's consideration of this matter.

• (1620)

When the Access to Information Act came into force in 1985, it marked a significant advance in the openness and transparency citizens expect of their government in modern democracy and the belief that, ultimately, information held by federal institutions belongs to the people it serves. However, the Access to Information Act has not been amended in any substantial way in over 30 years.

Through Bill C-58, the government has sought to strengthen the administration of the Access to Information Act by giving additional powers to the Information Commissioner, providing proactive disclosure and ensuring the act is more regularly reviewed.

A new Part 2 of the act would make government open by default, enshrining in law the proactive publication of a wide range of information. The bill would provide the Information Commissioner with the long-sought authority to order a federal institution to disclose records in response to an access request. It would enable and, in some cases, compel communication between the Information Commissioner and the Privacy Commissioner, helping to maintain an appropriate balance between Canadians' right to access and the right to protection of their personal information.

However, as honourable senators are aware, a range of stakeholder perspectives, including academics, legal professionals, Indigenous organizations and concerned citizens, expressed their views that Bill C-58 as it was originally drafted would not fulfill its intended objectives. The Honourable Scott Brison, the former President of the Treasury Board, appeared before our Standing Senate Committee on Legal and Constitutional Affairs on October 3, last year, expressing openness to Senate amendments that would improve upon certain areas of the bill. That commitment was reaffirmed in correspondence sent to the committee by the then Treasury Board President on February 25 of this year.

The committee undertook an extensive and wide-ranging study, proposing a total of 20 amendments while providing detailed observations on various elements of the bill and the Access to Information system as a whole. The government will be carefully reviewing the committee's observations, particularly as it undertakes future reviews of the act as intended in the act itself.

I am pleased to report that the government has agreed to accept the vast majority of amendments, 16 in total, while respectfully declining 4.

Of great importance to many here, the government accepted Senate amendments concerning the determination of questions of privilege in the Senate. The government acknowledged that their intention was not to alter the procedure by which the Houses of Parliament determine questions of privilege, nor was it to affect the privileges enjoyed by both houses and their respective members.

In accordance with precedents established in the Senate and with relevant provisions of the *Rules of the Senate* being applied, the Speaker will be required to hear debates on questions of privilege and senators retain their ability to appeal a Speaker's ruling in accordance with our Rules.

The government has also accepted Senate amendments that would eliminate the government's authority to set and collect fees apart from the application fee, which the government has committed to maintain at a nominal $5.

Our committee held that providing the Information Commissioner with the authority to order the release of government information needed to include strengthened provisions for privacy. The committee adopted an amendment that the Information Commissioner must consult the Privacy Commissioner before ordering the release of personal information that was withheld by an institution under the personal information exemption. The government accepts this important Senate amendment.

The government also accepted other Senate amendments that would enhance communication between the Information and Privacy Commissioners, further strengthening the protection of personal information. Those amendments were suggested by both the Information and Privacy Commissioners as part of a joint submission.

The government also accepted a Senate amendment requiring government institutions to continue to publish information about their organization, records and manuals through Info Source. Info Source is an important tool for Canadians seeking to understand what information is being collected by government and where within government that information resides.

Another Senate amendment involved access requests that are vexatious, made in bad faith or are an abuse of the right of access. In 2017-18, for the first time, the government received over 100,000 access to information requests. Unfortunately, a small but not insignificant proportion of those were made for reasons inconsistent with the purpose of the act.

The government agrees with the committee's contention that the authority given to heads of institutions to seek the Information Commissioner's approval to decline to act on a request should be a very narrow one. The government has accepted Senate amendments to limit this authority to requests that are vexatious, made in bad faith or are an abuse of the right of access. That new authority will help to ensure institutions are able to focus their efforts on legitimate requests.

A key element of Bill C-58 is the order-making power it would bestow on the Information Commissioner — the authority to make binding orders regarding the processing of requests, including the release of records. The commissioner would be able to publish those orders, establishing a body of precedents to guide institutions as well as users of the system.

Further, the government accepts the Senate amendment that would grant order-making power to the Information Commissioner immediately upon Royal Assent to Bill C-58.

The bill, as originally tabled, would have delayed the introduction of this order-making power for a year after Royal Assent. That was intended to provide the commissioner time to prepare to assume this power. The commissioner has said that she is ready to go and asked that this power be made available immediately upon Royal Assent.

Whereas the Information Commissioner must now go to court if an institution does not follow her recommendations, Bill C-58 puts the onus on institutions — should they disagree with an order by the Information Commissioner, institutions will have 30 days to challenge the order in Federal Court.

Bill C-58 would also require proactive publication of expenses reimbursed to individual judges of the superior courts. The objective of the regime was to carefully balance public expectation of enhanced transparency in the administration of judicial expenses, while also respecting the fundamentally important principle of judicial independence. To that end, a broad exemption for judicial independence was included to act as a safeguard against any possible infringement of judicial independence.

That being said, it was clear from testimony before the Standing Senate Committee on Legal and Constitutional Affairs — including representatives of the judiciary, legal profession, as well as legal scholars — that the publication of individual judicial expenses gives rise to serious concerns in relationship to judicial independence.

Despite the broad exemption included in the bill as originally drafted, many felt that focusing on individual judicial expenses left judges too exposed to unfair criticism and posed too great a risk. The amendment adopted in committee, through the leadership of our colleague Senator Dalphond, replaces the requirement for the proactive publication of individual judicial expenses with an aggregate model of publication.

The government accepts this Senate amendment, agreeing that it will serve to remove concerns about judicial independence in all but the most exceptional circumstances.

As Senator Dalphond noted in a press release on this matter on June 12 of this year:

> This amendment eliminates a black hole that existed in the original draft of Bill C-58 . . .

Furthermore, he stated the amended bill will provide:

> . . . a good balance between the objective of transparency and respect for judicial independence.

The government also accepts a Senate amendment that would address serious concerns raised by witnesses from Indigenous organizations as well as the Information Commissioner and other stakeholders.

As originally tabled, Bill C-58 contains provisions designed to speed up the system by requiring those requesting information to identify the precise subject matter, type of record and period for the record being sought.

That is an example of a well-meaning principle having unintended consequences.

Indigenous organizations advised the committee that these provisions could create barriers to their access rights where records often go back decades, sometimes centuries.

It is unreasonable to request a specific subject, type of information and time period under such circumstances. The government agrees and has accepted the Senate amendment that would eliminate this requirement. The government wants to ensure that Indigenous peoples are able to access the information they will need to support land claims, for example, or seek redress for past wrongs.

Witnesses representing Indigenous organizations who appeared before the committee also expressed concern that they had not been appropriately consulted in the development of Bill C-58. Correspondence from Treasury Board President to the Senate Legal and Constitutional Affairs Committee, which I referenced earlier, made specific commitments to engage Indigenous organizations and representatives in exploring how the Access to Information Act could be amended in the future to better address Indigenous concerns. As with all engagement with First Nations, Inuit and Metis nations, the minister committed to work in consultation and collaboration with them going forward. That such concerns are heard and addressed underscores the importance of reviewing legislation on a regular basis, a commitment that is now legislated in this legislation. Bill C-58 would require the minister to undertake a review of the operation of the act every five years, with the first review to begin within one year of Royal Assent.

• (1630)

To bolster the effectiveness of these reviews and eliminate any perception of the conflict of interest, the committee amended Bill C-58 to require that the reviews also be undertaken by committees of both Houses of Parliament. This would enable a full and wide-ranging discussion on the broad issues that, as we have seen, arise when dealing with access to information. The government agrees with this Senate amendment, as this will provide an additional layer of review that will benefit from the expertise of our respective parliamentary committees.

The government has respectfully declined to accept some Senate amendments for technical reasons or on the grounds that they require further study to ensure any potential for unintended consequences is identified and addressed. For example, the government has declined a Senate amendment that would create a new criminal offence for the use of any code, moniker or contrived word or phrase in a record in place of the name of any person, corporation, entity or third-party organization.

The government advises that the criminal offence provisions of the Access to Information Act were not the subject of consultation or study in the development of this bill. As a consequence, consideration of changes to those provisions should more properly take place in the context of the full review, especially considering the heavy penalty if one is found to be guilty.

Another Senate amendment would have limited the extension of time to respond to requests. Under the current act, in certain circumstances, the head of an institution can notify a requester that additional time is needed to fulfill their request. If an extension of more than 30 days is taken, the head of the institution must notify the commissioner that this is happening. The Senate amendment states that the approval of the commissioner would be required for extensions longer than 30 days. This could mean over 11,000 new requests being sent to Office of the Information Commissioner every year.

The government believes that a change of this magnitude requires further study and consultation with the Office of the Information Commissioner to consider the implication for her office, and therefore respectfully declines the Senate amendment. Given that the bill has been amended to require that reviews of this act be conducted by committees here and in the other place, the Senate will have an opportunity to study this and other issues in the very near future.

Since the rejection of this amendment has the effect of leaving the existing regime for time limits in place, the commissioner's authority to receive and investigate complaints regarding time limits needs to be retained. Thus, the Senate amendment to eliminate this authority is also declined.

The government has also declined a related Senate amendment that would have removed the commissioner's authority to accept and investigate complaints related to waiving of fees. The government has indicated that the commissioner could continue to have oversight over the way institutions exercise the authority to waive fees.

A Senate amendment that would require the Information Commissioner to review the operation of the proposed Part 2 of the act and report the results to Parliament on an annual basis has also been declined. The government holds that such a provision would create the potential to infringe on both parliamentary privilege and judicial independence. In any case, the government notes that concerns in this regard are largely addressed by the fact that individuals can continue to access documents published under Part 2 by making a request under Part 1. They can also request any supporting documents related or published under Part 2. The commissioner will have oversight over the records released in response to those requests.

Finally, the government has respectfully declined the Senate amendment to provide the Information Commissioner with the capacity to file orders in the Federal Court and have them enforced as Federal Court orders. The government feels that enabling the commissioner to file an order with the Federal Court is not needed in the scheme set out in Bill C-58. The Information Commissioner's orders are already binding and the bill already sets out an avenue of recourse to the Federal Court if an institution has serious concerns with an order.

In closing, I would reiterate that the government has listened carefully to the work of this chamber, has accepted the vast majority of the Senate amendments, including those which I would characterize as the most important in addressing shortcomings that were identified by the committee. In the end, we have a bill that has undergone sober reflection. Our Legal and Constitutional Affairs Committee has done incredible work in this regard over a long period of time. I would urge honourable senators to agree with the message from the other place, as this legislation reflects the next step in making the access to information regime more effective for and responsive to Canadians' interests.

Some Hon. Senators: Hear, hear!

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, I rise to speak to the message from the House of Commons concerning Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts.

I must admit that I am extremely disappointed and surprised that the Liberal government rejected the amendment on obstructing the right of access to information that I had proposed to the Standing Senate Committee on Legal and Constitutional Affairs. This amendment had been adopted by the Senate and sent to the House of Commons.

By moving forward with this amendment, the Senate was correcting a defect in relation to the offence of obstructing the right of access to information, which has been part of the act since 2009. This is a defect that could interfere with the Information Commissioner's work. The amendment not only improved the Access to Information Act to prohibit the use of codes and other ruses to interfere with the application of the act, but it also protected the access to information mechanism from techniques used to evade information requests.

The only reason provided in the government's response is based on the strategic objective of the bill. What was the strategic objective of this bill? As the President of the Treasury Board testified when he appeared before the committee, Bill C-58 was meant to fulfill the Liberal government's election promise to make the access to information regime more transparent and to widen the scope of government information Canadians are entitled to have access to.

We were also told that Bill C-58 would make access to information more efficient. During the 2015 election campaign, Justin Trudeau said, "We will make government information more accessible."

The mandate letter for the President of the Treasury Board called on the office holder to, and I quote:

> . . . enhance the openness of government . . . and that the Act applies appropriately to the Prime Minister's and Ministers' Offices . . . .

Furthermore, the President of the Treasury board testified that this bill would give the Information Commissioner greater powers.

However, I would remind you, honourable senators, that during the study of the bill, Canada's major media outlets brought to light some disturbing and troubling facts. In the midst of the Norman scandal, the *National Post* and all of the other

major media outlets revealed that military staff at the Department of National Defence had used code names to refer to Vice-Admiral Norman in email and other communications.

Hiding behind the Norman scandal was another equally worrisome scandal, the use, for sinister purposes, of code names, nicknames or other aliases instead of Vice-Admiral Norman's actual name in order to make it harder to search for documents about him when access to information requests were submitted.

The strategy involved using nicknames or code names, so that communications about the Vice-Admiral could not be found.

More specifically, according to a January 29, 2019, Global News report, Marie Henein, Vice-Admiral Norman's defence lawyer, presented to Justice Heather Perkins-McVey of the Ontario Superior Court a list of code names that her team of lawyers had managed to obtain through access to information requests. They included "The Kracken," "The Boss," "C34" and others.

The objective of these dubious tactics could only be to block or hinder access to documents and communications dealing with Vice-Admiral Norman and to undermine the effectiveness of the system.

As stated during the preliminary inquiry by a military member whose name is protected by a publication ban, officials at the Department of National Defence use code words in order to make documents untraceable to the public servants responsible for research when responding to access to information requests. If this action meant to undermine the research of relevant information doesn't amount to obstructing the right of access, how else could it be described? The media have called it a manipulation of the access to information request system at the Department of National Defence. The techniques may not have been designed to hide certain documents, but they can certainly complicate the process of finding them.

• (1640)

They were basically getting around the law by intentionally muddying the waters. The use of code words is directly at odds with the purpose of the Access to Information Act. The use of code words goes against the purpose of Bill C-58, which is to modernize the Access to Information Act and offer Canadians greater transparency.

I was very surprised to hear Senator Harder say that this amendment went against the purpose of this legislation, when the minister talked about modernization. I believe that the coming into force of subsection 67(1), adopted in 2009, dissuaded people from circumventing the law because there have been no suits filed for destruction of documents since. However, with the growing phenomenon of distributing digital documents and sending email, this dubious practice of using code words in particular has to be prohibited under the Access to Information Act.

On February 1, the *National Post* ran an article entitled "How to avoid a paper trail: The reliable — sometimes illegal — tricks used by bureaucrats and political staff." This practice exists. The article in question made reference to the use of code words as a way to avoid leaving a paper trail.

If we refuse to make that practice illegal, we're repudiating the very principles of the Access to Information Act. In the name of transparency, which is Bill C-58's raison d'être, we must ban all practices designed to impede access to information by using codes to block access to documents. We have an opportunity to put an end to this practice by rejecting that part of the government's message.

If we succeed in eliminating that loophole with respect to terms likely to be used to avoid disclosing documents, we'll be protecting the core purpose of Bill C-58. Considering that Canada has slipped to 55th place in the annual global freedom of information rankings and is now tied with Bulgaria and Uruguay, it's clear that the gaps identified in the wake of the infamous Norman scandal must be closed if the goal is to improve Canada's credibility.

I thank you, dear colleagues, for adopting the amendment, regarding the use of any code, at committee stage and in this chamber. I invite you to support the amendment to insist on amendment number 12, which we agreed to, and to strengthen in particular the wording of subsection 67(1) of the Access to Information Act by adding "use any code, moniker or contrived word or phrase in a record in place of the name of any person, corporation, entity, or organization."

This issue is at the heart of Prime Minister Trudeau's commitment to make the Access to Information Act more transparent and credible. In addition to maintaining the Canadian public's confidence in the access to information system, we must safeguard the transparency and efficiency of this system.

MOTION IN AMENDMENT NEGATIVED

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

> That the motion be not now adopted, but that it be amended by replacing all of the words after paragraph (*a*) with the following:
>
> "(*b*) insist on its amendment 12, to which the House of Commons has disagreed; and
>
> (*c*) do not insist on its other amendments to which the House of Commons disagrees; and
>
> That, pursuant to rule 16-3, the Standing Senate Committee on Legal and Constitutional Affairs be charged with drawing up the reasons for the Senate's insistence on its amendments and present its report, with the reasons for the insistence, on or before June 20, 2019; and
>
> That, once the reasons for the insistence have been agreed to by the Senate, a message be sent to the House of Commons to acquaint that house accordingly.".

Hon. Senators: Hear, hear!

The Hon. the Speaker: In amendment, the Honourable Senator Boisvenu moved, seconded by the Honourable Senator Ngo, that the motion be not now adopted, but that it be amended —

Hon. Senators: Dispense.

Hon. Pierrette Ringuette: Honourable senators, I would add some qualifications to the speech we just heard. To my mind, the assumption that military officers use codes to conceal information is too outlandish for words. It sounds like something out of *Star Trek*.

Military operations involve all kinds of codes and operating frameworks. When military or police operations are being carried out, it is normal to use codes, code names or other words.

Even though this use of codes is not intended to hide information, Senator Boisvenu is determined to make it a criminal offence. Nonsense. We need to realize and accept that certain organizations, especially in the field of national security, need to use codes.

Honourable senators, we even use codes here in the Senate. For instance, under the amendment proposed by Senator Boisvenu, "CIBA" would become a code word, and if the Senate failed to comply, it would be committing a criminal offence.

You can see why I'm not in favour of Senator Boisvenu's amendment. This isn't about transparency or credibility. When we use abbreviations as part of our work on the Standing Senate Committee on Legal and Constitutional Affairs or the Standing Senate Committee on Banking, Trade and Commerce, for instance, it's not because we lack transparency or credibility.

That's why I strongly advise honourable senators to vote against Senator Boisvenu's amendment.

Senator Boisvenu: I'd like to ask a question. First of all, Senator Ringuette, I would have expected less simplistic competing arguments than the ones you presented. On the one hand, you know the bill talks about voluntary intent and criminal intent. We know the use of codes is pretty common.

If you read my amendment properly, it says nothing about hiding information, but rather preventing access to information. I'd first like to ask whether you are quite familiar with the Access to Information Act.

Senator Ringuette: Yes, Your Honour, I'm very familiar with it.

[*English*]

Hon. Marc Gold: Would the honourable senator take a question?

Senator Ringuette: I would.

Senator Gold: Is it your opinion, Senator Ringuette, that were we to accept this amendment, it would have the effect of the bill dying on the Order Paper?

Senator Ringuette: Everything is relative, especially in the time frame under which we are operating. We are hearing that the House of Commons might rise and we still have a lot of work to do.

• (1650)

The government has committed in its platform to review the Access to Information Act. The act has not received a considerable overhaul in more than 30 years. We finally have a modern act and upon Royal Assent, there will be a one-year mandatory review and then every five years after that first year.

For myself, in regard to access to information for all Canadians, in this act there is the proactive disclosure, which is a major element and a desperately needed one. I do not wish this bill to die on the Order Paper — after all the work that has been done so that we can have a modern access to information for all of Canadians — based on someone not liking acronyms.

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

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: I see two honourable senators rising. Is there agreement on a bell? The vote will take place at 5:07 p.m.

Call in the senators.

• (1700)

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

YEAS
THE HONOURABLE SENATORS

Andreychuk	Mockler
Ataullahjan	Neufeld

Batters	Ngo
Boisvenu	Oh
Carignan	Patterson
Dagenais	Plett
Doyle	Poirier
Eaton	Richards
Frum	Seidman
Housakos	Smith
MacDonald	Stewart Olsen
Manning	Tannas
Marshall	Tkachuk
McInnis	Wells
McIntyre	White—30

NAYS
THE HONOURABLE SENATORS

Anderson	Harder
Bellemare	Hartling
Black (*Alberta*)	Klyne
Black (*Ontario*)	Kutcher
Boniface	LaBoucane-Benson
Bovey	Lankin
Brazeau	Lovelace Nicholas
Busson	Marwah
Christmas	Massicotte
Cordy	McCallum
Cormier	McPhedran
Coyle	Mégie
Dalphond	Mercer
Dawson	Mitchell
Day	Miville-Dechêne
Deacon (*Nova Scotia*)	Moncion
Deacon (*Ontario*)	Munson
Dean	Pate
Downe	Petitclerc
Duncan	Pratte
Dyck	Ravalia
Forest	Ringuette
Forest-Niesing	Saint-Germain
Francis	Simons
Gagné	Sinclair
Galvez	Wallin
Gold	Woo—55
Griffin	

ABSTENTIONS
THE HONOURABLE SENATORS

Bernard	Joyal—2

• (1710)

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

On the Order:

Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Woo:

That, in relation to Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts, the Senate:

(*a*) agree to the amendments made by the House of Commons to Senate amendments, including amendments made in consequence of Senate amendments; and

(*b*) do not insist on its amendments to which the House of Commons has disagreed; and

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

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Harder, seconded by honourable Senator Woo, that in relation to Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts — may I dispense?

Hon. Senators: Dispense.

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.)

CUSTOMS TARIFF AND THE CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

BILL TO AMEND—FORTY-SECOND REPORT OF NATIONAL FINANCE COMMITTEE ON SUBJECT MATTER TABLED

Leave having been given to revert to Presenting or Tabling Reports from Committees:

Hon. Percy Mockler: Honourable senators, I have the honour to table, in both official languages, the forty-second report of the Standing Senate Committee on National Finance, which deals with the subject matter of Bill C-101, An Act to amend the

Customs Tariff and the Canadian International Trade Tribunal Act 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 Mockler, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

MACKENZIE VALLEY RESOURCE MANAGEMENT ACT CANADA PETROLEUM RESOURCES ACT

BILL TO AMEND—THIRD READING

Hon. Margaret Dawn Anderson moved third reading of Bill C-88, An Act to amend the Mackenzie Valley Resource Management Act and the Canada Petroleum Resources Act and to make consequential amendments to other Acts.

She said: Your Honour and honourable senators, to begin, I would like to recognize and acknowledge that we are on the unceded territory of the Algonquin Anishinabek.

I rise today to speak to Bill C-88 a third time.

As I have previously indicated in this chamber, the Northwest Territories is home to many different peoples, languages and cultures. The majority of our population is Indigenous and our relationship with the land and waters we have occupied for millennia remains strong. We insist on being actively involved in decisions about resource development activities that take place in our communities.

Forty-two years ago, Justice Berger wrote:

> What happens in the North, moreover, will be of great importance to the future of our country; it will tell us what kind of a country Canada is; it will tell us what kind of people we are. In the past, we have thought of the history of our country as a progression from one frontier to the next. Such, in the main, has been the story of white occupation and settlement of North America. But as retreating frontier has been occupied and settled, the native people living there have become subservient, their lives moulded to the patterns of another culture.
>
> We think of ourselves as a northern people. We may at last have begun to realize that we have something to learn from the people who for centuries have lived in the North, the people who never sought to alter their environment, but rather to live in harmony with it.

As my honourable colleagues know, Bill C-88 is made up of two parts. The first part makes amendments to the Mackenzie Valley Resource Management Act that would resolve the litigation that currently impedes the progress of development projects along the Mackenzie Valley.

In 2015, the Supreme Court of the Northwest Territories put an injunction in place which suspended the restructuring of four regional land and water boards in the Mackenzie Valley. This restructuring had been included in the Northwest Territories Devolution Act and was a surprise to impacted Indigenous governments and organizations.

Bill C-88 would preserve the four regional boards and the co-management and joint decision-making regime that is outlined in the Gwich'in Land Claims Agreement, the Sahtu Dene and Metis Land Claims Agreement and the Tlicho Land Claims and Self-Government Agreement. This would resolve the outstanding litigation. It would provide greater certainty to industry and help unlock the potential social and economic benefits of development activities in the Mackenzie Valley for future generations.

David MacMartin, Director of Intergovernmental Relations for the Gwich'in Tribal Council, advised us that:

> If Bill C-88 is not passed, Canada will not fulfill its commitment to the Northwest Territories Indigenous governments, which will then be forced back into time-consuming, expensive and acrimonious litigation.

In addition to restoring certainty to the regulatory regime of the Northwest Territories, the second part of Bill C-88 ensures responsible development through proposed amendments to the Canada Petroleum Resources Act, or the CPRA.

James Fulford, Chief Negotiator, Offshore, in the Department of Executive and Indigenous Affairs for the Government of the Northwest Territories, noted:

> The proposed amendments to the MVRA in Bill C-88 will increase certainty around responsible resources development in the Northwest Territories. That certainty is something our territory needs as we continue to work with the Indigenous governments in our territory to attract responsible resource development.

• (1720)

Arctic ecosystems are among the most fragile on earth. They take a long time to recover when damaged by human activity. And we know that the impacts of climate change are most evident in the Arctic. In light of these realities, in 2016, Canada, jointly with the United States, announced an immediate prohibition to development activity in the Arctic offshore. This prohibition is to be reviewed every five years and will factor scientific evidence and Indigenous knowledge into decisions about future development activity.

Bill C-88 supports this approach by authorizing the Government of Canada to prohibit activities under existing exploration and Significant Discovery Licences in the Arctic offshore. This is not an entirely new authority. In fact, the CPRA already authorizes such a prohibition under specific criteria. Bill C-88, however, would amend the CPRA to add a new criterion, the national interest.

From March to July 2017, while developing this part of Bill C-88, consultations were launched with the Government of Northwest Territories, Government of Yukon, Government of Nunavut, as well as Inuvialuit and Inuit organizations and existing oil and gas rights holders.

The consultations provided important feedback from industry, the territorial governments and Indigenous organizations about their plans and visions for future oil and gas development in the Arctic offshore. All parties emphasized the importance of oil and gas development to the northern economy, and there was support for the measure in Bill C-88 that authorizes the Governor-in-Council to issue a prohibition order freezing the terms of existing licences in the Beaufort Sea for the duration of the moratorium.

It must be noted, however, that there are concerns about the need for consultations in all matters related to oil and gas development but particularly before issuing a prohibition order under the national interest provision proposed in the second part of this bill.

The Minister of Crown-Indigenous Relations stated at the Standing Committee on Energy, the Environment and Natural Resources:

> . . . the CPRA already recognizes the rights of Inuvialuit and all other northern Indigenous communities in regards to the legislative and regulatory measures in the act and states explicitly: Nothing in the CPRA shall be construed so as to abrogate or derogate from any existing Indigenous or treaty rights of the Indigenous people of Canada under section 35 of the Constitution Act, 1982. In keeping with that clause and the federal government's constitutional obligation, this government is committed to consulting with the Inuvialuit and any other northern Indigenous organization with rights in the Arctic offshore prior to taking a decision to introduce a CPRA prohibition order under the new "national interest" criterion.

In committee, the Minister of Crown-Indigenous Relations also confirmed that she has written to the Inuvialuit Regional Corporation to provide assurance that the Government of Canada "remains fully committed to working with the Inuvialuit in all aspects as it relates to the offshore of the Inuvialuit Settlement Region in the Beaufort Sea."

Bill C-88 would allow the government to freeze the terms of existing licences until a five-year science-based review is complete in 2021. Some of the licences are set to expire as early as this summer. The legislation before us would allow the government to halt the countdown to licence expiry, and the countdown would not start again until the results of the scientific review justifies that the suspension be lifted.

Resource development in the North presents both challenges and opportunities. It is critical that all parties affected by resource development be involved in decision-making. As I have already stated in this chamber, the Governments of Yukon, Northwest Territories and Nunavut as well as Indigenous organizations and northern communities are full partners in the science-based review process in the Arctic offshore. Others, including industry, are being actively engaged as part of the review.

Additionally, negotiations between the Governments of Northwest Territories, Yukon, the Inuvialuit Regional Corporation and the Government of Canada are under way to reach co-management and revenue-sharing agreements in the Arctic offshore. Through these agreements, northern and Indigenous communities will be actively involved in the decisions about development in their regions, and local communities and businesses will benefit from offshore oil and gas activity.

Justice Berger stated:

> We have sought to make over these people in our own image, but the pronounced consistent and well-intentioned effort at assimilation has failed. The use of the bush and the barrens, and the values associated with them, have persisted. The native economy refuses to die. The Dene, Inuit and Metis survive, determined to be themselves. In the past their refusal to be assimilated has usually been passive, even covert. Today it is plain and unmistakable, a fact of northern life that must be understood.

During witness testimony at the Energy, the Environment and Natural Resources Committee, Grand Chief George Mackenzie of the Tlicho Government stated:

> It is very important for me as the grand chief to speak to you personally to reinforce how vital this bill is for our communities, our territories and our treaty relationship.

Despite its late arrival in this chamber, it is important that Bill C-88 is passed during the life of the current Parliament. I wish to thank my honourable colleagues in this chamber, the members of the Standing Senate Committee on Energy, the Environment and Natural Resources and the staff of the committee.

I would also like to thank all the witnesses, particularly those who participated by teleconference from the Northwest Territories and who have been actively involved in the development of this bill. Thank you also to the parliamentary staffers who have been working hard to support the passage of this bill during such a busy week. Finally, *quyanainni* to the critic of this bill, Honourable Senator Patterson, whom I have been working closely with in our efforts to see Bill C-88 passed.

Honourable colleagues, Bill C-88 is an example of a collaborative legislative process that recognizes and takes into account the perspectives of the people directly affected by the legislation. It is an example of the types of working relationships that can and should be developed between Indigenous governments and the Crown when both sides work together as partners in seeking solutions to shared problems. Bill C-88 is an example of northerners working together to ensure that decisions made about the North are made in the North. Bill C-88 deserves the full support of this chamber. *Quyanainni*. *Mahsi cho*. Thank you.

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

Senator Anderson: Yes, I will.

Senator Cordy: First of all, I want to congratulate you on the terrific job you did with this bill. I believe it's the first bill that you have sponsored in this chamber. So congratulations to you.

Hon. Senators: Hear, hear.

Senator Cordy: I was struck by a couple of things that you said in your speech and that we heard at the committee last evening. One was, if this bill doesn't pass quickly, if it doesn't pass before the house rises, then there will likely be litigation. I think that's extremely important.

I was also struck by your comment about when the Crown and the Indigenous peoples work together, good things happen. So my question is around that. It revolves around consultation. It seems that, as you said in your speech, when there is true consultation and a true process of discussion and negotiation between the Crown and northerners and Indigenous groups that good things happen. I wonder if you could talk about the importance of the consultation and how well this was handled in the development of this particular bill.

Senator Anderson: I will try. As you know, the impetus for the injunction was actually a bill that was passed by Canada that did not involve consultation. The consultations arose out of the court injunction when Justice Shaner recognized that there needed to be consultation with the Indigenous groups that were directly affected by Bill C-15.

As a result, if I recall correctly, from the Tlicho Government, Bertha Rabesca Zoe advised that this involved engaging with the Government of Canada and the parties that were affected, starting with teleconference calls to actual face-to-face meetings, ongoing. And they were actively involved in the development of the bill and review of the bill throughout the process.

The reason I referenced Mr. Justice Thomas Berger — some of you may be aware, but he was also involved with the Mackenzie Valley Pipeline Inquiry from 1974-77. That process is considered the gold standard for consultation. He met face-to-face with all Indigenous parties affected throughout the Northwest Territories from the proposed Mackenzie Valley gas pipeline. So I would say that consultation is extremely important, not only with this bill, but I think with every other bill that directly affects any Indigenous groups across Canada.

Hon. Dennis Glen Patterson: Honourable senators, I rise today as well to speak to third reading on Bill C-88, An Act to amend the Mackenzie Valley Resource Management Act and the Canada Petroleum Resources Act and to make consequential amendments to other Acts.

• (1730)

I would like to begin by saying —

[*Editor's Note: Senator Patterson spoke in Inuktitut*]

— to Senator Anderson for her leadership with this bill, her first as sponsor of a bill in this place. I was privileged to have worked closely with her, I think very collaboratively, in helping to get this bill the attention it deserves in the Senate in a timely fashion.

In that connection, I would also like to thank the steering committee and members of the Standing Senate Committee on Energy, the Environment and Natural Resources, and the chair, Senator Galvez, for their help and cooperation in quickly considering and dealing with this bill just yesterday.

Colleagues, Part 1 of Bill C-88 impacts a very specific part of the Northwest Territories. As Minister Bennett explained to the committee last night:

> In early 2015, the Supreme Court of the Northwest Territories granted an injunction that suspended the proposed board restructuring, along with, unfortunately, all the other positive regulatory amendments that had been included in Bill C-15.
>
> Bill C-88 will resolve the litigation regarding the restructuring of the boards and reintroduces the positive policy elements of Bill C-15 that are currently prevented from coming into force by the said injunction.

As the former sponsor of Bill C-15 in a previous Parliament, I know that there were many important changes made to the regulatory regime to help make it more efficient and consistent with other regimes throughout the North. Government, Indigenous and industry stakeholders, I believe, are all eager to see those improvements enacted.

This is why, despite reaching our chamber so late in the legislative session, it has been important to me to help facilitate the speedy passage of this bill. Tlicho Grand Chief George Mackenzie told the committee that:

> The injunction remains in effect to this day and will remain in effect until either a new law is passed or the lawsuit runs its course. The underlying lawsuit remains active, pending the result of this legislative process. If Bill C-88 is not passed by the current Parliament, we will be faced with either restarting the legislative process from the beginning or proceeding with our lawsuit against Canada. Both could take years.

Honourable senators, these opinions were reflected by representatives of other Indigenous governments in the Mackenzie Valley and by Premier McLeod, Premier of Northwest Territories. I'm confident that no senator here would want to ignore this united voice nor to see the continued uncertainty that would be created by not having this bill passed in the current session.

I would like, however, to place on the record that by passing this bill unamended, as I am suggesting we do, senators are putting their faith in the government to conduct the necessary engagement with industry and Indigenous stakeholders when trying to determine whether or not to bring forward cost recovery regulations.

As I explained in my previous speech, cost recovery is a concept whereby proponents would be required to repay to the federal government the costs incurred by the Crown and/or boards during the regulatory process. This places yet another unnecessary financial burden on proponents seeking to operate in a part of this country that is already two and half to three times

more expensive to operate in, as indicated by the Mining Association of Canada's excellent report entitled *Levelling the Playing Field*. This means that the ore quality must be higher than the normal acceptable quality, or commodity prices must be higher than they are now, in order for northern mines to make economic sense to proponents.

It is my fervent hope that the proper consultations are conducted and the government bear in mind the current cost of developing and operating a project when deciding whether or not to introduce cost recovery regulations mandated by this bill. The competitiveness of the North must be a key factor in that decision.

Part 2 of this bill, though considerably shorter than Part 1, received much more scrutiny. The proposed changes to the Canada Petroleum Resources Act, CPRA, would enable the government to impose a moratorium on oil and gas development in the Arctic by claiming that the development would interfere with "the national interest." The question of what defines the national interest was raised by members of the committee. Minister Bennett explained that:

> The "national interest" refers to a country's national goals and ambitions, whether economic, military or cultural . . . .

I, like some of my other colleagues, remain apprehensive about that term, as it is not defined within the act, leaving it up to interpretation by the government of the day and the courts.

What did give me comfort was an intervention from Mr. James Fulford, Chief Negotiator, Offshore, Executive and Indigenous Affairs for the Government of the Northwest Territories. During the committee proceedings last night, I asked Mr. Fulford whether he felt the safeguards put in place by this bill would be sufficient to prevent a repeat of the unilateral decision undertaken by Prime Minister Trudeau in December 2016.

Honourable senators, you will recall that the Premier of the Northwest Territories at the time complained that it was ill-considered and unfair and issued a Red Alert, saying that he was afraid from that announcement that colonialism had reemerged against the North.

Mr. Fulford, in answer to my question, replied that the Government of the Northwest Territories:

> . . . feel[s] that the terms of reference for that process offer us the opportunity to have a real influence over decision-making in the offshore, so we feel that it is definitely an improvement.
>
> I can also refer to the onset of the northern accord negotiations. As I indicated, so far they are proceeding quite well. Just to draw some context there, none of the east coast offshore oil and gas regimes currently have anything like a national interest provision in their legislation. We've been informed and assured that we are looking at negotiating a northern accord that looks much like those east coast offshore regimes so we would expect that our regime looks like those.
>
> We considered the prohibition amendment in the CPRA to be a purpose-specific clause to address a problem created by the moratorium, if I can be that blunt. We expect that, like in the offshore negotiations on the east coast, the CPRA will be swept away and replaced by the new legislative regime that we negotiated together.

Honourable senators, I do want to mention that when I was the Premier of the Northwest Territories, we were actually very close to negotiating what we also called a northern accord. At that time, the Right Honourable Brian Mulroney was Prime Minister, and we negotiated an enabling agreement to negotiate a northern accord with Indian and Northern Affairs Minister Bill McKnight, and we were thrilled at the time that it acknowledged the N.W.T. interest in the waters of Hudson's Bay, among other things.

That initiative ultimately failed for various reasons, so I was delighted to hear that one might soon be reached, rendering this troublesome concept of a national interest defence to banning oil and gas development in the Arctic a non-issue.

It is my hope that the completion of negotiations on a new northern accord with Yukon, the Northwest Territories and affected Indigenous rights-holding jurisdictions will be followed by similar negotiations with Nunavut and the organization representing rights holders, Nunavut Tunngavik Inc. It is northern people who care about their environment and developing their economy who should be the ones to make decisions with Canada about a co-managed Arctic offshore.

• (1740)

In fact, I asked Minister Bennett last night if this was the first part of a longer-term pan-Arctic vision of co-management in the offshore, to which she replied to my delight:

> Last year, I think, when you chaired the panel at the UN, we were boasting about how co-management is working in our North in the territory land base. . . . Once we've gotten a final devolution agreement in Nunavut, we would be very happy to begin negotiations with Nunavut on co-management, as well as resource revenue-sharing with, not only the Government of Nunavut, but NTI, so that we have for the offshore this consistent collaborative approach that has worked so well on the land.

"That's music to my ears," I told her at committee.

However, I would bring one other concern to your attention. Both the CPRA and the Oceans Act contain non-derogation clauses, and neither was strong enough to prevent the unilateral imposition of a moratorium. That is why Senator Anderson and I worked very closely to draft an observation, which was ultimately appended to this bill. It states:

> The Inuit concerns with amendments to Section 12(1) of the *Canada Petroleum Resources Act* originated with Bill C-55, An Act to amend the Oceans Act and the Canada Petroleum Resources Act, which received Royal Assent on May 27, 2019. Chair and CEO of the Inuvialuit Regional Corporation, Duane Smith, raised his persisting objection to measures that would create new and interim conservation areas. Unlike newer land claims, the Inuvialuit Final

> Agreement (IFA) is entirely silent on the establishment of conservation areas. Mr. Smith has pointed out that the non-derogation clause in C-55 does not include the same express protections for IFA rights holders that are included in newer land claims. These concerns are compounded by the amendments proposed here, in Bill C-88.
>
> The current moratorium in the Arctic offshore was imposed in 2016 without any notice to stakeholders. Since that time, there has been movement towards a more collaborative relationship between Government, industry and Indigenous governments and organizations. However, the *Canada Petroleum Resources Act* lacks express language on Government's duty to consult with Indigenous governments and organizations. The non-derogation clause in the CPRA, as well as the Oceans Act, are not strong enough to provide comfort to older land claims, like the IFA, that do not incorporate express protections for rights holders where conservation areas are contemplated.
>
> The Committee strongly recommends that going forward, in the spirit and intent of Canada's reconciliation agenda, the Government of Canada commit to meaningful consultation with Indigenous governments and organizations around matters in the Arctic offshore, and that this consultation process respects the rights of Inuit and First Nations that stem from Section 35 of the Constitution, as well as from settled treaties, comprehensive land claims agreements and self-government agreements in the region.

I just want to mention in closing, honourable senators, that I did pay tribute in the committee last night to Minister Dominic LeBlanc, who, when he held the Northern Affairs portfolio, was the one who initiated the very welcome negotiations about developing a collaborative co-management approach for the offshore with the Yukon, the Northwest Territories and with the Inuvialuit for the Beaufort Sea region. That's a wonderful precedent for the Arctic offshore, moving east.

Honourable senators, with these assurances in place, I feel confident in our ability to hold the government to account should the process forward not be one of collaboration and consultation — perish the thought. That is why I join in solidarity with Premier McLeod, Grand Chief Mackenzie, the duly elected leaders of the Gwich'in Tribal Council and Sahtu Secretariat, and with my colleague Senator Anderson of the Northwest Territories to urge you to support passage of this bill.

Thank you. *Quyana*. *Mahsi cho*. *Taima*.

Hon. David Richards: Senator Patterson, would you take a question?

Senator Patterson: I'd be delighted.

Senator Richards: Thank you.

I asked this question to the group last night. I don't know if it can be answered, but I'm going to ask it again.

How much do the land and natural resource claims of actors like Russian, Denmark and the U.S. burden the ability of Canada and the Inuit to enact this bill? I wonder if you have any ideas about that.

Senator Patterson: Thank you very much for that question. It's a timely question because the Special Committee on the Arctic just released a report this week. We travelled to Arctic regions, and one of the subjects we examined was the question of security and sovereignty in the Arctic.

In that connection, the committee had very strong recommendations about Canada beefing up its presence, monitoring, fleet and capacity to assert its sovereignty in the Arctic in the face of the increase of activities and infrastructure in other circumpolar nations like Russia, and in the face of interest from so-called near-Arctic nations like China and — would you believe it — Singapore, who say they have interests in the Arctic. The committee recommended:

> 1. That the Government of Canada develop a strategy that: 1) empowers Arctic and northern governments to assume roles in delivering federal programs and services to its residents; and 2) devolves federal programs and services related to the Arctic and northern regions to local, territorial and Indigenous governments.
>
> 2. That the Government of Canada: 1) provide greater financial support towards the implementation of comprehensive land claims agreements, including land-use planning processes and governance of regulatory boards; and 2) consult and cooperate with Indigenous and territorial governments to develop co-management regimes with respect to the Arctic offshore waters.

This bill moves us in those welcome directions. Thank you.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Anderson, seconded by the Honourable Senator Duncan, that the bill be read a third time.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read third time and passed.)

BILL TO PROVIDE NO-COST, EXPEDITED RECORD SUSPENSIONS FOR SIMPLE POSSESSION OF CANNABIS

THIRD READING

Hon. Tony Dean moved third reading of Bill C-93, An Act to provide no-cost, expedited record suspensions for simple possession of cannabis.

He said: Honourable senators, I rise today to speak at third reading to Bill C-93, An Act to provide no-cost, expedited record suspensions for simple possession of cannabis.

Before I get into that, I want to thank Senators Colin Deacon and Marty Deacon, who both worked alongside me. I want to thank all the leaders in the Senate for their considerable role in agenda planning that has allowed us to get here this evening.

• (1750)

I want to thank Senator Carignan, the critic who has applied his extensive legal and parliamentary skills and knowledge to this bill; the chair of Standing Senate Committee on Legal and Constitutional Affairs, Senator Joyal, his steering committee and members of the committee for going the extra mile in considering the bill expeditiously. I also want to thank Senator Pate for her contributions. We know that we have a foremost Canadian expert on those — and particularly women — who are marginalized, victimized or incarcerated.

As stated last week in my second reading statement, the objective of Bill C-93 is to allow individuals affected by simple cannabis convictions the option of shedding the burden of stigma as well as eliminating barriers to meaningful employment, education, housing, the ability to volunteer in their communities and having a greater ability to travel.

Under this important legislation, individuals who have been convicted of simple possession will be able to apply for a record suspension or pardon free of the $631 application cost and also of the five- to 10-year wait times. It's also important to note that there would be no subjectivity to this process. Once all of the required documentation is provided to Parole Board, the applicant would be granted a record suspension regardless of other assessment criteria used for regular pardons applications.

The proposed pardon process under Bill C-93 will be a simplified and expedited version of the existing pardons or records suspension process that has been in place for many years and it recognizes the tens of thousands of people who have been unfairly convicted of possessing a substance that is now legal and strictly regulated in Canada.

This applicant-driven process would allow individuals to apply for a record suspension as long as they have completed their sentence and where the only conviction on their criminal record was simple possession of cannabis. Simple possession generally refers to a criminal charge for possession of controlled substance, in this case cannabis, for personal use with no intent to traffic.

Due to an important amendment at the House of Commons, individuals could still apply even if they have outstanding fees associated with their conviction. This amendment, in addition to several others adopted at the House of Commons Public Safety Committee, would help those who may be disadvantaged or vulnerable to be eligible to apply for a record suspension under Bill C-93.

Last Thursday, the Standing Senate Committee on Legal and Constitutional Affairs heard from the Honourable Ralph Goodale Minister of Public Safety and senior officials from several departments on the policy objectives and the practical application of this legislation, should it be adopted. The minister testified that this initiative is intended to assist individuals who have been convicted of simple cannabis possess in their rehabilitation, and to help those people lead productive lives in our society.

During his testimony the minister stated that:

> It's a question of fairness. It's a question of faster reintegration into the mainstream of society. It's an objective of trying to make sure - especially with respect to marginalized groups upon whom there was a disproportionate impact of the old cannabis law - that they are treated fairly and appropriately.

This is an objective shared by many cannabis amnesty advocates, including representatives from the Canadian Black Lawyers Association, the Canadian Bar Association and the Campaign for Cannabis Amnesty.

During his testimony at committee, Mr. William Thompson of the Canadian Bar Association said that:

> The CBA has long advocated a harm-reduction approach to drug use — one that relies on health care, treatment options and careful regulation rather than criminal prohibition to save lives and reduce the harms to users and the broader community. Reducing the continuing barriers to people, moving their lives on from these convictions is an important step in that approach. In fact, the section would support an automatic process to expunge simple possession convictions from people's records, but it recognizes there may be practical impediments to that approach . . .

Colleagues, in addition to this testimony heard at Standing Senate Committee on Legal and Constitutional Affairs on Monday, we also heard from Senator Carignan and Senator C. Deacon on expedited pardons last week. Based on their statements and those made from other honourable senators in committee, I think it's safe to say that senators and expert witnesses alike are of the same mind on the objectives that Bill C-93 is trying to achieve. Many senators in this chamber, regardless of political stripe, would likely agree that the government should be doing more to recognize the injustices imposed by simple cannabis possession and especially those who are indigenous, racialized or living in vulnerable communities.

Many of us would likely want to see a more automated pardon process for those convicted of simple cannabis possessions.

In his speech last week, Senator Carignan referenced a program in California for called Clear My Record through Code for America. It is a computerized program that allows for the expedient removal of simple criminal code records, such as the simple possession of cannabis.

I completely agree that we should be looking to other jurisdictions and programs to inform how our government might address injustices associated with cannabis possession. However, I also recognize the difficulty in implementing a similar measure here in Canada in the near future.

Officials have been clear that while a more automated process is desirable, it will be challenging and will require considerable lead time measured in years. The challenge is that currently — and many of you know this — we have a vast, complex and widely distributed constellation of often paper-based records, with others likely stored on various forms of storage media that have constantly changed over the last decade or two. If your basement is like mine, I could describe my records in exactly the same way.

As a result, it's not possible to electronically process pardons for all of those having simple possession charges. This would require the digitization of the hundreds of thousands of legal documents dealing with drug possession charges. The process of consolidating data across jurisdictional boundaries would require data sharing agreements and maintaining compliance with varying jurisdictional privacy codes. As a result, there is no fast route to automation, as desirable as that is.

The automated pardons and/or expungements preferred by many would take years and millions of dollars to realize and is best done in the context of broader justice system reforms. The Standing Senate Committee on Legal and Constitutional Affairs makes some very strong observations on this point.

Honourable senators, we have to focus on what we can reasonably do in the meantime. I believe Bill C-93 answers that question. We are all obligated as parliamentarians to ensure members of our communities are allowed equal participation in our society. We want to empower those who are disadvantaged because of their simple cannabis possession convictions so they too can access better jobs, appropriate housing and so they can volunteer and expand their travel opportunities.

I have no doubt that we as senators will continue to press for system reforms in the coming years and we have an opportunity to move closer towards those reforms today with Bill C-93.

Honourable senators, Bill C-93 is not perfect but as Senator Sinclair said last week, perfection can be sometimes the enemy of the good. I would encourage you all to join me in voting in favour of Bill C-93 so that we can help those carrying the burden of minor cannabis convictions to shed the stigma of criminality and participate equally in contributing to our society and their own well-being.

Some Hon. Senators: Hear, hear.

Hon. Marty Deacon: Honourable senators, I rise today to speak to Bill C-93, an Act to provide no-cost, expedited record suspensions for simple possession of cannabis.

Let me begin, however, by saying I'm starting to enjoy this tradition. For me, there is no surer sign that summer is around the corner than Senator Dean compelling us to pass legislation dealing with cannabis.

Colleagues, like last time, it is his thorough and well-reasoned arguments that are bringing me around in my thinking. Though I voted in favour of Bill C-45, I started off with a great deal of apprehension. Of the many hats I have worn if my pre-Senate life, two of the most important were that of an educational leader and a coach of young people from playground to podium. Of the groups who not be touching cannabis, students and athletes rank pretty high on my list. I worried that legislation would normalize its use yet, as I listened to the debate, I realized our laws at the time were doing nothing to stem access to cannabis or limit its consumption. I came to the conclusion that the consequences we had in place were, in fact, more damaging than the substance itself, and that we try a different approach.

• (1800)

The bill we have before us today is a natural extension of this. When and if we pass this legislation, we will be undoing some of the damage created by old laws.

As someone who worked —

The Hon. the Speaker: I'm sorry, Senator Deacon, I apologize for having to interrupt you, but it's now 6 p.m. Pursuant to rule 3-3(1), I'm required to leave the chair unless there is agreement that we not see the clock.

Is it agreed that we not see the clock, honourable senators?

Hon. Senators: Agreed.

Senator M. Deacon: As someone who worked extensively with youth, I know that even intelligent, thoughtful people can make impulsive, poorly thought out choices. I've done more locker, backfield and backpack searches than I care to count. Trust me when I tell you that 99 per cent of these cases where cannabis was found, these were good students and athletes who made a poor choice.

I would hate to think they can get held back because they were charged with a crime that no longer exists.

Moreover, colleagues, our old laws were not uniformly applied. As you were reminded at second reading, racial minorities bore of brunt of enforcement, burdening them further in a system that is already tilted against them. I won't repeat all of what my colleagues said, but let me remind you of at least some of what researchers have found. One study showed that between 2015 and 2017, Indigenous people in Regina were nearly nine times more likely to get arrested for possession than White people. In Toronto, Black people with no criminal convictions were three times more likely to be arrested for possession. That, colleagues, is why initially I didn't think this legislation went far enough.

I thought we ought to go further, to instead provide for record expungement. As we know, a pardon doesn't necessarily wipe the slate clean. For instance, some employers do not ask if you have a criminal record, but instead ask if you pled guilty to a crime. Even with a record suspension, you would have to say yes, you have pled guilty. More often than not, this would mark the end of the hiring process for that individual.

I honestly wrestled with this for a while, but after personal reflection and thorough discussions with my colleagues, I have come around to supporting this legislation as written. I have a few reasons for this. As you are aware, expungements were created only a few years ago for a select group of Canadians. These were individuals who ran afoul of the discriminatory laws dealing with consensual same-sex activities. Like many of you, I have friends and loved ones who count themselves as part of the LGBTQ2 community. I recognize historical importance of granting these expungements. It says that these laws should never have been on the books in the first place.

I believe expungement should be reserved for cases like this. For when someone else's rights were violated, it says to them they were never actually committing a crime. Possession of cannabis was and is a choice — being gay is not — and I'm not ready to equate laws against cannabis with something like the archaic buggery law.

There is also the message expungements could send to Canadians. I remind my colleagues that while Canada has legalized cannabis, we only did so in a strict set of circumstances.

You will recall that the Senate sent back Bill C-45 with a number of amendments to clauses the majority of us deemed too harsh. The government rejected them. For instance, under current law, an 18-year-old could face up to 14 years in jail for passing a joint to their friend beside them who is 17, even if they are only months apart in age.

I believe the headliner reading "pot convictions expunged" could send the wrong message, that our current laws are more permissive than they actually are. There are still many ways to get a record for a cannabis offence today, and all Canadian must be mindful of this.

As Canadians become more comfortable with the legislation, I trust that laws will be loosened in time. They will get to a point where we scratch our heads, yes, we scratch our heads, that cannabis was ever illegal in the first place. We are not there yet.

On cannabis, the dial has moved but the pendulum has not swung entirely. That's why incrementalism is necessary here. As Senator Deacon, the other Deacon, so aptly put it in second reading, perfection is the enemy of progress. This bill captures that sentiment.

I also note that while the government is only offering pardons, it is aiming to expedite the process in this case. The legislation would do away with both the application fee and the five- to ten-year waiting period typically required for a pardon.

At committee, the minister said that the parole board is looking to simplify the process further, to perform outreach via social media and other mediums to make Canadian aware that this is there for them and to get them started in the process.

That's not to say that I'm thrilled with how the government approached this bill. We only received this legislation a few weeks ago. As I mentioned at the outset, we're running on days in this session. Were it not for the tireless effort of the bill's sponsor and the Legal Affairs Committee, we might not even have it here at third reading today.

With more time and thought, we could have had a chance to possibly add to and improve this bill, to make sure that the process of applying for a pardon was as seamless as possible. Perhaps even more middle ground between a pardon and an expungement that we could have explored. But I'm afraid an amendment at this stage would kill the bill. I would rather see Canadians be provided with at last some kind of avenue to clean up their past and move forward with their lives.

Colleagues, today, in the interests of its speedy passage, I'll stop here. It is my intention to vote in favour of the bill before us. I encourage you to do so as well. Thank you.

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 read third time and passed, on division.)

[*Translation*]

APPROPRIATION BILL NO. 2, 2019-20

SECOND READING

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate) moved second reading of Bill C-102, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2020.

She said: Honourable senators, I rise today to introduce Bill C-102, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2020, at second reading.

[*English*]

The bill before you today, Appropriation Act No. 2, 2019-20, contains the expenditures included in the Main Estimates of year 2019-20. It is the very last supply bill of this 42nd Parliament.

Hon. Senators: Hear, hear!

Senator Bellemare: The Main Estimates of 2019-20 were tabled in the Senate on April 11, 2019, and were referred to the Standing Senate Committee on National Finance as well as to the Joint Committee on the Library of Parliament, who studied Vote 1 of the Main Estimates. Reports have already been tabled in the Senate. As you know, the estimates documents are technical and rather complex. I believe the work our colleagues have accomplished throughout this Parliament is worth applauding.

[*Translation*]

I sincerely thank the members and former members of the Standing Senate Committee on National Finance; Percy Mockler, its chair; Senator Jaffer, who served as deputy chair; Senator Joseph A. Day, current deputy chair; Gaëtane Lemay, committee clerk; and all of the Library of Parliament analysts and parliamentary employees who worked tirelessly throughout the 42nd Parliament. Colleagues, this committee is far from being a sinecure. It claims the highest number of hours of study. I should point out, however, that the committee doesn't vote on supply. In other words, it doesn't do a clause-by-clause study of the bill. The committee's mandate is to study the estimates and report back to the Senate. Before I go any further, I'd like to quickly go over some of the features of the current financial cycle.

[*English*]

Back in June of 2017, the House of Commons approved a motion to change standing order 81 for the duration of the 42nd Parliament. This new sequencing was part of a two-year pilot initiative to make it easier for Canadians and parliamentarians to track government spending.

• (1810)

Ever since the adoption of the new rule, the budgetary cycle begins with the tabling of the expenditure provisions contained in interim estimates, followed by the budget statement which was presented in Parliament on Tuesday, February 19 of this year, and then the tabling of the Main Estimates in April.

[*Translation*]

This is now the second consecutive year that we have followed this sequence and where the Main Estimates include the measures announced in the budget speech. I would also remind senators that the 2018-19 fiscal year was a year of transition. As many of you already know, a central vote, or vote 40, which was a transition vote, appeared in the 2018-19 financial cycle. I remind you that this was a Treasury Board managed central vote for budget implementation, which included all funding set out in Table A2.11 of the budget announced on February 27, 2018. This vote allowed Treasury Board to approve, with certain conditions, an increase in a vote set out in the table.

To improve the budget process, and in response to the concerns expressed by certain members of the Standing Senate Committee on National Finance and members of the other place, this central vote doesn't appear in Bill C-102 before us today. Instead of relying on vote 40, every voted measure in Table A2.11 of the budget is now associated with a separate vote under the identified department.

[*English*]

For example, under the Public Health Agency of Canada, which has three items in table A2.11 of the budget, each of the three expenditures is listed under a distinct vote in the estimates document. For instance, the "Introducing a National Dementia Strategy" item from table A2.11 is described as follows:

> Vote 15: Authority granted to the Treasury Board to supplement any appropriation of the Agency for the initiative "Introducing a National Dementia Strategy," announced in the Budget of March 19, 2019, including to allow for the provision of new grants or for any increase to the amount of a grant that is listed in any of the Estimates for the fiscal year, as long as the expenditures made possible are not otherwise provided for.

[*Translation*]

According to the Parliamentary Budget Officer, this new approach of identifying every item requiring Treasury Board approval under a separate vote and under the relevant department, is an improvement over central vote 40. He said, and I quote:

> This is an improvement as it allows different parliamentary committees to examine these measures, as well as permit parliamentarians to vote on the specific measures, rather than one central vote.

Moreover, the government continues to provide detailed monthly reports online on the funding allocated to these individual votes, as well as progress reports in the supplementary estimates for 2019-20. This is a trend that may continue in future.

Let's now move on to the specifics of Bill C-102. This appropriation bill, which includes all the spending in the Main Estimates, ensures that the government's financial needs for the remaining nine months of the year are met and approved by the end of June, without which salaries cannot get paid and other spending will be delayed.

[*English*]

In summary, total budgetary authorities that are outlined in the Main Estimates amount to $299.6 billion, which is an increase of approximately $23.7 billion, or 8.6 per cent, compared to those in the Main Estimates of the previous 2018-19 budgetary cycle.

Honourable senators, 58.1 per cent of the total budgetary expenditures are for statutory spending, while the remaining 41.9 per cent have to be voted by parliamentarians.

Bill C-102 seeks Parliament's approval to spend $125.6 billion in budgetary expenditures and $57.1 million in non-budgetary expenditures. These amounts include expenditures within the planned spending set out by the Minister of Finance in Budget 2019, notably, $883 million to advance reconciliation with Indigenous peoples by settling specific claims; $462 million to renew Canada's Middle East strategy; $404 million to continue implementing Jordan's Principle; $386 million to ensure proper payments for federal public servants; and $373 million of predictable capital funding for Public Services and Procurement Canada.

These estimates also reflect other funding decisions made prior to Budget 2019, notably, those made in the Fall Economic Statement, including additional funding to settle outstanding claims, to advance reconciliation, improve services and infrastructure in Indigenous communities; the ramping up of infrastructure spending under the Investing in Canada Plan and the New Building Canada Fund, as well as the Gordie Howe International Bridge; increased capital spending for Canadian Coast Guard ships and VIA Rail trains; and increased funding to reduce greenhouse gas emissions and protect species and habitat.

In addition to the voted expenditures, the Main Estimates for this year also include — for information purposes — forecasts of statutory spending by departments, among which $174 billion is for budgetary expenditures and $2.2 billion is for non-budgetary expenditures, such as loans, investments and advances.

[*Translation*]

Significant changes to statutory spending compared to 2018-19 include the following elements: increased major transfer payments, specifically elderly benefits, fiscal equalization and the Canada Health Transfer; a one-time transfer of $2.2 billion through the federal Gas Tax Fund to meet short-term priorities in municipalities and First Nation communities; and lastly, an increase in interest on unmatured debt.

Honourable senators, that concludes my presentation on this bill. Thank you for your attention.

[Senator Bellemare]

[*English*]

Hon. Elizabeth Marshall: Honourable senators, I also rise to speak to Bill C-102, An Act for granting to Her Majesty certain sums of money for the federal public administration for the year ending March 31, 2020.

Bill C-102 is Parliament's request for funds, as outlined in the 2019-20 Main Estimates. The 2019-20 Main Estimates present financial requirements of $302 billion for its 121 departments and agencies. Parliament is responsible for voting on $126 billion of this money, as indicated in Bill C-102. The remaining $176 billion has already been approved by other legislation.

Senator Mockler spoke at length earlier this week on many of the items that are included in the Main Estimates and in the supply bill. Senator Bellemare has also spoken. There is not much left for me to say. You will hear some things you've heard before.

The first item I want to talk about is the estimates reform project, which Senator Bellemare just spoke about. I think I have attended all the meetings during which that project was discussed. It is a very interesting project. A lot of work has been done on this project over the past four years, and a lot of preparatory work was done before that time.

I want to give you an idea as to how the Main Estimates operated three years ago and the progress that has been made in the subsequent three years.

Prior to last year, the Main Estimates were tabled before the budget was released. That was the 2018-19 Main Estimates. As a result, the Main Estimates did not include any new budget initiatives. Rather, new budget initiatives were included in supplementary supply bills for that year or, in some cases, didn't show up until supply bills of future years.

Last year, the 2018-19 Main Estimates were tabled after Budget 2018 was released, so the funding for all new Budget 2018 initiatives were included in one budget implementation vote, which was called "Vote 40." Vote 40 resided in Treasury Board, was centrally managed by Treasury Board and included $7 billion in new budget initiatives.

As the details of each new budget initiative were developed, and subsequently approved by Treasury Board, the corresponding funding was transferred to the respective department or agency so they could spend it.

• (1820)

That process last year was criticized by parliamentarians, the Parliamentary Budget Officer and the media for minimizing parliamentary oversight. People familiar with the process and what was happening were a little concerned — I know I was — that vote 40 was going to be a permanent fixture.

In essence, parliamentarians were asked to approve funding for all of the Budget 2018 initiatives before the departments and agencies had developed the details of the new programs; therefore, before the $7 billion had been scrutinized through the Treasury Board submission process.

At the end of last year, we were interested to see what happened to the $7 billion, because over the year it was being transferred out to government departments and agencies. There was a list of all the budgeting initiatives on the Treasury Board website.

As they were being transferred out, you could see it started out slowly at the beginning, and we were getting concerned. Even up to December it looked like a lot of the money had not been transferred out. But by the end of last year almost $5 billion of the $7 billion had been transferred out to the respective departments for program implementation. For a number of reasons, $2 billion was withheld by the Treasury Board, and $72 million remained unallocated. It seemed like they had control over the money.

This year, the new budget initiatives of $10 billion are allocated to respective departments or agencies. Each new initiative has its own separate vote. This has made it somewhat easier to track the new budget initiatives.

I don't know how easy it will be as we get through the year. At least for the start of the year, when you go through the estimates document, you can see what the new budget initiatives are for each government department and agency.

The issue is that parliamentarians are still being asked to approve funding for new budget initiatives without sufficiently detailed information and before they have been scrutinized through the standard Treasury Board submission process.

An example of this is the new First-Time Home Buyers Incentive. That was reviewed by the Social Affairs Committee. We also looked at it a couple of months ago in the Finance Committee as part of the estimates process. At the time it was studied, the rules had not been released. Within the last couple of days those rules have now been released. That will have to be on our to-do list.

To give you an example of the problems associated with the approval of funding before a budget initiative is fully developed, the Parliamentary Budget Officer tracked the Budget 2016 initiatives through their subsequent estimates and found that 30 per cent had variations, both higher and lower, compared to the amount that was initially indicated in Budget 2016. This demonstrates the value of Treasury Board's approval of developed budget initiatives and the problem when parliamentarians are required to approve these initiatives before they are reviewed and approved by the Treasury Board.

I was very interested in the reforming of the estimates process. Minister Joyce Murray, President of the Treasury Board, met with us on May 8 and provided an update on the estimates project.

First of all, for the Budget 2019 initiatives, she assured us that unspent funding on those budget initiatives will lapse. There was some concern that if the funding wasn't spent it would be transferred to some other program and used for another purpose. She assured us that it will not be transferred to another program.

She also said that this is year two of the two-year pilot project to align the estimates with the budget. She said future initiatives will rest with the new Parliament. I was a little disappointed because I had hoped she would leave some sort of template so we could see what progress is contemplated into the future.

We were also told that the new Budget 2019 initiatives are not included in the 2019-20 departmental plans. In committee, we have to bear this in mind when we're reviewing the departmental plans.

Honourable senators, I am not going to go through everything that is in the supply bill or in the estimates, but I want to talk about some of the things that we do in the Finance Committee.

One of the biggest challenges in studying the estimates is following the money from year to year and from department to department or among departments. When you look at an initiative, it could cover five or six departments and 10 years. You are trying to trace the money as it goes from agency or department and you're going from year to year. Many of the projects span several years. The Phoenix pay system is a good example of this.

When we studied the Phoenix pay system, we had to look back to when it was started, what was spent in past years, how much is being requested this year and how much government expects to spend over the next five years. It is not just a matter of picking up the estimates book, looking at a certain dollar amount and saying, "What is that money for?" It's broader than that. We have to see how the project has progressed.

The most straightforward item in the estimates is the rebate offered on the electric vehicles that Senator Boehm and I are planning to buy.

One of the more complex programs we studied was the funding for asylum seekers and refugees. This program spans eight government departments and agencies. This is a new budget initiative that is outlined in the Budget 2019 document. As you go through the budget document, you can see eight government departments and agencies involved. I want to talk about a couple of those departments to give you an idea of how complex the estimates can be.

First of all, the Department of Immigration and Citizenship is requesting $3 billion, of which $338 million is for new budget initiatives. Officials from the department informed us that the elevated number of asylum seekers, including those that have crossed into Canada irregularly, has challenged the asylum system. To address these challenges, the government plans to implement a comprehensive border enforcement strategy. I'm sure we'll learn more about that in future Finance Committee meetings.

To support the strategy and to process 50,000 asylum claims each year, the government plans to invest $1.2 billion over the next five years across eight government departments and agencies. Of this amount, $452 million will be allocated to the Department of Immigration and Citizenship, with $160 million allocated this year. We're looking at all the departments and we're looking at a number of years.

Increased funding of $324 million is also being requested to assist provinces and municipalities in providing temporary housing to asylum seekers. You may recall that last year $150 million was provided to provinces and municipalities. Again, this spans more than one fiscal year.

The Immigration and Refugee Board of Canada is requesting $205 million. Even though they didn't directly say it when they appeared before the committee, they are quite challenged in keeping up with the work they have to do.

Included in the $205 million for the Immigration and Refugee Board is $32 million from Budget 2018, which will be used to manage irregular migrants.

Also included in the $205 million is $57 million, which will be used to enhance the integrity of Canada's borders and asylum system. This funding will be used to support the processing of 50,000 asylum claims annually as well as enable the board to participate in the implementation of the new comprehensive border enforcement strategy.

In summary, funding increases for the Immigration and Refugee Board will be used to increase capacity and speed up the process of refugee claims and appeals.

Over the past year, we have seen a number of studies into this topic. The Auditor General released an audit in his spring report. The Parliamentary Budget Officer released a report last year. The department itself did some work on the Immigration and Refugee Board. I think it was a former public servant, Mr. Neil Yeates, and there were many recommendations. There has been a lot of work done on that, because the departments and the board and all the departments involved in the refugee program are being challenged.

Officials informed us that in 2018 the Immigration and Refugee Board experienced the largest influx of refugee claim referrals since its inception in 1989. A total of 56,000 claims were received. At the end of 2018, there were almost 72 claims outstanding. In addition, wait times for refugee claims have also increased significantly over the past two years.

Officials also told us that there were 74,000 claims outstanding at the end of March 2019. If the additional funding had not been provided in Budget 2018, there would have been 83,000 claims outstanding.

• (1830)

The Canada Border Services Agency is also one of the organizations that is involved in this $1.2 billion initiative. In total, they are requesting $1.9 billion for the agency, of which $262 million is for new budget initiatives, and $135 million of the new funding is for sustainability and modernization of Canada's border operations.

One hundred and six million dollars will be used to enhance the integrity of Canada's borders and asylum systems. It's worth noting that this $106 million is part of the $1.2 billion program spread over the eight different federal departments and agencies that I mentioned earlier, whose objective is to enhance the integrity of Canada's borders and asylum systems. The agency will use this funding to implement the border enforcement strategy, the processing of the 50,000 asylum claims and the removal of failed asylum claims. Funding is also being requested to address the increased demand for visitor visas, work and study permits.

Funding of $1.5 million is also being requested to protect people from unscrupulous immigration consultants. This is in addition to the $11 million being requested by Immigration, Refugees and Citizenship Canada for the same program. I'm trying to remember which committee studied that. It might have been Social, but I don't think it was.

The strategy around immigration consultants will have three components. As part the budget implementation act, the statutory framework will be enacted to regulate immigration consultants. New funding will increase criminal investigations, and there will be public education and outreach. Over five years this program is expected to cost $55 million.

Looking at those eight departments and agencies was the biggest area. We didn't look at all of them, but they all have a hand in that program. Just to figure out who is doing what and with what money has been a challenge.

I want to talk about the Department of Indigenous Services, because they appear before Finance quite regularly. They are requesting $12 billion. That's a significant increase when compared to $10 billion last year. They had expenditures of $4 billion in 2017-18. There has been a significant increase.

Of the $12 billion, $2 billion will be allocated to operating expenditures. Just over $9 billion will be in the form of grants and contributions, and $600 million will be for new budget initiatives.

Underlying this year's increased requests for funding are two major pieces of legislation which significantly affect the department and its programs. We have spoken about these before.

Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families, seeks to recognize and affirm Indigenous jurisdiction over child and family services.

The second piece of legislation is the department of Indigenous services act, which is included in Bill C-97, the budget implementation act. This act defines the duties and responsibilities of the Minister of Indigenous Services and was studied by the Standing Senate Committee on Aboriginal Peoples. The Standing Senate Committee on National Finance will use the bill, when enacted, as a guide when reviewing funding requests from the department.

As previously indicated, $9.5 billion is being requested by the department for grants and contributions, of which $1.7 billion is for grants and $7.8 billion is for contributions. The largest grant is $1.5 billion, and it is to support the new fiscal relationship for First Nations under the Indian Act. Officials told us that this new grant is based on co-developed criteria and will advance self-determination by enhancing predictability and flexibility of funding under this program. Department officials assured us that performance indicators, using quantitative criteria, will be used to report on this and other departmental programs.

Several senators on the committee were interested in the status of the long-term water advisory program. Sixty-six million dollars is being requested this year to eliminate boil water advisories on reserves. Officials told us that there are 50 boil water advisories in effect and that the department is on track to eliminate these by March of 2021. Officials also told us 6,842 housing units and lots are being built, renovated or serviced, of which 3,883 are now complete.

One of the interesting hearings that we had was something new and that is the Leaders' Debates Commission. That was an interesting area. The Leaders' Debates Commission was created last October by an order-in-council with the mandate to organize two leaders' debates for the 2019 federal general election. The order-in-council also established the criteria that the leader of each political party must meet to participate in the leaders' debates.

The commission is requesting just over $4 million to organize the two leaders' debates, one in each official language. The commission is comprised of a commissioner supported by seven-member advisory board. The commission's mandate includes the preparation of a report to Parliament following the 2019 debates outlying funding, lessons learned and recommendations to inform the potential creation of a more permanent Leaders' Debates Commission.

The last department I want to talk about is the Department of National Defence. I've spoken previously on that department, especially its new defence policy that was released in June of 2017 and the difficulty in obtaining information on estimated and actual costs of the capital projects.

The National Finance Committee has undertaken a study on military procurement. We have just finished reviewing our interim report. That also gets into this area of estimated and actual costs. Without this information, it's not possible for parliamentarians to track the progress of military capital projects.

For example, the department's defence policy indicates that just over $6 billion would be spent in 2017-18 on capital projects, yet actual costs were only about $4 billion. That's about a $2 billion shortfall. The following year, it indicated that just over $6 billion would be spent. We now know that just over $4 billion was spent. Again, there was a shortfall of about $2 billion.

For this year, when we were reviewing the Main Estimates and when we were looking at this bill, defence policy indicates that just about $6 billion will be spent on capital projects, yet the Main Estimates is only requesting $3.8 billion. That's, again, indicating a shortfall in excess of $2 billion.

This year we explored more about exactly what is in the capital projects. The department indicated that they have 333 capital projects in the new defence policy. Of the 333 projects, the department's website identifies 17 major projects, and they are identified as 17 transformational and major Crown projects, including the Arctic and offshore patrol ships, the Canadian Surface Combatants, the Future fighter capability project, and the Medium Support Vehicle System.

Departmental officials indicated that of the $3.8 billion requested in the 2019-20 Main Estimates and also now included in this bill, three projects have the highest estimates. They said that $300 million is being requested this year for the Arctic and offshore patrol ships, and this would be ice-capable offshore patrol ships that are being constructed by Irving Shipbuilding Inc. The department's website indicates that this project will cost in excess of $1 billion. There is a lot of interest in tracking exactly from the time that the project commences right until it finishes. That is usually over a number of years.

Three hundred million dollars is also being requested for the Fixed-Wing Search and Rescue Aircraft Replacement Project. Sixteen new sensory equipped aircraft will be acquired to replace the search and rescue fleets, a CC-115 Buffalo and CC-138 Hercules aircraft. The department's website indicates that the total cost of this project will also exceed $1 billion.

The third project is also another $300 million project. It's being requested for the Medium Support Vehicle System Project. New support vehicles will be required to transport troops, cargo and equipment and to perform unit-level and combat services. The department's website indicates the total cost of this project will also exceed $1 billion.

The fourth project being funded this year is the Canadian Surface Combatant Project, which will provide 15 Canadian surface combatants constructed by Irving Shipbuilding. Two hundred and fifty million dollars is being requested in this bill for this project. The project will also cost an excess of $8 billion.

While these four major projects are being undertaken by the Department of National Defence, financial information has been difficult to obtain. Given the magnitude of the costs and the significance of these projects to Canada, more information should be available to parliamentarians.

At the last Finance Committee meeting with officials of the department, they committed to providing the dollar amount for each of the 17 major projects included in the defence policy for 2019-20. They also committed to providing the dollar amount included for each of the 17 major projects included in the 2019-20 estimates request.

Last month government announced it would spend $15 billion for new ships, including two more Arctic and offshore patrols ships to accompany the six Arctic and offshore patrol ships currently being constructed by Irving Shipbuilding.

• (1840)

Also promised are 16 multipurpose vessels to be constructed by Seaspan Shipyards. These capital projects will be discussed during future committee meetings.

Honourable senators, one general comment I would like to make relates to the committee's study of 2019-20 Main Estimates which support the supply bill. The Main Estimates provide an overview of the spending plans of all of the government departments and many of its agencies. Many issues are raised during our committee meetings. As I mentioned previously, these issues carry forward into future years.

In closing, I thank Senator Bellemare for her second reading speech. I also thank the chair of our committee, Senator Mockler, Vice-chair Senator Pratte and Senator Day and all my colleagues for thoughtful and interesting questions. Thank you also to our clerk, Ms. Lemay, to our analysts Mr. Smith and Mr. Pu, and to all the staff who make our committee successful.

I look forward to our next supply bill which I expect will be forwarded during the next new parliamentary session. Thank you.

Hon. Senators: Hear, hear.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Bellemare, seconded by the Honourable Senator Harder, that this bill be read the second time.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

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

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

SPEECH FROM THE THRONE

MOTION FOR ADDRESS IN REPLY— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator Cordy:

That the following Address be presented to His Excellency the Governor General of Canada:

To His Excellency the Right Honourable David Johnston, Chancellor and Principal Companion of the Order of Canada, Chancellor and Commander of the Order of Military Merit, Chancellor and Commander of the Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

MAY IT PLEASE YOUR EXCELLENCY:

We, Her Majesty's most loyal and dutiful subjects, the Senate of Canada in Parliament assembled, beg leave to offer our humble thanks to Your Excellency for the gracious Speech which Your Excellency has addressed to both Houses of Parliament.

Hon. Marty Klyne: Honourable senators, I begin by acknowledging we are on the unceded Algonquin and Anishinabek territory.

I have given a title to this speech: What makes me, me.

My story includes information about me being a Cree Metis — a story I very rarely have the opportunity to share in detail with anyone.

I am Cree Metis from the Treaty 4 territory and homeland of the Metis in Saskatchewan. I take pride in sharing the history of my family with you as we approach June 21, National Indigenous Peoples Day, a day recognizing and celebrating the cultures and contributions of First Nations, Inuit and Metis.

Some 20 years ago, I listened to Chief Billy Diamond talking to a mainstream social in Ottawa. He noted that the term "Indian" came from Christopher Columbus mistakenly believing that he had found the shorter route to India. Chief Diamond quipped, "It's a good thing they weren't looking for Turkey."

Honourable senators, the term "Metis" is adopted from French "métis" from a Latin word for mixed, to represent those who are descended from a person of mixed First Nation and Euro-American ancestry. Metis typically trace their ancestry through the marriage between a European man and a First Nations woman. The majority of first Europeans who came to this land were explorers, voyageurs and fur traders, many of whom settled down with First Nations women to start families. The earliest Metis began to appear almost 400 years ago.

For the record, the Constitutional definition of "Aboriginal" is First Nations, Inuit and Metis. We Metis thank Harry Daniels, my uncle, for Metis being included in that Constitutional

definition. Through Jean Chrétien, he convinced Prime Minister Pierre Elliott Trudeau that Metis rightfully belonged in the Constitutional definition.

Being Metis is not just a consequence of colonialism and it is different from being First Nations or Inuit or European. The Metis evolved as a unique people, arising as a product of both First Nations and European cultures, creating a unique history of customs, culture, cuisine, dress, music, dance and communities reflective of and influenced by the best of both First Nations and European customs and cultures.

Metis origins have been endowed with the hope of opportunity for a better way of life that our European ancestors brought with them and the tenacity to thrive in unforgiving climates passed down from our First Nations ancestors. If I could identify a shared trait from these often seemingly different worlds, it is one of industriousness. It originates from the belief that we can move forward to build a future, irrespective of our situation.

The federal government initially recognized the Metis as an autonomous people, probably because they were considered useful translators, guides and skilled labour and had an understanding for trade. However, as the land the Metis inhabited became more valuable, the government devised many strategies to take that land away. We get a glimpse of the animosity that the government held towards the Metis during the Treaty 4 negotiations in 1874.

One of the lead representatives during negotiations, Chief Ota-Ka-Onan of the Saulteaux, chastised Lieutenant Governor Alexander Morris for his treatment of the Metis representatives when he said to Morris:

> Now when you have come here, you see sitting out there a mixture of Half-breeds, Crees, Saulteaux and Stonies, all are one, and you were slow in taking the hand of a Half-breed.

The reason for the government's animosity was their own making. A year earlier in 1869, the government marched on the Red River Colony. That would lead to what many know as the Red River Rebellion, but the victors write history. The Metis, on the other hand, know this event as the Red River Resistance. It was here that Louis Riel, who made all attempts at peaceful negotiations to settle the conflict, would become a heroic figure to Metis and vilified by the government.

In 1885 the colony at Batoche in Saskatchewan was made up of some 500 Metis. Many had fled from Manitoba following the Red River Resistance. The government found that the Metis colony measured out their farm plots as long, narrow parcels that jutted out from the river to allow as many farmers as possible access to water. The government instead wanted long plots running parallel to the river. When the Metis asked to negotiate this dispute, the government refused and used military force against the Metis once again. That would spark the North-West Resistance and it was here that Louis Riel would surrender. The government managed to crush the community and any hopes and aspiration of Metis independence.

Honourable senators, the government further used other policies to shape how Metis would access their lands through issuing scrip land and scrip money. That approach allowed the government to open up Western Canada to purely European settlers on land the Metis had settled for generations. Metis families were forced to take scrip, which was a piece of paper to be redeemable for a parcel of land or a one-time payment of money. The result was the government prevented Metis from living communally and gave only the best land to European settlers. Worse, the scrip papers provided were often stolen or swindled away from the Metis.

The government succeeded in creating a landless, treaty less and disenfranchised Metis people. Their dependence created the Road Allowance People in the early 1900s as the Metis established communities by squatting on Crown Land, parkland and forests and were forced to take menial jobs from the farmers to whom the government had given their land.

A turning point of Metis struggle occurred in 2016 with the decision from *Daniels v. Canada* case where the Metis and non-status leader Harry Daniels, my Uncle Harry, successfully argued that the Metis were indeed Indians under section 91(24) of the 1867 Constitution.

• (1850)

The case did not provide Metis with access to status, but it did force the federal government to negotiate land claim settlements and provide access to resources for health programs, education and government services, along with the reparations for the devastation of the residential school system and the Sixties Scoop.

That is just a brief glimpse or cursory overview of the 400-year history of the Metis. I will now turn to my own history and lineage and what makes me who I am.

Like many Canadians, my lineage stretches across many nations and many cultures. The main families of my story begin with Klein in Germany, McKay in Scotland and Bellegarde, from France.

On the Klein side, I can trace my lineage back to my twelfth great-grandfather, born in 1460 in Germany. Note that at this time the spelling was Klein. Seven generations down the line, my fifth great-grandfather, Johan Philip Klein, was born in Germany in 1864 and died in Pennsylvania, U.S.A., in 1739. Ergo, he was the first one to come over to North America. His German-born son, Johan Adam Klein, my fourth great-grandfather, made his way to Quebec, Canada and started a family there. This makes me a seventh-generation European Canadian.

With Johan's son, my third great-grandfather, Michel, Sr. Klyne, the spelling of the last name was changed to Klyne. This was close to 240 years ago and I have not yet discovered why the change, but I suspect his mother, Marie Genevieve Bisson, had something to do with it.

On the McKay side, my mother's patrilineal side, I trace that back to my sixth great-grandfather in 1700 Scotland. My fifth great-grandfather, John McNab McKay, and his wife Elspeth Kennedy, were the first to come to Canada from Scotland and they brought their Scotland-born son, John Richard McKay, Sr., with them.

On the Bellegarde side, my mother's matrilineal side, I trace that back to my eighth great-grandfather in 1620 France. My seventh great-grandfather, Christophe Gerbault, Sieur de Bellegarde, and his wife, Marguerite Lemaitre, were the first to come to Canada and all of their children were born in Quebec.

A number of Metis mothers are generations strong across my lineage, as are First Nations mothers, coming into both my patrilineal side and my matrilineal side beginning over 250 years ago. My fifth great-grandmother, Titameg Whitefish Cree, was born in 1755, a Swampy Cree woman. Others include my fifth great-grandmother, Mme. LaFrance, native woman born 1770, my fourth great-grandmother, Josephette, Cree woman, born in 1760 and my great-grandmother, Marie Anne Bellegarde, lovingly referred to as Kookum from Little Black Bear First Nation, born in 1862, 157 years ago.

Not that long ago, before my grandmother passed away, she would visit her Treaty Status sisters on their home reserve, which was once considered her reserve as well.

On September 10, 1939, Canada entered the Second World War, declaring war on Germany. Less than four months later, my father, Lawrence Klyne, enlisted in active forces on January 2, 1940, as a private in the Royal Canadian Army Service Corps. The motto of the corps was *Nil Sine Labore*, Latin for "Nothing Without Work." He could have been the poster boy for this motto.

On May 23, 1946, he discharged as a corporal in the Royal Canadian Army Service Corps, Regimental Number L.7453. He was in the active force of the Canadian Army for six years, five years of which were overseas during World War II.

He was unable to find permanent employment in civilian life after his discharge, so he decided to re-enlist sixteen months after discharging from the Canadian Army and 11 months after the birth of my sister, Julie Ann Klyne, who passed away February 5, 2015, at age 67.

My father built our home in Regina after my sister was born on March 1, 1947. I recall him telling me he paid $10 for the lot and he told me a story about digging the hole for the basement. He said all it took was him and my Uncle Wilf, a team of horses, a plow and two bottles of wine. The army trained him to be an excellent mechanic and multi-disciplined tradesman and that very home still stands true today, 70 years later.

He made it known he was interested in serving in Fort Churchill in view of the possibility of promotion to sergeant. He did make sergeant.

On November 26, 1953, almost six years after re-enlisting, he embarked for Korea, arriving for the Korean War on December 13, 1953. He returned to Saskatchewan on January 25, 1955, and was a supervisor and instructor for approximately 10 years until he discharged from the Canadian Army on March 10, 1966. He made a 25-year career of the army and served in active forces during the Second World War and in the regular forces that included the Korean War. During his term, he was also in the Royal Canadian Electrical Mechanical Engineers. He retired as Sergeant Lawrence Klyne, SL.7453.

Over his military career, his medical set includes: the 1939-1945 star; the Italy Star; the France and Germany Star; the Defence Medal; the Canadian Volunteer Service Medal with a silver clasp; the War Medal, 1939-1945; United Nations Service Medal (Korea); Queen Elizabeth II Coronation Medal (1953) and Canadian Forces' Decoration.

In preparing this speech, I discovered that he was due two additional medals, which I will apply for after the Forty-second Parliament, and those two medals are the Canadian Volunteer Service Medal for Korea and the Canadian Korea Medal.

To me, my father was Clark Gable, John Wayne and G.I. Joe all rolled up in one. He was firm, fair and decisive. He never raised a hand to me and never used foul language around me. A common cuss word to be heard from him would have been something like, "blast." This was a guy who commanded authority just by looking at you.

My mom and dad met after he came home from World War II. When he was travelling home from Europe with his army buddy, Alec Daniels, he told him that when he got back to Canada he wanted to find a beautiful bride, build a home and settle down. Alec introduced him to his cousin, Alice Vera McKay, and they married shortly after at granny and grandpa's home. My great-grandmother, Kookom, was there too.

My mother was raised in Regina Beach, Saskatchewan, a Metis community, as Dr. Lloyd Barber would refer to it, and was a member of the Canadian Women's Army Corps and received the Canadian Volunteer Service Medal. She was a loving mother who was full of life, driven with fortitude and perseverance, balanced with good humour and quick wit, to add to being a fabulous cook, talented seamstress and excellent homemaker and being very creative and artistic with everything she did.

She came from a family very much of Metis origin. My great-grandfather, William Henry McKay, took scrip land and gave up any rights to land or treaty and was a pioneer who settled in Regina Beach at what became known as McKay Crossing. My great-grandmother, Marie Anne Bellegarde, left Little Black Bear First Nation to marry my great-grandfather. In doing so, she gave up treaty status and, hence, treaty rights. My grandfather, Edward McKay, was born under a wagon in McKay Crossing in 1900.

I want to pay homage to my wife, Charlene, who is the mother of my youngest son, Mack Klyne, and also homage to my first-born son, Benjamin Mark Tingley, who was raised by his absolutely wonderful adoptive parents, Bill and Lily Tingley.

Charlene is a great partner in many ways. She is a best friend and a great person to share my life with, not to mention a great mother and a brilliant business person who successfully ran our award-winning business.

My eldest son, Ben, lends to my belief of nature and nurture. Not only does he look like me, but despite he and I being apart for the first 19 years of his life, he sounds like me, he talks like me and he has the same mannerisms as me. Ben is married and I have two gorgeous grandchildren, Jack and Portia. Ben had an excellent upbringing and is well-educated with an executive MBA and owns a successful advising firm.

My young son, Mackenzie Gordon Lawrence Klyne, is undoubtedly headed for good things in education, family and life. His creativity and approach to life and all it has to offer is inspiring. Like his older brother, he is a gentleman.

Honourable senators, I thank you for your attention, and as a salute to the Canadians out there watching this at home, I hope my story has provided something that speaks to the uniqueness of our great nation and its Metis people.

Thank you.

Hon. Senators: Hear, hear!

Hon. Pat Duncan: Honourable senators, I rise today in reply to the Speech from the Throne to provide members with my inaugural speech in this chamber. The inaugural speech provides an opportunity to acquaint our colleagues with background — where do I come from? It also provides an opportunity to speak to how it came to be under this revised process for appointment to the Senate — why I applied for the job.

• (1900)

Perhaps most important, this is an opportunity to express my heartfelt thanks. I so appreciated the kind words spoken by Senators Harder, Mercer, Smith and Woo as I was welcomed to the chamber.

I would also like to particularly express my thanks, as it might be one of the last opportunities to do so, to Senator Andreychuk. Members will recall that Senator Andreychuk sponsored my entry into this august chamber. She has also provided me with advice and support, and I have observed that the senator has served this chamber and Canada with such dignity and respect that I can only hope to one day emulate her.

Thank you, Senator Andreychuk.

Hon. Senators: Hear, hear.

Senator Duncan: Colleague, may I also extend my heartfelt thanks to all of you. Your support and your encouragement — I am truly grateful for that. To your staff and the Senate staff, thank you for your warm welcome.

My welcome in this chamber, in *Hansard*, included some of the details of my background and other points that have come out as we have begun our work together. Senator Day's celebration of Canada's air force was an opportunity to share that my father, from Glasgow, Scotland, was an RAF pilot in World War II. He met my mother here in Ottawa, and they married shortly thereafter. Colleen Bartlett was an American from the State of Maine who had joined the Canadian Army.

My parents returned to Britain in 1945, and the family became four with my brothers and sisters born in little air force stations all over Great Britain.

The family immigrated first to the U.S. in 1955 and then to Canada. Upon entry to Canada, an enlightened border official — and this is not just for Senator Simons — suggested that they go to Edmonton, where I joined the family. Discussions about immigration in Canada and immigration policy at my dinner table begin with "were it not for a Canadian policy of welcome, my family and I would not be here."

In 1964, public service called to my father, and he moved to the Yukon. I have to say he travelled the Alaska Highway with all the essentials: his first-born son, the encyclopedias and his curling broom. That public service and the notion of public service — my family of origin — has been passed on. Dad worked on the Yukon's very first health care legislation. His health care work would be somewhat challenged in today's environment, as he was also of the firm belief, as a Scotsman, that it was his role as a public servant to treat the taxpayers' nickel as if it were his very last and the last one you had to spend. You had value for money and accountability, something I have also witnessed with my colleagues at the National Finance Committee, with whom I truly have appreciated the opportunity to work.

The importance of community involvement also came from my mother, whether it be passing on the traditions through the guild of needle arts; sewing bindings on quilts donated to the chemo room at Whitehorse General Hospital, a tradition I'm proud to continue; or the quilts of valour. The family's involvement also continued at the community curling clubs in bonspiels, my own curling for the Yukon at the Canada Winter Games, being a girl guide and a provincial commissioner of the Girl Guide Organization, built my foundation, commonalities that I believe we all share — that sense Canadians have of the ties that bind us: fair play and respect for one another.

That respect for one another was not quite as obvious when I entered political life. Senators and Canadians will have heard some of the stories, if they have listened to the "No Second Chances" podcasts. Dr. Kate Graham, senior fellow of Canada 2020, was the project leader. That project concludes today, colleagues, and I would just remind you of this note: Of the more than 300 first ministers in our country's history, only 12 have been women. We can and we will do better.

Serving in the Yukon Legislative Assembly from all corners — leader of the third party, and official opposition, premier, the sole member of a political party — some of my memorable moments include support for and concluding land claims negotiations and signing the devolution transfer agreement with Ottawa. Working government to government with First Nation governments was an honour and a privilege.

One of the guiding moments I have carried from that time is a note that was on my desk in the legislature, reminding me that nothing is ever lost by common courtesy.

Leaving politics to become a public servant, I completed my Foundation of Administrative Justice Studies. One of the first courses in that course of study is the interpretation of legislation. I can remember asking myself, "What were they thinking when they passed this?" I must say that I'm reminded of the Canada Elections Act in 1890: "No woman, idiot, lunatic or criminal shall vote."

Colleagues, I think we have to ask ourselves every day when we look at legislation, will it stand the test of time?

I would be remiss if I didn't commend my former colleagues in the Yukon Legislative Assembly, because in reviewing and applying the Workers' Compensation Health and Safety Act, the preamble to that act instructs public servants that all workers, families and employers are to be treated with dignity, respect and fairness. As a manager, I believed it was my responsibility to remind public servants every day that those were our guiding principles as they were outlined in the act.

Like many folks looking to the future, having been in the public service, I pondered what was next. I wanted to continue to be of public service. At the eleventh hour, I submitted my application to the process to become a senator. To be clear, I took to heart the desire that it be an independent process. My application was supported by the requisite three Yukoners, representatives of all walks of life who have contributed to all different political parties.

I would be remiss if I did not express my thanks to my family, especially my husband, Daryl Berube, and our children, Kirsten and Craig, for their love and support for my application and for my appointment.

Now I work as a senator. Can I outline for you a lofty goal of an environmental or economic project that I would like to see completed? No. From this background, senators, colleagues, what I believe I bring to the chamber is my commitment to you of effort, of giving it my very best, and the understanding of the honour and privilege that it is to be of service to Canadians.

Hon. Senators: Hear, hear!

Senator Duncan: I also bring our Yukon Legislative Assembly prayer that asks the Creator, the Great Spirit, the leader of all people, that we may make only sound, fair and wise decisions on behalf of the people. In the words of some of Yukon's First Nations, *mahsi cho*. Colleagues, thank you.

(On motion of Senator Bellemare, debate adjourned.)

(*At 7:09 p.m., pursuant to the orders adopted by the Senate on February 4, 2016, and May 9, 2019, the Senate adjourned until 1:30 p.m., tomorrow.*)

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