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OFFICIAL REPORT
(HANSARD)

Tuesday, May 25, 2021

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Tuesday, May 25, 2021

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

Prayers.

[*Translation*]

SPEAKER'S STATEMENT

The Hon. the Speaker: Honourable senators, on May 5, 2021, I made a statement in the Senate outlining the process to be followed for the election of the Speaker pro tempore for the rest of the session. This was done pursuant to a decision of the Senate made on February 8, 2021, when it adopted the fourth report of the Committee of the Selection.

The deadline for senators to indicate a wish to run for the position of Speaker pro tempore was noon on May 10, 2021. Only one senator expressed an interest, so an election is not required, and the post can be filled by acclamation.

Honourable senators, I am therefore pleased to advise you that the Honourable Senator Ringuette will be Speaker pro tempore for the remainder of the session. Pursuant to the process established on May 5, the following motion is deemed moved, seconded and adopted: "That the Honourable Senator Ringuette be named Speaker pro tempore for the remainder of the session".

Colleagues, I know that, like me, you will wish to congratulate Senator Ringuette on her new responsibilities. She brings extensive parliamentary experience — both in the Senate and in the House of Commons — to her role, and we will benefit from her good sense, quick wit and acumen. I have appreciated her dedication and support since she took on her role on an interim basis.

Thank you, Senator Ringuette, for all your diligent work for the Senate, and my very heartfelt congratulations and best wishes.

[*English*]

Hon. Pierrette Ringuette: I would like to say a particular thank you to all honourable senators.

[*Translation*]

I am really blessed to have the support of my colleagues in this task, which I see as very important to the proper functioning of our institution, and to have your support, Mr. Speaker. Many, many thanks to all of you, dear colleagues. I hope to be able to continue to serve you in this role. Thank you.

Hon. Senators: Hear, hear!

[*English*]

SENATORS' STATEMENTS

THE HONOURABLE MARY JANE MCCALLUM
THE HONOURABLE MURRAY SINCLAIR

CONGRATULATIONS ON INSTALLATION AS UNIVERSITY CHANCELLORS

Hon. Yuen Pau Woo: Honourable colleagues, as senators, we are involved in many activities outside of the Red Chamber. From time to time, some of us may be given awards and recognition for accomplishments and other good deeds. It would be impossible to recite them every time an award or recognition is given. However, on this occasion, I want to take a minute to recognize a current colleague and a former colleague who have truly achieved something quite extraordinary.

Senator Mary Jane McCallum, as some of you know, has been appointed as chancellor of Brandon University, the first Indigenous person and woman to serve as chancellor of that university. Our former colleague Senator Murray Sinclair was appointed as chancellor of Queen's University.

Former Senator Sinclair is fond of saying words to the effect of, "It was education that got us into this mess," referring, of course, to residential schools. He has always said in the follow-up to that comment that it is education that will get us out of this mess.

He and Senator Mary Jane McCallum are at the pinnacle of responsibility at two prestigious universities in our country. We look to them to help us get out of this mess.

Congratulations, Senator Sinclair and Senator Mary Jane McCallum.

Hon. Senators: Hear, hear!

ASIAN HERITAGE MONTH

Hon. Wanda Elaine Thomas Bernard: Honourable senators, I rise today, during Asian Heritage Month, to recognize the important work of the Filipino-Canadian Social and Community Worker Network.

This year has brought an influx of anti-Asian discrimination and an increased awareness of the racism and violence faced by Asian Canadians. It is important that we work together to address anti-Asian racism. I also want to bring attention to positive things that are happening in Asian-Canadian communities by acknowledging a grassroots organization that is supporting their community through this difficult time.

I have had the pleasure of meeting the executive members of the Filipino-Canadian Social and Community Worker Network: Monica Batac, Dr. Ilyan Ferrer, Veronica Javier and Dr. Fritz Pino. These change leaders have mobilized Filipino, Filipina and Filipinx social workers across Canada by hosting events and through their Facebook group. This group is a hub for connections, mentorship and resource sharing. They bring attention to issues faced by Filipino people in Canada, including issues related to racism and colonialism, immigration, labour, solidarity with Black and Indigenous communities and assessing COVID-related community needs.

The network fills a need for Filipino scholarship and representation in social work and community activism as social workers, community workers, social work educators or academics. As a founder of the Association of Black Social Workers established 42 years ago, I am familiar with the courage and persistence needed to spearhead such an initiative off the side of your desk. I hope that 42 years from now, the network can look back on these early years as a pivotal point for Filipino social workers and community workers in Canada.

• (1410)

Honourable colleagues, in honour of Asian Heritage Month, please join me in recognizing and supporting the important work of the Filipino-Canadian Social and Community Worker Network. Thank you.

ANTI-SEMITISM

Hon. Linda Frum: Honourable senators, in the past days, Canadian cities have seen an unprecedented surge of assaults and attacks upon Jewish Canadians. Our elected leaders may say there is no place for hate of any kind in Canada, but, of course, that's not true.

For people who hate Jews, there's most certainly a place in Canada. It's a large place, a growing place and an increasingly comfortable and respectable place. Those who inhabit that comfortable and respectable place might not deface a synagogue themselves or throw a brick at a school, but they create permission for those who do commit those overt acts of hatred. They teach our fellow citizens to think it is perhaps excessive to throw a brick, but those Jews, they brought it on themselves. They deserve it. The real victim is the brick thrower.

I want to talk today about one of those teachers. It is, unfortunately, a taxpayer-funded broadcaster, Radio-Canada. In recent weeks, one reporter at Radio-Canada has embarked on a campaign against a former ambassador of this country to Israel. The trouble is, the reporter has got no facts to support the campaign, so the campaign has to proceed by insinuation.

She wants to tell a story of a sinister Jewish conspiracy. The conspiracy does not exist, but photographs can be placed side by side under a suggestive headline to create a false impression. Then the headline and the photos can be posted to social media to weaponize the false impression on thousands of minds that will never click to the underlying report to read how baseless it all is.

I was one of those side-swiped by this campaign. I was singled out as a member of the conspiracy, illustrated by a photo of me standing beside an Israeli flag. Just in case anyone missed the point: Jew plot, Jew danger, Jew enemy.

Parliamentary rules discourage me from identifying the reporter in question. On reflection anyway, the issue is not one reporter. Reporters do not write their own headlines, select their own photographs or make the placement of those photographs, and many of the most inflammatory social media posts about this were issued from the accounts of the reporter's colleagues and friends, not the reporter herself. So this is not about a single individual. This is a story about a habit of mind.

Professional news organizations usually have standards to prevent this kind of sly defamation. Public broadcasters might be expected to be more professional than most, but when the topic is Jews, Radio-Canada is less professional than any. It's not a new problem, and it's not one person's failure. It is a deep cultural malformation that starts with ancient paranoid fantasies and culminates in violence on the streets of Montreal.

FEDERAL GREENHOUSE GAS OFFSET SYSTEM

Hon. Robert Black: Honourable senators, I rise today to highlight the important steps that many Canadian farmers have taken to make their operations more environmentally sustainable.

This government has made it clear that the fight against climate change remains one of its key focuses. While I wholeheartedly support the important goal of reducing greenhouse gas emissions, I am wary of the impacts that initiatives such as the Federal Greenhouse Gas Offset System will have on our agricultural industry.

Earlier this year, the Minister of Environment and Climate Change Canada announced this new system. Unfortunately, draft regulations for Canada's carbon offset market indicate that farmers won't receive credit for removing any greenhouse gas emissions before 2017.

While the government established its plan to put a national cost on carbon that same year, many farmers had already taken steps over previous years to make their land a zero-till operation — this technique increases the retention of organic sequestration, organic matter and nutrient cycling, which in turn increases carbon sequestration — or to have perennial forage

coverage. There is more carbon in soils under perennial forage than annual crops due, in part, to the former's ability to better transfer carbon to the soil.

Following the minister's announcement of the new system, the Canadian Federation of Agriculture and other producer groups formed the Agriculture Carbon Alliance to:

> . . . ensure that Canadian farmers' sustainable practices are recognized through a policy environment that maintains their competitiveness, supports their livelihoods, and leverages their critical role as stewards of the land.

I would like to thank CFA and their industry partners for continuing to support farmers and their notable efforts to go green.

At this time, I would also like to acknowledge that the 2021 federal budget includes provisions to support farmers, namely by returning a portion of the proceeds from the price on pollution directly to farmers in backstop jurisdictions — currently Alberta, Saskatchewan, Manitoba and Ontario — beginning in 2021-22. While this is a positive step, I am hopeful more support — and recognition for work that has already been completed — will be offered moving forward.

Honourable colleagues, it is clear that the agriculture industry understands and supports the call to action to fight climate change. However, to achieve our goals in greenhouse gas reduction, government and industry must work together. Canadian agriculture producers and processors need the government's support in transitioning their operations to be more sustainable, but they also require the government's support while they seek to change decades-long practices and procedures.

I do hope that when the time comes to discuss these issues in the chamber, you will acknowledge the steps that many farmers have already proactively taken in the past. It is in our nation's best interests that government and agriculture work collaboratively to establish cleaner and greener farming practices that will not only benefit the future of farming but the whole of Canada as well.

Thank you. *Meegwetch*.

ASIAN HERITAGE MONTH

Hon. Victor Oh: Honourable senators, I rise today to speak again on Asian Heritage Month and to recognize outstanding Asian Canadians.

Today, I will highlight the incredible work by Dr. Lawrence Loh, Peel Region's Medical Officer of Health. Dr. Loh spent his youth between Kuala Lumpur, Malaysia and London, Ontario. Since his graduation from Western University's medical school, Dr. Loh has been a remarkable public health professional. He has held important positions at the Public Health Agency of Canada, Public Health Ontario and B.C.'s Fraser Health Authority. Additionally, Dr. Loh's work as a researcher and educator at Canada's most renowned university has brought him many honours and awards.

In March 2020, we were all grappling to understand the complexity of the COVID-19 pandemic. Dr. Loh was appointed Peel's new Medical Officer of Health. After only three days on the job, he faced the unprecedented task of curbing the spread of coronavirus in my city of Peel.

A year later, Dr. Loh is recognized as a hero in our community. His forward-thinking and resolve to take actions beyond the provincial guideline orders were instrumental in containing COVID-19 transmission in one of the country's hardest-hit regions.

Dr. Loh remains fully committed to preserving and improving the health and safety of every resident in the Peel region, especially those who are most vulnerable. Throughout the pandemic, he has advocated for increased safety and health measures, and has publicly condemned anti-Asian racism.

• (1420)

Honourable senators, please join me in recognition of Dr. Loh and all front-line workers in their extraordinary efforts to combat the COVID-19 pandemic in our country. Thank you.

ROUTINE PROCEEDINGS

THE SENATE

MOTION TO AFFECT THURSDAY'S SITTING AND RESOLVE INTO COMMITTEE OF THE WHOLE TO CONSIDER SUBJECT MATTER OF BILL S-4 ADOPTED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

> That, notwithstanding any provisions of the Rules, usual practice or previous order, when the Senate sits on Thursday, May 27, 2021:
>
> 1. the sitting start at 1:30 p.m.;
>
> 2. the Senate resolve itself into a Committee of the Whole at 1:55 p.m. to consider the subject matter of Bill S-4, An Act to amend the Parliament of Canada Act and to make consequential and related amendments to other Acts, with any proceedings then before the Senate being interrupted until the end of Committee of the Whole, which shall last a maximum of 95 minutes;
>
> 3. if the bells are ringing for a vote at the time the committee is to meet, they be interrupted for the Committee of the Whole at that time, and resume once the committee has completed its work for the balance of any time remaining;

4. the Committee of the Whole on the subject matter of Bill S-4 receive the Honourable Dominic LeBlanc, P.C., M.P., Minister of Intergovernmental Affairs, accompanied by at most three officials;

5. the witness's introductory remarks last a maximum total of five minutes;

6. if a senator does not use the entire period of 10 minutes for debate provided under rule 12-32(3)(d), including the responses of the witnesses, that senator may yield the balance of time to another senator; and

7. the sitting adjourn no later than 8:30 p.m., as if that were the ordinary time of adjournment.

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.)

JUDGES ACT

BILL TO AMEND—FIRST READING

Hon. Marc Gold (Government Representative in the Senate) introduced Bill S-5, An Act to amend the Judges Act.

(Bill read first time.)

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

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

[*Translation*]

INCOME TAX ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation).

(Bill read first time.)

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

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

CANADA LABOUR CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-220, An Act to amend the Canada Labour Code (bereavement leave).

(Bill read first time.)

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

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

[*English*]

CANADA REVENUE AGENCY ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-210, An Act to amend the Canada Revenue Agency Act (organ and tissue donors).

(Bill read first time.)

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

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

[*Translation*]

CANADA-CHINA LEGISLATIVE ASSOCIATION
CANADA-JAPAN INTER-PARLIAMENTARY GROUP

ANNUAL MEETING OF THE ASIA-PACIFIC PARLIAMENTARY FORUM, JANUARY 13-16, 2020—REPORT TABLED

Hon. Paul J. Massicotte: Honourable senators, I have the honour to table, in both official languages, the report of the Canada-China Legislative Association and the Canada-Japan Inter-Parliamentary Group concerning the Twenty-eighth Annual Meeting of the Asia-Pacific Parliamentary Forum, held in Canberra, Australia, from January 13 to 16, 2020.

THE SENATE

NOTICE OF MOTION TO CALL UPON THE GOVERNMENT TO DESIGNATE THE SECOND WEEK OF MAY OF EVERY YEAR AS JURY APPRECIATION WEEK

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

> That the Senate recognize that, each year, thousands of Canadians are called to jury duty and contribute to the Canadian justice system; and
>
> That the Senate call upon the Government of Canada to designate the second week of May in each year as Jury Appreciation Week in Canada, to encourage those Canadians who provide this public service and to recognize their civic duty.

[*English*]

NOTICE OF MOTION TO CONDEMN THE RECENT VIOLENT ATTACKS AGAINST JEWS

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

> That the Senate unequivocally condemn the recent violent attacks against Jews in various cities in Canada, and elsewhere — a worrying indicator of the rise of anti-Semitism in this country — and call upon the Government of Canada to reaffirm its unwillingness to tolerate both anti-Semitism in general and, specifically, physical attacks against Jews, who the great Israeli statesman Abba Eban called "the living embodiment of the minority, the constant reminder of what duties societies owe their minorities".

QUESTION PERIOD

HEALTH

COVID-19 VACCINE ROLLOUT

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question is for the government leader in the Senate. Senator Gold, Manitoba Premier Brian Pallister has been informed that 100,000 Manitobans could be immunized over just the next few days if surplus COVID-19 vaccines sitting in freezers in the border states of North Dakota and Minnesota would be sent to our province.

• (1430)

While restrictions and lockdowns continue across our country, this week Canada will receive only 600,000 doses of the Pfizer vaccine. Canadians need more vaccines as quickly as possible, and we need the Trudeau government to do everything in its power to get these American vaccines into Canada. Leader, if Prime Minister Trudeau is such good friends with President Biden, why has he not called him and asked him to allow surplus vaccines in the U.S. to be shipped to Manitoba and other provinces?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. Before I answer it, let me extend my congratulations to you and every other Winnipegger for the victory of the Winnipeg Jets. But at the same time, my condolences to my colleague, Senator LaBoucane-Benson and others from Alberta for their loss. As a Montrealer, hope springs eternal in our series.

The Government of Canada is working — not only with the provinces, but also with its American partner — to ensure that Canadians receive all the vaccine doses they need as quickly as possible. To date the government has delivered over 23 million vaccines to provinces and territories and over 61% of Canada's adult population has received at least one dose. That represents over half of the Canadian population as a whole. We're third amongst G20 countries now.

The Government of Canada was pleased to respond to Premier Pallister's request for assistance with the difficulties the province is experiencing and will continue to work diligently to secure as many doses as it can, including those from the United States.

Senator Plett: What number we are in the world as far as doses and vaccines are concerned is somewhat irrelevant when we could have 100,000 more doses by simply getting the President of the United States to encourage North Dakota and Minnesota to send those over.

Premier Pallister spoke with the Prime Minister on Friday and urged him to reinforce this message to President Biden and his administration to allow excess U.S. vaccines to come to Canada immediately. The premier said the Prime Minister supported the need for excess doses from the U.S. to be sent to Canada now when they are needed most. Leader, that was four days ago. There has been silence from the Trudeau government ever since.

There is an immediate need for these vaccines, and the Prime Minister is not showing any sense of urgency. After all, he thinks a one-dose summer, two-dose fall is sufficient when it just isn't good enough. When will he make that call to President Biden?

Senator Gold: I don't know whether the call was made. I'll certainly make inquiries, senator, and keep this chamber apprised. But I want to reassure the chamber and all Canadians that the Government of Canada — both the Prime Minister and Minister of Public Services and Procurement and other officials — are in regular contact with counterparts in the United States to work diligently on behalf of Canada.

ENVIRONMENT AND CLIMATE CHANGE

LIQUEFIED NATURAL GAS

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, my question is also for the government leader in the Senate. Last week, Australia's Woodside Energy announced its decision to sell its entire 50% stake in the Kitimat LNG Project in northern British Columbia. When Chevron announced its intention to sell its 50% stake in this project back in December 2019, I raised this matter here in the Senate.

Chevron has since announced that it will no longer fund work on this project. This is terrible news for my province and our country as Kitimat LNG is a $24-billion project that would support over 4,000 jobs. The First Nations Limited Partnership comprising 16 B.C. First Nations has also expressed their great disappointment.

Leader, the Trudeau government's anti-energy policies and rhetoric have driven away major projects across Canada, and today the future of Kitimat LNG looks absolutely bleak. How many more projects will fail under your watch?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. Regrettably and with respect, I can't accept some of the assumptions in your question. The government's policies are not killing projects. On the contrary, this government has supported not only a number of projects in particular, but the sector more generally while at the same time working to find an appropriate pathway as we evolve toward a cleaner economy. I will make inquiries if there is a specific question, but to the best of my knowledge, the government remains committed to developing clean energy for the country.

Senator Martin: Well, I do disagree in terms of the support that the government has given to the energy sector. We didn't see anything for any of the COVID-19 emergency measures, and the projects have been failing.

I have a list, leader. It includes the Energy East Pipeline project, Northern Gateway Pipelines project, Frontier Oil Sands Mine Project, Mackenzie Valley pipeline, Aspen Oil Sands Project, Pacific NorthWest LNG Project, Aurora LNG project, Westcoast Connector Gas Transmission project and the Keystone XL Pipeline Project. These are all major energy projects which were cancelled under the Trudeau government's watch.

The Trudeau government has enacted legislation that has driven investment away time and time again. Minister Wilkinson has previously talked down the importance of LNG in meeting or GHG emissions targets. Leader, it's a bigger question and I would love to get your response to how the government is supporting the sector when we see the opposite in this long list. What future does LNG have in Canada?

Senator Gold: Thank you for your question and for the list. I will refrain from stating the obvious point that the factors that go into whether projects go forward or not are many-fold, and they include the world price for resources, the world's growing appetite for clean energy and so on. It is simply not the case that the failure of all the projects you outlined fall within the responsibility of the federal government. It is tempting to blame the government when things go bad and praise them the most when things go well.

The fact is the government remains committed to developing our resources in an appropriate and sustainable way and will continue to do so.

INTERNATIONAL DEVELOPMENT

COVID-19 VACCINE

Hon. Sabi Marwah: Honourable senators, my question is for the government leader in the Senate. Senator Gold, as you are no doubt aware, while countries such as Canada and the U.S. seem to be getting the pandemic under control, it continues to have a devastating impact on many other countries globally. Furthermore, measured by wealth, high-income countries have administered over 40 doses of the vaccine per 100 people whereas low-income countries administered less than a dose per 100 people.

Besides the moral argument this raises, and given the interconnected world we live in, until the COVID virus is brought under control, it is a threat to us all.

Will the Government of Canada support the proposal to waive intellectual property rights to vaccine development and assist in the transfer of technologies so that vaccines can be produced more broadly and in countries where access to vaccines has been limited? As you are aware, this proposal has already been approved by over 100 countries, including the United States.

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator. As the Government Representative in the Senate, I'm pleased to answer your question. The government remains committed to ensuring the equitable distribution and access to successful COVID-19 vaccines throughout the world.

With regard to your specific question, the government is ready to discuss waiving intellectual property protections, particularly to the vaccines under the WTO TRIPS Agreement, but has been actively working over the last number of months to encourage further discussions of this proposal at the WTO. The government remains committed to identifying consensus-based solutions, and I can cite an example of that in that regard by Minister Gould, the Minister of International Development, to welcome the move from the United States. She said:

> We have been trying to broker this conversation for many months now at the WTO to find a path forward. . . .

And she said, ". . . we have been open to it."

• (1440)

FINANCE

INVESTMENT IN OIL AND GAS COMPANIES

Hon. Rosa Galvez: Honourable senators, my question is for the Government Representative in the Senate. Senator Gold, last October in the context of worrisome reports on Canada Pension Plan's investment in fossil fuel corporations in Colorado and Ireland going wrong, I asked the government whether it was acceptable that Canada's largest asset owner kept undermining our international commitments and putting the retirement security of over 20 million Canadians at risk. I have yet to receive an answer to that question.

But last week we heard CPP was at it again. Hydro-Québec secured all necessary permits to supply Massachusetts with renewable hydro power for the next 20 years — a move that, according to the utility, will have the effect of taking 700,000 cars off the road every year. Calpine Corporation, one of the U.S.'s largest producers of electricity from gas and which stands to lose if the project goes forward, has been funding a hostile opposition and disinformation campaign against a new power line through Maine made necessary by the project. Again, the Canada Pension Plan has an important investment in Calpine and has its own representative on the board, therefore actively participating in opposing decarbonization efforts in Canada and abroad.

Senator Gold, what is the government doing to ensure the federally regulated financial sector finally addresses climate risk?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. The government remains committed, as I've said in previous answers in this chamber, to working diligently to help the energy sector and Canadians more generally transition to a more sustainable and cleaner energy platform. I don't have the specific answer to your question with regard to the CPP, but I can assure this chamber that the government takes its responsibilities to the environment very seriously.

Senator Galvez: Senator Gold, nearly two years have passed since the Expert Panel on Sustainable Finance recommended that the government, "Clarify the scope of fiduciary duty in the context of climate change."

When will the financial sector declare its climate risk to its investors and the public?

Senator Gold: Thank you for the question. Increasingly, the corporate and financial sectors are taking these issues that you raise seriously. I don't have a specific answer to your question. I will endeavour to find out and report back to the chamber.

INDIGENOUS SERVICES

FORCED STERILIZATION

Hon. Yvonne Boyer: Honourable senators, this question is for the Government Representative in the Senate. Senator Gold, last week it was reported in *La Presse* that Joyce Echaquan, the First Nations woman who in September 2020 died in a hospital bed as staff laughed at her, had previously been sterilized against her will. In addition to her sterilization, she had been forced or coerced into at least three unwanted abortions.

This led to Joyce having an understandable and justifiable fear of and lack of trust in the health care system. Tragically, her lack of trust was proven right, and she paid for it with her life.

This is an all too common story with Indigenous women in Canada's health care system. The spaces that should be the safest for us are often the most dangerous. Action to repair the generational lack of trust will take time, but action to save these lives must be taken immediately. What is the government doing to right these wrongs for Joyce's family and for all the women who have been sterilized against their will?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, colleague. Forced and coerced sterilization is a deeply troubling and unacceptable violation of human rights. As you would know, Indigenous Services Canada has been looking into this issue with guidance from the department's Advisory Committee on Indigenous Women's Wellbeing, which is a committee comprised of Indigenous organizations, including experts in women's organizations. This was launched in 2019.

In addition, Indigenous Services Canada, in January 2020, supported a national forum on consent and informed choice in Indigenous women's services.

With regard to the tragedy in my province to which you referred, as you would know, a coroner's inquest is currently under way to examine the circumstances surrounding her tragic death.

FINANCE

RECOVERY PLANNING

Hon. Douglas Black: Senator Gold, while you likely will not accept the premise of this question, it is widely regarded across this great country that the Government of Canada has bumbled most aspects of its COVID-19 response, whether early detection and response; rapid testing; contact tracing; PPE acquisition; a vaccine manufacturer agreement with China, which China never had the intention to honour; vaccine supply agreements, which must be agreements based on best intents only; leadership of the national Vaccine Task Force; and communications from Government of Canada agencies that are a mixed message mishmash.

Senator Gold, as we stumble toward the end of this nightmare, there is still one place where the Government of Canada could redeem itself: a national recovery plan, as I called for over a year ago in a letter to the Prime Minister, and an immediate plan to reopen Canada's borders.

Last week, over 60 of Canada's big and small business organizations, representing two thirds of our GDP, wrote to the Prime Minister requesting just that.

Senator Gold, when will the Government of Canada announce both its plan for a national recovery, as so many other nations have done, and its plan to reopen our borders?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, and you are quite correct that I don't accept the premises of your question. The long litany of so-called failures is simply at odds with the fact that Canada is making considerable progress in vaccinating its population, that the numbers are decreasing and have allowed provinces across this country — with some exceptions, unfortunately — to begin to ease the restrictions that have proven necessary and effective in slowing the spread of the virus.

With regard to the borders, you know that Canada has taken the view that it must act prudently in the best interests of Canadians and has recently extended the closure with the United States for another period until the end of June, and will continue to monitor that closely.

With regard to the recovery plan to which you made reference, I would refer honourable senators to all the measures in the budget implementation bill, which is being pre-studied here in the Senate, and all of those measures designed to help Canadians get through not only the difficult period that we find ourselves still in, but to transition to a healthier and a stronger economy.

Senator D. Black: Senator Gold, wishful thinking, justifications and the answer "no" are simply not a strategy. When will the Government of Canada respond to the letter that came from the business groups last week, and when will the Government of Canada start to project hope and not fear with immediate responses as so many other countries have done?

Senator Gold: The Government of Canada, senator, will continue to work, as it has done — carefully, prudently, responsibly and collaboratively — with the provinces and territories to ensure that Canadians are both safe and able to look forward to a gradual return to a less confined circumstance.

• (1450)

PUBLIC SAFETY

SYSTEMIC RACISM

Hon. Wanda Elaine Thomas Bernard: Honourable senators, my question is also for the Government Representative in the Senate.

Senator Gold, today marks exactly one year since the murder of George Floyd by Minneapolis police officer Derek Chauvin. This murder was caught on camera by a brave young woman named Darnella Frazier. Since that video went public, we have witnessed a growing awareness about the violence and anti-Black racism faced by people of African descent across the world and here in Canada. During the past year, there have been a number of government, public and private sector commitments made to address systemic racism and anti-Black racism in Canada. There has also been backlash.

Senator Gold, after the year of global awakening about the pandemic of racism, we certainly acknowledge that some progress has been made by the Government of Canada to address systemic anti-Black racism. The motion to recognize August l annually as Emancipation Day and a number of specific budget allocations as part of the commitment to address the multi-generational effects of enslavement, segregation and systemic anti-Black racism are duly noted. However, there is a gap. Black Canadians have called on this government to publicly apologize for Canada's role in the enslavement of African people and their descendants and the impact that history has on current-day systemic anti-Black racism.

Senator Gold, when will the government make this long overdue apology to African Canadians?

Hon. Marc Gold (Government Representative in the Senate): Thank you for raising this issue. The government is very well aware that Black history in Canada has not always been celebrated or indeed properly highlighted so that many Canadians, unfortunately, are not aware that Black people were once enslaved in the territory that is now Canada or how those who fought the enslavement of Black Canadians had to lay the foundation for a more inclusive and diverse society here in Canada. Thank you for noting the recognition of Emancipation Day — it's a major step forward — and the budget measures that have been made as well to support Black initiatives, Black philanthropy and the like.

With regard to the specific plans of the government on your calls for an apology, that's duly noted. I do not have the answer to your question. I will certainly make inquiries.

Senator Bernard: I would follow up and ask Senator Gold if he could make that inquiry and inform us of the response. There was a petition that was duly registered and tabled, but we've not had an apology. Thank you.

TRANSPORT

FORMER FERRY TERMINAL

Hon. Carolyn Stewart Olsen: Honourable senators, my question is for the Leader of the Government in the Senate.

Cape Tormentine, New Brunswick, was once a flourishing community and home to the port that served the ferry crossing between New Brunswick and Prince Edward Island. With the Confederation Bridge came the loss of that ferry service and a tremendous blow that continues to have consequences for the people living there. We are now on the brink of a possible

environmental tragedy. Derelict equipment remains on the site, particularly on the wharves. The equipment is full of petroleum products and other dangerous chemicals that could damage the shoreline and kill our fishing industry.

Leader, will the federal government commit to assessing the environmental risks and commit to working with local partners to clean the site up?

Hon. Marc Gold (Government Representative in the Senate): Thank you for bringing this issue to my attention, of which I personally was not aware. I will certainly make inquiries and report back.

HEALTH

COVID-19 VACCINE ROLLOUT

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question is for the government leader. According to the *Toronto Star*, Prime Minister Trudeau himself came up with the line "one-dose summer . . . two-dose fall." This line is likely the closest we will get to an admission of failure from the Prime Minister. A one-dose summer, two-dose fall is the direct result of his government's failure to secure an adequate COVID-19 vaccine supply, especially earlier this year in the months leading up to the Trudeau third wave.

Leader, how could the Prime Minister possibly think a slightly better one-dose summer and two-dose fall is a sufficient promise to give Canadians? Nobody wants that. Shouldn't his goal be to provide two doses as quickly as possible?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. Since you don't tire of asking me questions about the ostensible failures of the government, then I shall not tire of reminding this chamber that, in fact, as I reported months ago in the face of such questions, Canada is on track and indeed beating the goals it articulated for ensuring that Canadians are properly vaccinated. Indeed, the recommendation that was followed by many governments in this country to extend the time between the first and second vaccine doses is proving, on the basis of subsequent scientific research, to have been very well-founded.

The Province of Quebec, for example, has vaccinated close to two-thirds of the eligible population to date and avoided the third wave altogether. Some of the problems that some provinces are currently facing are clearly a function of having been too precipitous in relaxing the standards or not taking this seriously enough at various times.

The short answer is that this government remains on track to deliver on its promise to Canadians that they will receive the vaccines that they need, and we are doing well in that regard.

Senator Plett: Well, Senator Gold, I am indeed tired of asking these questions and I wish we would get a proper answer and have the Prime Minister keep his promises. He moves the goalposts all the time. I watched a PGA golf tournament on the weekend, and 10,000 people followed Phil Mickelson around the golf course. I watched part of a Minnesota hockey game. I don't know how many thousand they had in that arena. Yet, we are bragging that we are ahead of the curve here? I don't know how you judge success, Senator Gold, but I have a different measuring stick than you.

The health care system across several provinces remains under pressure. The lack of access to vaccines is causing hospitals to focus only on COVID-19 cases. Essential services and emergency surgeries are on hold and waiting lists are growing. Leader, I was touched to hear of a woman right here in the City of Ottawa who waited for surgery for close to a year but her surgery was not considered urgent until her other organs were affected. She recently waited four days in hospital for an emergency surgery. Her doctor says his waiting list is beyond eight months now, up from four to six weeks just two years ago. This woman, leader, and her family are not alone. There are thousands of Canadians in a similar situation.

How does the Trudeau government's failure on vaccine procurement help these families and our hospitals, and how is this deemed a success?

Senator Gold: Thank you for your question. No one denies, and the government certainly is aware, that the pandemic and the burden on our health care system have had very serious consequences for all Canadians, so please don't misunderstand my response. The government is of the view that its plan and its diverse portfolio of vaccines, the extraordinary efforts that Minister Anand and her team are doing to ensure a regular and growing delivery of vaccines to Canada is a successful response to the pandemic and the results — in terms of the number of vaccinations administered and the proportion of Canadians who have already received a vaccine — are a testament to that.

Hon. Yonah Martin (Deputy Leader of the Opposition): Leader, in a press — time has expired.

• (1500)

The Hon. the Speaker: My clock is showing there is a minute left, but I bow to the table. Sorry, Senator Martin.

POINT OF ORDER

Hon. Donald Neil Plett (Leader of the Opposition): Your Honour, I would like to raise a point of order. We appreciate your clock more than the table officer, however, that isn't my point of order.

I just received a text from two of our senators saying they keep getting knocked off the Zoom call. They are having a problem getting on. So I ask for indulgence to suspend and ensure that everybody is able to log on, if possible.

The Hon. the Speaker: Absolutely, Senator Plett. We will do that. The sitting is suspended with a five-minute bell.

Can we ask our table officer to ensure that all senators who wish to participate are able to? Thank you.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1520)

[*Translation*]

ORDERS OF THE DAY

KINDNESS WEEK BILL

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-223, An Act respecting Kindness Week, and acquainting the Senate that they had passed this bill without amendment.

SENATORS' STATEMENTS

RACIAL DISCRIMINATION IN CANADA

Leave having been given to revert to Senators' Statements:

Hon. Marie-Françoise Mégie: Thank you for your understanding, colleagues.

Black people in America have been disproportionately affected by the pandemic compared to the general population.

Whether we are talking about the rate of infection, mortality or vaccine coverage, disparities remain. When we compare the health capacity of certain countries, there is a clear gap. Canada's opposition to the waiver on COVID-19 vaccine patents and its vote against the United Nation's resolution for a global call for concrete action to eliminate racism last December are raising a lot of questions. It is even more surprising in the post-Floyd era.

A year ago today, police officer Derek Chauvin killed a Black family man by holding his knee on his neck and suffocating him. That image will remain indelibly imprinted in the collective memory, as will Joyce Echaquan's cries for help, which are still ringing in our ears.

What is more, despite motions adopted by the Quebec National Assembly and the House of Commons, the Minister of Immigration has still not sorted out the file of Mamadi Camara, who was unjustly imprisoned.

Stories of injustice perpetrated against non-White people continue to abound in Canada, but we are beginning to see a desire for change that gives us hope we may one day shake off the yoke of chauvinism. For example, the other place voted unanimously in favour of a motion to designate August 1 as our national Emancipation Day to mark the end of slavery. This is an opportunity for us to reflect on what we have achieved since 1834 and on how far we have yet to go to achieve true equality.

The Government of Canada's 2021 budget includes measures to improve representation of certain segments of our population in the public service. Politicians of all stripes are taking an active interest in equity and inclusion issues and joining forces to work on those issues as members of the Parliamentary Black Caucus.

Honourable colleagues, I urge you to get informed, to share and to support the demands of Indigenous and African-Canadian senators' working groups to advance equality in our country. That is how we will build a more just and equitable world. Thank you.

[*English*]

ORDERS OF THE DAY

POINT OF ORDER

SPEAKER'S RULING RESERVED

The Hon. the Speaker: Honourable senators, on May 6, Senator Plett raised a point of order concerning a written notice of a question of privilege, for which there was a request to allow further argument.

• (1530)

Hon. Pierre J. Dalphond: Honourable senators, I rise today in response to a point of order raised by the leader of one of the four recognized groups in the Senate on May 6. On that occasion, it took no less than 23 minutes to express his views on leadership, discipline, me and some rules.

Your Honour, you said at the time:

> It has been brought to the floor by Senator Plett in what I would consider a very serious and lengthy way. . ..

In that context, I pray for your patience, Your Honour, in allowing me an equal amount of time to respond.

The leader concluded his remarks as follows:

> . . . to summarize, Senator Dalphond breached the rules in four different manners. One, he used personal, sharp and taxing speech; two, he impugned motives to me; three, he willfully misled the Senate; and four, he used confidential negotiations to attack me in public thereby jeopardizing the Senate functioning.

I will deal with all of these alleged breaches to show, Your Honour, that the point of order is not only out of order, but baseless.

Starting with procedure, there are three invalidating problems with the point of order. The first is that, under the Rules, a point of order cannot be raised in relation to a motion unless the motion has been moved or in relation to an inquiry until that debate has begun. This principle is expressed in Rule 4-11(1)(b) and discussed in the *Senate Procedure in Practice* on page 217. In the present case, the written notice was withdrawn, clarifying my intent not to proceed and not to initiate the process with formal oral notice.

A second problem with the point of order is that it seeks to challenge the content of a document that is nothing more than an email. As you know, Your Honour, a written notice of privilege is nothing but a prior notice of intent to raise a question of privilege in the chamber at the next sitting during Senators' Statements. A withdrawn written notice does not constitute a part of parliamentary proceedings and it is recorded nowhere in the Senate Journals, the Order Paper, the Notice Paper or the debates. Accordingly, it is obvious that my words cannot be taken down, per Rule 6-13(2), because they were not up.

In reality, a withdrawn written notice of a question of privilege is nothing more than a message in senators' email boxes. Like messages put on Twitter by senators — some of which employ misleading and taxing language to dispute the independence and integrity of senators — email messages sent by a senator to another senator, or on his behalf, are not governed by the Rules because they are not part of the proceedings of the Senate or its committees. Of course, this is also true of comments made by a senator to The Canadian Press.

The third invalidating procedural defect with the so-called point of order is that it was brought too late. As noted, my written notice of a question of privilege was distributed on April 27 and withdrawn on April 30. All the facts to which Senator Plett referred happened before the sitting on April 30 and were then known by him. Yet Senator Plett did not raise his point of order until May 6.

Senate Procedure in Practice states:

> While a point of order need not be raised at the first opportunity, it should be raised when the object of the complaint (an event or a proceeding), is still before the Senate, or the issue is still relevant to the question before the Senate.

A relevant excerpt of the *House of Commons Procedure and Practice, Second Edition, 2009* confirms this procedural defect:

> Since the Speaker must rule on the basis of the context in which language was used, points of order raised in regard to questionable language must be raised as soon as possible after the alleged irregularity has occurred.

For these three distinct procedural reasons, Senator Plett's point of order is, in fact, out of order.

Your Honour, should you conclude otherwise, let me comment now on the substance of the so-called point of order.

I will address, first, the claim about the use of confidential negotiations. Your Honour, an allegation of this sort should be properly brought as a question of privilege such as contemplated in Appendix IV of the Rules, rather than a point of order. Thus, that specific claim appears to be also out of order.

More to the substance, my letter and the words attributed to me by Ms. Bryden of The Canadian Press do not refer to the discussions between the leaders during a telephone conference held on Monday, April 19. As can be seen in the letter, I referred to the content of three public documents: first, clause 5(4) of Bill C-7, now an act of Parliament, that mandates the review to commence within 30 days of Royal Assent; second, a message from the House of Commons to this chamber dated April 16 in compliance with clause 5(4) of the bill; and third, a motion in reply adopted unanimously by this chamber on April 20.

I also referred to the public fact that despite the motions of the House and the Senate to establish a joint committee and the Senate deadline of April 23 for names of senators to be provided, there were no senators' names on the public website of the joint committee at the end of the day on April 26, only the names of members of Parliament. Thus, my written notice letter about the question of privilege was sent to the clerk late that evening at 9:27 p.m.

In the preceding days, through personal inquiry, I also learned that, in addition to me, the Canadian Senators Group had nominated Senator Wallin and the Independent Senators Group, Senator Kutcher and Senator Mégie. As for the Conservative group, I was told that no name had been communicated by the leader. Yet the Senate motion was clear. The leaders and facilitator were to file "the names of the senators named as members. . ." ". . . with the Clerk of the Senate no later than the end of the day on April 23."

The motion also states that the Senate co-chair of the joint committee was to be determined according to Rule 12-13(1), which means at the organizational meeting of the joint committee.

On that point, the *Companion to the Rules of the Senate* states:

> In joint committees, the clerk of the committee conducts the election, first of a Joint Chairman from the Senate, and then of a Joint Chairman from the House of Commons. In both instances all members of the committee, regardless of their House, may vote on each motion.

It was clear from my discussions with many senators that the nominees for the Senate co-chair and deputy chair positions should be based on a consensus between the five members and not on deals between leaders — this approach being coherent with the motions adopted by the Senate on Tuesday.

As Senator Plett said in his speech, the leadership of the Independent Senators Group and the Progressive Senate Group informed him accordingly before Friday, April 23, to avoid any surprises. From there, you didn't need to be Hercule Poirot to figure out why the name for the single seat available to the Conservative group under the rule of proportionality was not communicated by Senator Plett before the expiry of the deadline fixed by the Senate.

In his speech nearly three weeks ago, Senator Plett made it abundantly clear why he refused to provide a name on behalf of his group. He wanted assurance that his nominee would be the Senate co-chair as a pre-condition of his agreeing to comply with Bill C-7, the motion of the Senate and the message sent to the House of Commons.

In other words, as I said to the Canadian Press reporter, Senator Plett wanted a blank cheque from me and other nominated senators to the joint committee on the co-chair position, and I wasn't ready to give it to him.

• (1540)

In conclusion on this point, Your Honour, I did not make public any part of the leaders' meeting held on Monday, April 19, but regrettably, Senator Plett did reveal the content of such discussions at the last sitting of the Senate and, I will add, in an incomplete and somewhat misleading way. I see Senator Woo nodding.

Therefore, should you consider that you have the power to discipline a senator for disclosing confidential discussions between leaders and other senators — which I don't think is the case based on previous rulings that you made on May 2 and May 27, 2019 — I ask that Senator Plett should be disciplined. Please consider this observation as my own point of order in connection with the partial disclosure by him of the confidential discussions between the leader and the deputy leaders held on April 19.

While these remarks are also sufficient to respond to the claims about impugned motives and misleading the Senate, let me add a few words about the allegation of contempt.

In his speech at the last sitting, Senator Plett claimed that the Senate's deadline of April 23 was of no force or effect and that April 23 was not a crucial date; negotiations could continue. In other words, according to him, a statutory deadline is not important and parliamentarians are free to ignore it, even to impede the Senate as a whole from complying with it. Fortunately, this is not what the other place thinks, and it has managed to do its part within the statutory deadline.

The truth is that we as parliamentarians should show the greatest respect for statutory deadlines because we expect nothing less by other people in similar circumstances. For example, the Port of Montreal workers returning to work by the deadline fixed in the bill that we passed on April 30.

Senator Plett also said that the non-effect of the deadline follows from the absence of a remedy for its breach in the motion. But, of course, remedy for such a breach by a parliamentarian exists. It is a question of privilege known as contempt.

Senate Procedure in Practice defines contempt as follows:

> Any actions that substantially obstruct Parliament and its members in the performance of their duties are considered contempt of Parliament.
>
> The power to discipline for contempt can be seen as a complementary way for Parliament to assert its privilege. The explanation for this is that the houses of Parliament should be allowed to protect themselves against acts that interfere with their functions, and thus maintain the authority and dignity of Parliament. This ability to address affronts, whether or not they fall within the fairly narrowly defined categories of privilege, is essential to achieve this end. Both breaches of privilege and contempt may be raised as questions of privilege.

These considerations explain the contents of my letter, protected by freedom of expression in criticizing a public office holder in the exercise of his public office, as I will expand on now, dealing with the fourth and last claim made against me by Senator Plett that I have used personal, sharp and taxing speech in violation of rule 6-13(1).

I repeat that such a point of order is out of order for the three distinct procedural reasons discussed previously. However, should you decide, Your Honour, to extend rule 6-13(1) to the content of a withdrawn written notice of a question of privilege, I will refer to comments made on the reserved point of order raised by Senator Lankin and me and December 3, 2020. The context was a speech by a former Speaker who accused the current Prime Minister of many things, including criminal bribery.

Senator Plett did not intervene that day. However, on December 8, 2020, upon further reflection, he asked to reopen debate on the point of order, which you graciously granted. He then said:

> Your Honour, you have been in this chamber for quite a few years now. I am sure that last Thursday you said to yourself that, yes, the language used by Senator Housakos to describe the relationship between the Prime Minister and WE Charity was sharp but that you have heard much sharper language before in this Senate Chamber to describe a Prime Minister. I want to reassure you; you are right. You have heard much worse.

Then he went on to say, "Questioning, criticizing and attacking public officials for decisions they have made is the essence of Parliament."

Colleagues, Senator Plett is a public official. Like it or not, his decisions as leader of a group are subject to public scrutiny and parliamentary criticism, including, according to him, in sharp language in this chamber.

Since the question is still under advisement, I want to say that I disagree with his perspective. That's why the language in my written notice of privilege, even if not a speech in this chamber or before a committee, was so formal and so descriptive of what was, in my view, a case of contempt that must be raised through a question of privilege as indicated in precedents.

In conclusion, Your Honour and honourable senators, there is no valid point of order here but only an attempt by the leader of the Conservative group to discipline a member of another group. According to him, old practices and discipline must prevail because of necessity to the proper functioning of the Senate. In other words, the rank-and-file senators — the "nobody" senators,

to quote him — must implement whatever agreement the leaders have reached. Unfortunately for him, this is not the reality of the current Senate.

Senators, members of three of the four recognized groups have now applied for and chosen those associations. They were not appointed to those groups. They now represent about three quarters of the current membership of the Senate and will soon make up over 80%.

They believe equality and independence are critical to the proper functioning of the Senate as a chamber of sober second thought. They don't accept being whipped. They don't accept being told how to vote, and they don't provide a blank cheque. I will not provide a blank cheque.

Thank you, Your Honour. *Meegwetch*.

Hon. Yonah Martin (Deputy Leader of the Opposition): Your Honour, may I just make one point of clarification?

Senator Dalphond has referred to our caucus as one of the four recognized groups. I want to distinguish the three parliamentary groups that are recognized, but that we are the Conservative caucus, Her Majesty's Loyal Opposition. I want to make that distinction. Thank you.

The Hon. the Speaker: Thank you, Senator Martin.

Senator Plett, did you wish to reply?

Hon. Donald Neil Plett (Leader of the Opposition): Yes, very briefly, Your Honour.

I also want to make one clarification. It really has little to do with the point of order, but since Senator Dalphond talked about having applied to be part of the group that he is in and that people with the PSG, CSG and ISG applied to be in their groups, the fact is that so do the Conservatives. I was appointed by the Governor General on the advice of the Prime Minister to this august chamber, and I decided that I wanted to sit with the Conservative Party of Canada. Neither the Prime Minister nor the Governor General appointed me to sit as a Conservative. That was a choice I made because I believed that was the best choice for me, just like Senator Dalphond, who has jumped from one to another because he didn't feel at home with one and chose to sit with another group, as have some members of the CSG who were originally part of our caucus.

Senator Dalphond was correct when he said I talked about Senator Housakos's comments that I mentioned you have been in this chamber for quite some time, and you will do an adequate job as you always have. You did an adequate job then, and you will do one here now again.

• (1550)

I want to reiterate that neither I nor Senator Dalphond will be the decision makers here. I never asked Senator Dalphond for a blank cheque because, first, he is not in the position to give me or anybody else a cheque on this matter. He is appointed — apparently, on a weekly basis — as the deputy leader, but Senator Cordy is the leader, and Senator Cordy was the senator who was part of negotiating a deal as to who would be the joint chair and how many members there would be from each caucus. Senator Dalphond, although he was on the call, was certainly not part of the negotiations, so I don't know why he would have been in a position all of a sudden to give anybody a cheque or make any decision on this matter.

However, again, that's really not part of the point of order.

Senator Dalphond pretends that his letter is not subject to rules because it is only a letter, like an email from a senator to another senator. But that was not the case, Your Honour. He sent this letter to the Clerk, who then in turn, because he must, sent it over 100 people. Senator Dalphond did not send me an email to insult me; he used the Clerk of this chamber to do that. He didn't do it himself.

Like I said back on May 6, Your Honour, I didn't raise this at the time because I was of the opinion that maybe Senator Dalphond would do the correct thing and apologize for what he had done. I do not object to Senator Dalphond using taxing language to me in this chamber when he speaks, but he used taxing language when he was misrepresenting the facts.

Again, what Senator Dalphond does in the Canadian press is one thing; what he does in this chamber is another. He sent this letter — a question of privilege — to this chamber, not to the media. That's where the point of order was raised.

Regarding his argument for not respecting the delay, he said himself that the remedy is a question of privilege. That is what he did, and he withdrew it. But he withdrew it actually suggesting that I had done what he told me that I should do right from the start, and that this was why he was withdrawing the question of privilege, not because he was wrong. If he had withdrawn the question of privilege and said, "I was wrong in doing this," I would never have raised a point of order, because he would have, in my opinion, presented the remedy that I am looking for at this point.

Your Honour, you have heard me speak on it. I will not repeat what I did. I believe Senator Dalphond has not made any valid arguments. The facts are in front of you, Your Honour; the facts are there as I presented them on May 6. Senator Dalphond has not denied those facts. He has tried to justify those facts, and they are not justifiable. They are wrong. It is wrong in this chamber to attack a person through the Clerk, the way Senator Dalphond did.

So that is my argument, Your Honour. I know you will take this under advisement, and I have the fullest confidence that you will reach the right decision. I want to assure you, Your Honour, that I will respect whatever decision you reach. I leave it in your very capable hands.

Thank you.

The Hon. the Speaker: Do any other senators wish to comment or enter the debate?

Seeing none, I thank Senator Dalphond and Senator Plett for their comments, and I will take it under advisement.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Gold, P.C., for the second reading of Bill S-4, An Act to amend the Parliament of Canada Act and to make consequential and related amendments to other Acts.

Hon. Scott Tannas: Honourable senators, this item is adjourned in the name of Senator Plett, and I ask for leave of the Senate that, following my intervention, the balance of his time to speak to this item be reserved.

The Hon. the Speaker: If you are opposed to this, please say "no." So ordered. Senator Tannas, on debate.

Senator Tannas: Honourable senators, I rise today to add my voice in support of Bill S-4.

I'd like to start by thanking the government and Minister LeBlanc for taking the initiative to consult with leaders before tabling this bill. I also commend the government for following through with the next step in their efforts to foster Senate reform.

Bill S-4 recognizes the current reality of a Senate dominated by senators who are not aligned with a political caucus in the House of Commons. In fact, today, more than 70% of senators are not aligned with a political caucus. This percentage will no doubt increase by the end of this current government's mandate, and even if a future government decides to unwind what Prime Minister Trudeau has created here in the Senate, it will clearly take many years to do so.

While recognizing this current and potentially long-term reality, Bill S-4 does not strip out or attempt to take away the roles of the past. It provides a respectful flexibility such that if the Senate, over time, decides to revert to its former state, then no legislation needs to be brought forward to change it back. So the practical changes proposed in Bill S-4 around the recognition of groups that are not government or opposition are both timely now and relevant for the future.

That said, I hope that a reversion doesn't happen. Canadians adamantly want the Senate to improve its performance. This has been confirmed by numerous surveys over the past two decades, including, as we know, by a couple of recent ones that were commissioned by our own Senator Dasko.

In their time in office and in response to public opinion, the Harper government developed a vision for Senate reform that involved elections and term limits; concepts that were widely supported in public surveys. Senator Black from Alberta and I are both here because former Prime Minister Harper appointed us in early 2013 after a Senate election in our province in the prior year.

While the public was keen on the ideas of elections and term limits, the Supreme Court was not, so with that initiative effectively sidelined, Prime Minister Harper made a decision not to appoint any new senators for the remainder of his time in office. This decision set the stage for the dramatic change in the Senate that has occurred over the past five and a half years.

Colleagues, without the decision taken by Prime Minister Harper to leave 22 seats vacant for his successor, the Senate would have a much different dynamic today, so we have him to thank for priming the pump of Senate reform. However, I must say it took the vision and the commitment for Prime Minister Trudeau to seize the opportunity to change the Senate. Throughout his time in office, he has been consistent in his words and his actions toward the creation of a new Senate dynamic, and I believe his work in this regard will become a positive pillar of his legacy.

Honourable colleagues, I believe we are firmly on a path toward the kind of improvement that Canadians want to see from the Senate. I also firmly believe it will take many years — decades — of incremental, positive improvement by all current and future senators before the Senate will receive favourable notice by a majority of Canadians — hard work for which there will be little or no credit, which is the essence of public service. I believe that Bill S-4 helps the Senate move forward, and that is why I support its passage.

Thank you, colleagues.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Honourable colleagues, as previously ordered, the item remains adjourned in the name of Senator Plett for the balance of his time.

(Debate adjourned.)

• (1600)

SPEECH FROM THE THRONE

MOTION FOR ADDRESS IN REPLY—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Gagné, seconded by the Honourable Senator Petitclerc:
>
> That the following Address be presented to Her Excellency the Governor General of Canada:
>
> To Her Excellency the Right Honourable Julie Payette, 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. Diane F. Griffin: Honourable senators, I rise today to respond to the Speech from the Throne, which was delivered in our chamber on September 23, 2020. I thank Senator Coyle for her leadership, and I will follow her example and respond to aspects of the Speech from the Throne relating to climate change.

I first became aware of climate change when I served on the Canadian Environmental Advisory Council in the late 1980s, which was an advisory group to the Honourable Tom McMillan, former Minister of the Environment. Then when I attended Globe 90 in Vancouver, it was a major topic on the agenda and an emerging issue of concern for the environmentalists and scientists at the conference. Internationally renowned speakers were talking about climate change and what it was going to mean for the world, including Canada.

Being from Prince Edward Island, it didn't take me long to realize we are going to have a problem. At that point, scientists were saying that we really needed to move on this quickly or it was only going to get worse, and here we are, 31 years later, and it has gotten worse. It's going to be a bigger challenge now to combat climate change than it would have been if we had acted in 1990.

As an Islander, rising sea levels are a major concern to me. When I was working with the Nature Conservancy of Canada about a decade ago, the organization was acquiring lands to protect wetlands and other natural habitat, and for coastal properties, it was important to buy some adjacent upland to be ready for the advancing coastline. For my colleagues who don't live on one of our coasts, the problem may not seem as pressing. But I'm reminded of former Senator Mitchell's speech from February of last year wherein he reflected on the importance of ports to the Prairie economy. He said:

> The Vancouver Port is essential to sustaining Alberta's economy, period; there is no argument about that.
>
> Canada's ports, more broadly — not all of them as vulnerable as others, but all of them at some point vulnerable to rising sea levels — in total handle $400 billion of cargo annually. That is 20% of Canada's entire GDP; 20% of our entire economy goes through our ports, and they are vulnerable to being inundated by rising sea levels. . . .
>
> Think about the implications for the Alberta economy. That cargo includes exports of Alberta's agriculture, forestry, petrochemical and other products. It also includes imports of products and equipment vital to Alberta's businesses and economy. . . .

I appreciated former Senator Mitchell's reminder that Alberta's economy is diverse and reliant on infrastructure made vulnerable by climate change.

In the Speech from the Throne, the Governor General noted that:

> . . . determination, concern for others, courage and common sense define our nation.
>
> We must bring all those qualities to bear once again and continue to work for the common good, and for a better, safer and more just society.

Outlined in the speech were the government's plans to support a large number of activities to reduce emissions. Some of these actions are to retrofit homes and businesses to be more energy efficient; to invest in renewable energy and emerging technologies; to support the manufacturing, natural resource and energy sectors as they transform; to partner with farmers, foresters and ranchers to reduce emissions and build resilience; to ensure that plastics are recycled; and, one of my favourites, to expand urban parks.

To be sure, these and other investments are being made in order to prevent and mitigate the effects of climate change, but adapting to climate change also offers profound opportunities for Canada. Augmenting our domestic supply of secure, reliable, affordable and sustainable energy may one day allow us to export surplus energy.

Developing more environmentally friendly packaging could make our value-added food products more attractive to international customers. Conserving natural habitats and preserving wetlands is not only an excellent carbon sink, but it can also lead to the establishment of parks that attract locals and tourists alike.

Innovation is not only necessary, it is exciting. For example, the University of Prince Edward Island's new Canadian Centre for Climate Change and Adaptation, located in St. Peters Bay, will allow graduate students, post-doctoral students and visiting researchers working on climate change to use the Greenwich adjunct of the Prince Edward Island National Park for research. I am really proud that we have such an institution in my home province.

Addressing climate change will take decades, during which time we will more than likely see several changes of government. Therefore, this is one place where we in the Senate can really be of service. We come to this place with many life experiences and much expertise, and our tenure is uncoupled from the electoral cycle.

Our friends in the House of Lords in the United Kingdom have used their similar circumstances to establish Peers for the Planet, a group of over 120 members of the House of Lords who want to put the need for an urgent response to climate change and biodiversity loss at the top of the political agenda.

On their website, the peers note that:

> The Upper House can bring long-term thinking and draw on expert members from across disciplines, from science to business to humanitarian relief.
>
> . . . Peers for the Planet aims to help Peers who are not necessarily veteran environmentalists and to build cross-party momentum that can inform the political agenda and win ambitious but practical changes in policies and laws, regardless of which party is in Government at any given time.

Honourable senators, Senator Coyle has suggested that we form such a group in our upper chamber, and I am eager to join with her and others to become a founding member. I hope I have lots of company from all groups in our chamber. Thank you.

(On motion of Senator Gagné, debate adjourned.)

• (1610)

[*Translation*]

ASSISTED HUMAN REPRODUCTION ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Moncion, seconded by the Honourable Senator Woo, for the second reading of Bill S-202, An Act to amend the Assisted Human Reproduction Act.

Hon. Lucie Moncion: Honourable senators, I rise today as the sponsor of Bill S-202, An Act to amend the Assisted Human Reproduction Act.

Since I delivered my speech on March 12, 2020, the world has changed dramatically. The pandemic has forced us to question what we take for granted, for better and for worse.

When it comes to assisted reproduction, the pandemic has highlighted some of the limitations and unfortunate consequences of the globalization of assisted human reproduction and reproduction tourism.

Last year, the media reported that around one hundred babies born to surrogate mothers were stranded in Ukraine because their adoptive parents could not pick them up when the borders closed. The adoptive parents, surrogate mothers and children were all harmed by this awful situation.

The substantial legal disparities that exist worldwide and the scarcity of legal systems that allow for better assisted reproduction reveal the inequalities among people around the world that compromise the health and safety of women and children. Canada's legal framework reinforces these international inequalities by failing to fully regulate assisted human reproduction or gamete donation domestically.

[*English*]

My concerns regarding the security of women and children in Canada, and also around the world, made me question the assisted procreation laws in Canada. To help me understand the issues and how the legislation and regulation can be improved, I met with fertility lawyers, criminal lawyers, doctors, surrogates, intended parents and agency representatives. These consultations led me to believe that the current criminal legal framework is inadequate and at the root of the health and safety issues linked to assisted reproduction.

In addition, I informed my opinion with extensive research into academic literature, mainly in comparative and Canadian politics, to try to understand why Canada decided to criminalize the practice in the first place and to learn about the law and practices surrounding surrogacy and gamete donations in other jurisdictions. Whether we are for or against surrogacy, the practice, as is presently legislated in Canada, is flawed and needs to change.

What is at stake is the health and safety of women and children in this unregulated practice where agencies operate with very little guidance. The criminal framework encourages a culture of silence — the perfect fuel for abuse or negligence of all kinds.

For example, an investigation by the CBC highlighted the case of one woman who was not told about the risk of back-to-back pregnancies without proper recovery time in between. I met with former surrogates who had multiple back-to-back pregnancies. One woman had seven pregnancies and gave birth to nine children, and others had serious complications following ova retrievals. I was not certain that proper care and information was provided to inform their decisions appropriately.

These situations happen in the current legal context and raises the question as to why we are so focused on regulating the money over health and safety. Therefore, my concerns regarding the health and safety of women and children involved are not alleviated by the fact that women become surrogates solely for altruistic reasons in Canada, and the scientific literature confirms the absence of a link between those two things.

[*Translation*]

Last week, Senator Miville-Dechêne and I were invited to a screening of *The Secret Society*, which is to be released this fall. This documentary shines light on certain aspects of egg extraction from women who, for altruistic reasons, choose to undergo invasive hormone therapy to donate eggs that will be used for artificial in vitro insemination.

The film sheds light on couples with fertility problems and describes the processes they go through and the costs involved in becoming parents. It also covers, to a lesser extent, surrogacy and the reasons that lead women to become surrogate mothers.

While watching this documentary, I asked myself why a women would choose to inject herself in the abdomen with hormones three times a day and to alter the chemistry and functioning of her body and then undergo an invasive and potentially dangerous surgical procedure in order to donate ova. I asked myself why a couple would choose to make multiple attempts to become parents and pay significant amounts of money to an in vitro fertilization clinic without knowing whether the process will result in a viable pregnancy. I also asked myself why a woman would agree to undergo a surgical procedure to be inseminated, carry someone else's child, be pregnant for nine months and agree to live with all the discomfort and inconveniences that go with pregnancy.

While watching the documentary, I also asked myself why our laws and regulations allow doctors, medical clinics, fertility clinics and lawyers to operate and reap the economic benefits associated with the infertility market, but criminalize those associated with egg donation and surrogate pregnancy.

After viewing the documentary, the participants were asked to comment on the quality and the content of the film. Some elements clearly show the realities of this practice and its downsides.

It is off-putting to see a couple "shopping" for a baby online, talking about the donor's size, or about their future baby's eye colour, skin colour or hair colour. It is downright disgusting to see exhibitors at the Canadian Fertility Show promoting their products and services that debase and commercialize the practice.

One of the people invited to the discussion was a researcher who briefly explained the situation with egg donors in the United States. She said that American women who donate eggs can be paid up to $10,000 per retrieval and that many of these women donate eggs as a way to pay off student loans or to support themselves. The researcher said that some of these young women donate many times, that they put their health at risk, exposing themselves to potential infertility issues or cancers, and that they are at risk of being exploited by unscrupulous practitioners who view egg retrieval solely from a financial perspective.

In light of these observations, I found myself wondering whether we can set our prejudices aside and agree to study the issue of gamete donation and surrogacy, as we do with all potentially controversial issues.

In the interest of improving the health and safety of women and children, I would like senators to examine the issue with an open mind and to set aside ideologies and beliefs. I introduced Bill S-202 in this chamber of sober second thought with the hope that we can collectively seek to understand the rationale or lack thereof behind the decision to favour a criminal legal framework over a regulatory legal framework in Canada.

[*English*]

Let me briefly present the state of the law in Canada. First and foremost, it is illegal to pay for ova or sperm donation. It is also illegal to pay a surrogate, but it is legal to reimburse her for certain pregnancy-related expenses such as additional food, clothing, vitamins and transportation costs incurred while travelling to medical appointments. To give a mundane example, it is criminal to buy flowers and chocolates for a surrogate while she is pregnant. It is also against the law to pay a donor.

• (1620)

If found guilty of violating the Assisted Human Reproduction Act, an intended parent can face up to 10 years in prison and fines of up to $500,000.

In the context of the pandemic, other issues have arisen with respect to expenses while exacerbating health and safety risks related to assisted reproduction. For example, in the current times, intended parents cannot legally compensate their surrogates for them to safely be at home. This has put surrogates and children in unsafe situations.

As for intended parents, they are rightfully afraid of the legal consequences of reimbursing ineligible expenses under the Assisted Human Reproduction Act.

[*Translation*]

The intent behind the amendments proposed to the Assisted Human Reproduction Act is to make it possible to set parameters and limits for assisted human reproduction in order to protect the health and safety of women and children and prevent abuse. Decriminalization is required to implement such a regulatory framework. The challenge is achieving consistency between the objective of the legislation and its actual effects.

The time has come to ensure consistency between the text of the legislation and its objective. The major principles set out in section 2 of the Assisted Human Reproduction Act are as follows: the protection and promotion of human health, safety, dignity and rights; the health and well-being of women; and free and informed consent.

The major principles also bring to mind the idea that:

> (e) persons who seek to undergo assisted reproduction procedures must not be discriminated against, including on the basis of their sexual orientation or marital status;

The criminalization of commercial surrogacy and gamete donation is not consistent with these principles and prevents us from adopting appropriate regulations.

The amendments proposed in Bill S-202 relate primarily to section 6 of the act, which pertains to surrogate mothers, and section 7, which deals with sperm or ova donation. Overall, the bill seeks to decriminalize payments made for a surrogacy, sperm donation or ova donation contract by repealing the provisions of the act that prohibit these actions.

Finally, the bill seeks to put in place restrictions on who can become a sperm or ovum donor. Donors must be at least 18 years old, must be able to consent to the donation and must not have been coerced into donating.

With regard to surrogacy, the bill also sets out specific restrictions on who can become a surrogate mother. These women must be at least 21 years of age, they must have the mental capacity to consent and they must not have been coerced into doing so.

In addition, the bill eliminates the prohibition against the reimbursement of expenses incurred by surrogate mothers, with certain exceptions. Thus, instead of broadly prohibiting the reimbursement of expenses, apart from those specified in the regulations, surrogate mothers can receive general compensation and the process is simplified.

In summary, the problems related to the uncertainty regarding reimbursable expenses come from the fact that an expense that is deemed "non refundable" could be seen as a form of payment, which makes the reimbursement of such an expense ipso facto criminal. Although regulations came into effect last June to clarify what expenses are eligible, the uncertainties and the threat of criminalization remain.

[*English*]

Broadly, decriminalizing payments in turn removes the burden of extremely strict regulation of expense reimbursement. The current legal framework can, in theory, expose someone who simply makes an unintentional mistake to serious penalties.

The legal framework proposed would enable parties to agree on the conditions for reimbursing expenses, including the type of expenses that can be reimbursed, the maximum amount that can be reimbursed and the supporting evidence required. Expense reimbursement would be a matter of contract law rather than criminal law.

In addition, unlike Bill C-404 from the Forty-second Parliament, Bill S-202 would come into force 180 days after Royal Assent. This would give the federal government and provincial legislatures a reasonable amount of time to exercise their regulatory powers, if necessary.

With respect to the agencies, Bill S-202 would make it clear that surrogacy agencies, like adoption agencies, are perfectly legal and legitimate by repealing section 6(2) of the Assisted Human Reproduction Act, which reads:

> No person shall accept consideration for arranging for the services of a surrogate mother, offer to make such an arrangement for consideration or advertise the arranging of such services.

Provinces and territories would be able to regulate or licence these agencies much like adoption agencies are regulated at the provincial level.

When it comes to the health and safety of women, but also to the ability of the intended parents to be vocal when there is abuse, it is important that the agencies be regulated. Agencies are currently completely unregulated and are likely to remain unregulated as long as sections 6(2) and 6(3) exist, which are likely void as against public policy but interfere in the provinces' ability to regulate the agencies.

Furthermore, intended parents are unlikely to sue an agency for breach of contract or negligence when they are fearful that they may have breached section 6(2) of the act and, therefore, the agencies that do exist are often unaccountable. The criminal nature of the prohibition prevents an open discussion on improving the current regulatory regime. It also prevents the provinces and federal government from fully regulating the practice and pushes it behind closed doors for fear of legal repercussions.

To be clear, for surrogacy, the intended parents enter into direct agreements with the gestational carrier prior to the embryo transfer. Typically, both the intended parents and the surrogate obtain independent legal advice on the agreement prior to its execution, and the clinic waits for a letter of legal clearance to be received prior to engaging in the embryo transfer process.

The agency itself has intended parents enter into a different agreement with respect to the agency's services.

The bill focuses on the decriminalization, knowing that the regulation of agencies and other aspects of assisted reproduction must happen at a provincial and territorial level. In Reference re Assisted Human Reproduction Act, the Supreme Court of Canada found that licensing and regulation requirements were ultra vires the federal government's powers, and these are correctly within the provincial government's powers.

An overly ambitious bill that seeks to centralize regulation through federal legislation would risk being found unconstitutional in light of this reference and the division of powers in the Constitution Act, 1867. So long as sections 6(2) and 6(3) exist, it is unlikely that a province will step in to regulate agencies which may or may not currently be legal.

Therefore, this bill would allow the provinces to regulate the agencies, and if the intended parents had an issue with the surrogacy agency breaching its agreement or otherwise acting improperly, the intended parents could take measures such as suing the agency for breach of contract or negligence without fear of having perhaps committed a crime by breaching section 6(2) of the Assisted Human Reproduction Act.

It is against the law to pay a donor under section 7(1) of the act. Ironically, Canada allows gametes to be imported from other countries, even if the donors there are paid. That explains why about 90% of sperm donations in Canada are from the United States and only 5% to 10% are from Canadian donors. By supporting imports, the government is relinquishing oversight of the legal framework governing the collection of most of the gametes found in Canada's sperm and ova banks.

[*Translation*]

In my speech at second reading during the first session, I gave you some background on the development of the current assisted reproduction regime. That regime was studied a long time ago, and, at the time, the final report urged the government to proceed with care. It is important to remember that we were in the early stages of studying human cloning, and there were ethical considerations associated with such practices. There were also concerns related to a more conventional view of procreation and

family. Same-sex marriage was not yet legal, and fertility problems were not yet part of the political discourse. All in all, it was a very different time.

It's important to look at the impact of Canada's legislative regime on the behaviour of Canadians abroad.

[*English*]

• (1630)

Many Canadians travel to countries where surrogate mothers face increased and pervasive risk of exploitation. Because of the state of the law in Canada, Canadians who wish to use alternative methods of assisted reproduction are often unsure and afraid that an ineligible expense may be seen as an illegal payment. They also lack access to surrogates and gametes domestically because of the impact of the current state of the law. This encourages people to travel to other countries with more relaxed rules to use the services of surrogate mothers and obtain gametes. This practice leads to a range of problems, including the exploitation of poor and racialized women in other countries and difficulty in accessing gamete and surrogacy services in Canada.

In theory, you could say that Canada's legislative approach is contradictory because we accept a regime that favours the exploitation of women in other countries out of a fear of exploiting women in Canada. By making it easier to use a surrogate mother in Canada, the bill would reduce Canadian exploitation of women in other countries and be more coherent with the underlying principles of the Assisted Human Reproduction Act.

I was surprised to find that there is no empirical evidence that would support differential treatment in Western countries toward paid surrogates and women who become surrogates for altruistic reasons. Both are vulnerable to some degree and need to be better protected under an adequate regulatory framework.

In the CBC investigation, John Kingdom M.D., a physician and professor at the University of Toronto says, "I think we should recognize that surrogates are altruistic, kind people who are at risk of power imbalances."

Empirical evidence has reduced significantly the concerns that arose in the early days of the assisted reproduction time as to what the typical profile of surrogate mothers is. It was a belief, and still is to this day for certain people, that in wealthy countries, surrogates would be women who comprise some sort of reproductive underclass to serve the needs of wealthy White women. Evidence has proven that there is no overrepresentation of poor, uneducated and racialized women. In fact, contrary to certain beliefs, the most recent research shows that the typical profile of a surrogate mother in the United States and in Western countries are not poor, uneducated women of colour who comprise some sort of reproductive "underclass" to serve the needs of wealthy White women.

While this dichotomy is one of the reasons why Canadian lawmakers justify the need to criminalize commercial surrogacy, it is not based on empirical evidence. Criminalization fosters a climate of fear and silence, which stifles discussion and increases the risk that vulnerable people will be exploited, whether we are talking about surrogate mothers, intended parents, gamete donors, gamete recipients or children.

Whether we agree or not with paid gamete donation or surrogacy, we are at a point in time when this matter needs to be looked at and studied with a 2021 lens. Our world has changed considerably since the Assisted Human Reproduction Act was adopted. What is the rationale or absence thereof beyond the decision to favour a criminal legal framework rather than a legal regulatory framework?

[*Translation*]

There is no longer any valid reason to maintain these prohibitions today. It is time to take another look at the extensive empirical evidence that supports the decriminalization of commercial surrogacy and gamete donation so that Canadians can benefit from regulations that truly protect their health and safety and ensure fairness and justice for all those who successfully contribute to helping others become parents.

It is high time that this issue was re-examined and we undertook a comprehensive study that would focus on every aspect of assisted human reproduction and propose tangible solutions to a problem that Parliament has refused to properly regulate for far too long.

Thank you for your attention.

(On motion of Senator Martin, debate adjourned.)

[*English*]

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.

(Bill read first time.)

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

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

CRIMINAL RECORDS ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Pate, seconded by the Honourable Senator Galvez, for the second reading of Bill S-208, An Act to amend the Criminal Records Act, to make consequential amendments to other Acts and to repeal a regulation.

Hon. Denise Batters: Honourable senators, I rise today to speak to Bill S-208, Senator Pate's bill to amend the Criminal Records Act to provide for the expiry of criminal records. This would allow a more automatic system of record suspensions rather than the more onerous and costly current system of application for a pardon.

I certainly appreciate Senator Pate's perseverance to see this bill come to fruition. She introduced these measures first as S-258, then S-214, and now as Bill S-208. And while I can understand Senator Pate's attempt to reduce stigma and discrimination for offenders who have already paid their debt to society, I have some serious concerns about the unintended consequences of this bill.

First, I am concerned about whether sufficient safety measures are built into this process. The current Criminal Records Act stipulates that a person charged with a schedule 1 offence, including many sexual offences against children, is not generally able to receive a pardon.

Bill S-208 would ensure criminal records will expire after a given period of time so that a person who had served his or her sentence would not have to apply or pay a fee to receive a record suspension. Instead, it would happen automatically.

Under the current Criminal Records Act, a person can apply for a record suspension after 10 years has passed since the completion of the sentence for an indictable offence, and after five years in the case of a summary conviction offence.

In Bill S-208, Senator Pate wants these waiting periods to be cut in half. Records would expire after only five years for an indictable offence, and two years for a summary conviction. I submit that slashing these wait times before a criminal record would expire could have devastating consequences for the safety of society. The chance of recidivism tends to decline with a longer period of time from the completion of one's sentence.

My biggest concern with the bill is the complete removal of schedules 1, 2 and 3 from the Criminal Records Act. This is a massive change to the safety protections built into the act. Currently, schedule 1 outlines offences that would make an offender ineligible for a record suspension.

• (1640)

I want to read these offences into the record because under Bill S-208 — which would see this entire list deleted — an automatic, free record suspension could be available to an offender who would have served their sentence for crimes such as: sexual interference with a person under 16; invitation to a person under 16 to sexual touching; sexual exploitation of a person 16 or more but under 18; bestiality in the presence of a person under 16 or inciting a person under 16 to commit bestiality; child pornography; parent or guardian procuring sexual activity; householder permitting sexual activity; making sexually explicit material available to a child under 18 for purposes of listed offences; making sexually explicit material available to a child under 16 for purposes of listed offences; making sexually explicit material available to a child under 14 for purposes of listed offences; corrupting children; luring a child; agreement or arrangement — listed sexual offence against a child under 18; agreement or arrangement — listed sexual offence against a child under 16; agreement or arrangement — listed sexual offence against a child under 14; exposure; removal of a child under 16 from Canada for purposes of listed offences; removal of a child 16 or more but under 18 from Canada for the purpose of listed offence; removal of a child under 18 from Canada for purposes of listed offences; trafficking — person under 18 years; material benefit — trafficking of person under 18 years; withholding or destroying documents — trafficking of person under 18 years; obtaining sexual services for consideration from person under 18 years; material benefit from sexual services provided by person under 18 years; procuring — person under 18 years; breaking and entering a place with intent to commit in that place an indictable offence listed in certain sections; and breaking and entering a place and committing in that place an indictable offence listed in certain sections.

And offences listed under previous Criminal Code versions: sexual intercourse with a female under 14; sexual intercourse with a female 14 or more but under 16; seduction of a female 16 or more but under 18; parent or guardian procuring defilement; householder permitting defilement; living on the avails of prostitution of person under 18 years; aggravated offence in relation to living on the avails of prostitution of person under 18 years; and prostitution of person under 18 years.

Let's remember that for all of those offences and the offences I will read next, an automatic free records suspension could be available under Senator Pate's Bill S-208, also including offences involving a child under the following provisions of the Criminal Code: sexual exploitation of a person with a disability; incest; voyeurism; obscene materials; mailing obscene matter; indecent acts; sexual assault; sexual assault with a firearm; sexual assault other than with a firearm; aggravated sexual assault; breaking and entering a place with intent to commit in that place an indictable offence listed in certain sections; breaking and entering a place and committing in that place an indictable offence listed in certain sections.

And offences listed under previous Criminal Code versions involving a child under the following provisions: sexual intercourse with stepdaughter, etc., or female employee; gross indecency; rape; attempt to commit rape; indecent assault on female; indecent assault on male; common assault; and assault with intent to commit an indictable offence.

When I questioned Senator Pate about this area after her second reading speech she said:

> There is a provision to ensure vulnerable record checks, which, of course, would cover the types of records you're talking about — sexual offences and some particularly violent offences — which would allow for the expiry process to be either delayed, not to be put in place or for the record to be resurrected if there was a need for it to be.
>
> It's not that there's a particular definition of one that wouldn't be included — except, of course, life sentences because there's no end to them. For all of them, it would commence after the end of a set period after the end of the sentence, unless the person has come to the attention of authorities, in which case there would be an investigation and appropriate proceedings.

What Senator Pate is proposing is to remove this entire list of offences currently not eligible for record suspensions, and instead leave it to a vulnerable sector record check to turn up that information. However, a vulnerable sector check would not be run in all circumstances. Section 6.3(3) of the Criminal Records Act states that a vulnerable sector check will be conducted:

> At the request of any person or organization responsible for the well-being of a child or vulnerable person and to whom or to which an application is made for a paid or volunteer position . . . if
>
> (a) the position is one of trust or authority towards that child or vulnerable person; and
>
> (b) the applicant has consented in writing to the verification.

Senator Pate has told us that such offenders would still show up in vulnerable persons checks. While this eliminates some of the problems, in limiting access to positions working directly with youth, for example, what about the scenarios not covered by such checks? What about an elderly woman who looks after her grandchild and unknowingly rents out a basement suite to an offender who has served a sentence for sexual crimes against children or someone with a past record of aggravated sexual assault? Under Bill S-208, the offender wouldn't even have to apply for a record suspension; it would automatically occur. That record would be sealed, that elderly landlord would be none the wiser, and we would all have to cross our fingers and hope that sex offender doesn't reoffend. I think that risk is unacceptable and most Canadians would agree with me.

There are many other scenarios where not being aware of the criminal past of an offender could prove dangerous. Take, for example, a job where a male sex offender might work on a shift with one other female coworker, perhaps at night in a vacant or remote location. He likely wouldn't need a vulnerable record check to work there, and under Bill S-208 his record suspension could be automatic only two years after his sentence. Is it fair for us to hide that information from his employer or a co-worker who may unknowingly be placing herself in danger just by doing her job? What about an offender who has served a sentence for aggravated sexual assault, receives a record suspension and finds employment as a realtor, where he might be showing residences to female clients alone? He is not in a position of trust or authority for a child or vulnerable person, so he might not have to undergo a vulnerable sector check, but if he reoffends, we will certainly have more vulnerable victims. It is irresponsible of us as legislators to willfully ignore the dangers this bill could unleash.

By removing Schedule 2 from the Criminal Records Act, Bill S-208 eliminates other offences for which a person has received a record suspension that would have previously been noted in the RCMP's automated criminal conviction records retrieval system. Again, Senator Pate amends section 6.3 (2) by allowing such notations only for offences against a vulnerable person, which as I explained earlier, will not cover all situations. Offences listed under Schedule 2 — which, again, this bill would eliminate — include: sexual exploitation of a person with a disability; incest; voyeurism; obscene materials; mailing obscene matter; indecent acts; sexual assault; sexual assault with a firearm; sexual assault other than with a firearm; aggravated sexual assault; abduction of a person under 16; abduction of a person under 14; indecent phone calls; breaking and entering a place with intent to commit in that place an indictable offence listed in certain sections; breaking and entering a place and committing in that place an indictable offence listed in certain sections; and attempt or conspiracy to commit an offence referred to in any of those sections.

And offences listed under previous Criminal Code versions: sexual intercourse with a female under 14; sexual intercourse with a female 14 or more but under 16; seduction of a female 16 or more but under 18; sexual intercourse with stepdaughter, etc., or female employee; gross indecency; and attempt or conspiracy to commit an offence referred to in any of those sections. Also, rape; attempt to commit rape; indecent assault on female; indecent assault on male; common assault; assault with intent to commit an indictable offence; and attempt or conspiracy to commit an offence referred to in any of those sections.

It is alarming that Bill S-208, in deleting those schedules, eliminates the careful balance that was struck under the current legislation. Furthermore, Bill S-208 retains references to Schedule 1, 2, and 3, even while it removes the schedules completely. That is very confusing legislative drafting.

In 2018, CBC produced an article further examining the vulnerable sector check process. It described how the process worked:

> Anyone who applies for a job in what the federal government considers a "vulnerable" sector — for example, nursing homes, daycares, taxi services or any service working with people with disabilities — is required to apply for a special background check, which combines a regular police check with a scan for suspended sexual offences.
>
> If a suspended offence record pops up in the course of that check, the police force that did the check won't know what's in it. It will notify the federal Department of Public Safety; the minister will then decide if the offence is relevant enough to the job to warrant disclosure. If the minister opts to disclose, a copy of the suspended record is returned to the applicant and the police service that oversaw the request. If it's denied, the background check is returned as having found "no record."

• (1650)

I find it alarming that a response deemed irrelevant is returned as having found "no record." This gives a false sense of security to the person applying for the vulnerable sector check. Furthermore, as the article went on to explain, how a minister and the government chooses to interpret the criteria for a vulnerable sector check can have a huge bearing on the outcome.

The article continues:

> Under the previous Conservative government, almost all vulnerable sector checks — 95 per cent — were disclosed to police and applicants. That number dropped to 38 per cent under the Liberals.

Ralph Goodale was the Minister of Public Safety during that plummet.

The same article went on to reveal:

> . . . researchers said it's "not relevant" to disclose a suspended sex offence if the applicant has applied to work with the elderly and their past offence involved children.

A Public Safety document quoted by the article states:

> "Due to their sexual preference pertaining to children, it is highly unlikely that they will offend against the elderly."

I suppose we're supposed to find that comforting, but I definitely don't and Canadians won't either. People don't expect an offender's criminal record to potentially disappear in less time than it took an offender's case to work its way through the court system. As a lawyer and long-time member of the Standing Senate Committee on Legal and Constitutional Affairs, which studied the issue extensively, I am well aware of how prolonged some court delays can be. Even with the new *Jordan* timelines to try to expedite the process, with appeals, a case can still ultimately spend years in the courts.

Canadians are frequently shocked at how light the sentences are for many types of crimes. The reality is that, in Canada, we already have significant reductions in sentences received, especially compared to the U.S., and the time actually served by offenders is also much shorter in Canada. With good behaviour, for example, some offenders serve only one third of their sentence in custody. Most offenders serve only two thirds of their full sentence. When this happens for particularly egregious crimes, Canadians' confidence in the justice system is rightfully shaken.

Furthermore, Senator Pate's bill would completely remove the waiting period before record expiry for an offender convicted under the Youth Criminal Justice Act, even if they are over the age of majority upon release. Many Canadians already feel that treatment of young offenders in our criminal justice system, especially for those who are nearing the age of adulthood, is too lax. Providing these offenders with an automatic record expiry with no waiting period would likely only inflame those feelings in the Canadian public. Certainly, some waiting period would be warranted.

It was the previous Conservative government that originally changed the term "pardon" to "record suspension" in the Criminal Records Act. The Harper government also increased the length of time between the completion of a sentence and an application for a record suspension to 10 years for an indictable conviction and five years for a summary conviction.

On many members' minds at the time was the case of former hockey coach Graham James, a serial sexual predator of children. James received a three-and-a-half-year sentence for his repeated sexual abuse of two teen hockey players, Sheldon Kennedy and another unnamed victim. Graham James assaulted his victims hundreds of times.

He received a pardon in 2007, five years after he completed his sentence, in accordance with the pardon rules at the time. Canadians with rightfully outraged that a repeat sexual abuser such as James could potentially receive a pardon after only five years. He then moved to Mexico and coached hockey in Spain before being charged with further sexual abuse of more victims, including Theoren Fleury, stemming from James's years as a coach in Western Canada. He received a two-year sentence for pleading guilty to these further crimes and, on appeal, his sentence was increased to five years. James was released on full parole by the National Parole Board in 2016.

In fact — small world — Senator Gold was on the National Parole Board at the time and was quoted in media reports as having participated in Graham James's parole hearing and decision, at which time James was then released into the city of Montreal.

Going back to the Graham James 2007 pardon, it is important to remember that news of that pardon did not emerge until three years later, in 2010, but it was a bombshell for the Canadian public. Sheldon Kennedy described his feelings about James's pardon this way:

> Children who are victimized spend a lifetime trying to explain what happened to them and working to restore their emotional well-being. Meanwhile, perpetrators get pardoned.
>
> Victims often struggle with emotional issues, alcohol, drug dependency, and suicide. They have to seek out their own forms of rehabilitation. Perpetrators typically get forced treatment and many get rehabilitated, on paper. However, research shows that pedophiles can rarely be rehabilitated. Interesting. So how can they be pardoned?
>
> My abuser got three and a half years for his crimes and was released after only 18 months. Then he got a rubber-stamp pardon and took off to Mexico, where he had a clean record, a name change, and a chance to start offending yet again. Is there a parent in this country who would have an issue with protecting their children from this animal and others like him? He and other perpetrators should never be allowed to get a pardon, period.

Upon hearing of James's pardon in 2010, then-prime minister Stephen Harper vowed to change the rules immediately to prevent similar offences from happening in the future. Then Prime Minister Harper also noted that any system that grants pardons to 99% of applicants needed to be overhauled.

A further motivation for the Harper government in amending the rules around the granting of pardons in 2010 was the pending pardon application date of July 5 of that year for notorious killer Karla Homolka. Homolka pled guilty to manslaughter and received a controversial plea deal, which resulted in a sentence of 12 years' imprisonment for her role in the rapes and murders of teenagers Kristen French, Leslie Mahaffy and Homolka's own sister, Tammy, with her partner, serial killer Paul Bernardo.

The Conservative government split the pardons bill in two. With the cooperation of the opposition, including Liberal opposition house leader Ralph Goodale, they were able to pass Bill C-23A quickly through Parliament quickly near the end of June. Homolka's manslaughter conviction was therefore excluded from pardon eligibility.

Honourable senators, Bill S-208 would largely walk back the important changes to pardons that the Conservative government put in place to protect the Canadian public.

There has been a push in this Trudeau government to dismantle laws established by Conservative Prime Minister Harper simply because of a partisan dislike for him and the Conservative Party. Believe it or not, honourable senators, a law is not worthless simply because it was put in place by a Conservative government.

The Conservative government implemented these changes to ensure the Canadian public would have greater faith in the justice system. These rules ensure that the length of time required before applying for a pardon was reflective of the severity and circumstances of a conviction and that such factors were taken into consideration before granting record suspensions. We should not be reversing those gains now, especially not by way of an individual senator's Senate public bill.

A criminal record suspension should not be an automatic default. It is a privilege, not a right. Committing a criminal act is a voluntary decision, and it is a crime against Canadian society as a whole. It rightfully comes with a heavy price. Part of that price is having to prove a commitment over a lengthier period of time to living a life free from further crime after one sentence is complete. I submit that five years for an indictable offence and two years for a summary offence is insufficient to prove that commitment.

Bill S-208 badly fails victims of crime. It does not seem to take into consideration the spirit of the Victims Bill of Rights.

Victims should have the right to be notified before individuals who have served sentences for serious offences are granted a record expiry. Clearly, this would have a serious impact on the sense of safety and security of victims and their families. Many victims will relive their past trauma every day of their lives. Unlike an offender with a pardon, they can't just wipe the slate clean and move on. In many cases, victims and families will live with their losses forever.

Granting offenders an automatic record suspension after only a short period of time displays a lack of respect for victims in this process.

Senator Pate has indicated that she was partly inspired to propose this particular iteration of Bill S-208 after reviewing Bill C-93, the Trudeau government's pot pardon legislation. I would caution you to temper your expectations for this bill, Senator Pate, given the Trudeau government's abysmal failure in granting pot pardons. First, the government couldn't get its numbers right. When the bill was first tabled, Minister Bill Blair suggested that the number of Canadians with a possession charge for marijuana could be as high as 400,000, but that the government reasonably expected 70,000 to 80,000 to apply for a pot pardon. Justice Minister David Lametti suggested that more than 250,000 Canadians had "some kind of cannabis possession conviction" on their records. He stated:

• (1700)

> We're hoping by expediting the process to make the number of people who have access to the pardon reach into the thousands.

In response to my questions at the Senate Legal Committee, senior government officials testified that the likely number was probably closer to 10,000 people.

And the truth? In the year that followed the enactment of Bill C-93, the federal government had ordered only 265 pot-possession record suspensions. Fewer than 300, honourable senators, out of a predicted almost half a million. That is Liberal math. That is the mark of a government out of its depth. That is an indicator that this Trudeau government will do and say anything it can to get votes and distract Canadians from the real picture.

The Trudeau government wanted a shiny bauble to put in the window for the 2019 election, and so the Liberal government, aided by its Trudeau-appointed senators here, pushed the pot pardon provisions through this chamber and into law within a few days in June, right before the Senate rose. Meanwhile, many Canadians discovered a hidden roadblock in the fine print of that bill. People who were convicted of any other offences, other than simple pot possession, were ineligible to apply for a pardon for their pot possession charge. By the time Canadians were waking up to that fact, though, Prime Minister Trudeau had already received enough votes to hold on to power, even if only in a minority Parliament situation. The votes, of course, were what it was all about. Certainly, this is indicative of how this Trudeau government approaches most policies. It is not about doing the right thing, but instead the politically expedient thing.

Honourable senators, I encourage you to think about whether that is good enough for you and whether it is good enough for all of us as Canadians. We have a responsibility to keep people safe, and Bill S-208 certainly won't do that. We can't just close our eyes and hope that everything works out. We need to set sound, careful policy on pardons, not play fast and loose with the lives and safety of Canadians.

I certainly appreciate that Senator Pate's heart is in the right place with this bill. Although we often disagree on policy, I don't doubt the sincerity of her beliefs on this issue. Unfortunately, Bill S-208 just goes way too far. It would be detrimental to the safety and security of Canadians and as such, I cannot support it.

Thank you.

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

Senator Batters: Yes.

Hon. Kim Pate: Honourable senators, I was calling the question, but I understand one of my colleagues has a question. I would just like to say thank you to Senator Batters for raising issues that I hope we will have the opportunity to examine more fully at committee in terms of evidence, incidence and assessment of the risks that she has identified and believes exist within this bill. Thank you very much.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Senator Batters, the statistics I have seen on child molesters and pedophiles show that 48% of them are at risk of reoffending after five years.

Senator Pate's bill would effectively ensure that the criminal records of these molesters would be expunged after five years. Don't you think that this bill could put the life and safety of children at risk, given that the police would no longer have access to information on these criminals' past?

[*English*]

Senator Batters: Thank you, Senator Boisvenu, for all of your work on that issue. Yes, that is very much a concern, especially because that person's automatic free record suspension could happen not only after five years, it could happen after as little as two years, depending on whether it's a summary conviction offence. It's five years for an indictable offence. So, yes, that's certainly a major concern and something we will need to delve into considerably at committee.

Thank you for your question and all your hard work on that issue.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

REFERRED TO COMMITTEE

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

(On motion of Senator Pate, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Pate, seconded by the Honourable Senator Boehm, for the second reading of Bill S-207, An Act to amend the Criminal Code (independence of the judiciary).

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

REFERRED TO COMMITTEE

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

(On motion of Senator Pate, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Boisvenu, seconded by the Honourable Senator Dagenais, for the second reading of Bill S-212, An Act to amend the Criminal Code (disclosure of information by jurors).

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Boisvenu, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

• (1710)

INCOME TAX ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Omidvar, seconded by the Honourable Senator Woo, for the second reading of Bill S-222, An Act to amend the Income Tax Act (use of resources).

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, it is my pleasure to rise today to speak to Bill S-222, An Act to amend the Income Tax Act (use of resources), also known as the Effective and Accountable Charities Act.

This bill is long overdue. Although I stand in the role of critic for this bill, you will soon discover that I am very supportive of this legislation. I want to thank Senator Omidvar for her work on this issue and for bringing this bill forward.

In her second reading speech, Senator Omidvar did an excellent job providing this chamber with an overview of the problem that this legislation seeks to address, so I will not take too much of your time to cover the same ground. However, I would like to briefly review why this bill is needed and why I believe this chamber should support it.

In Canada, like many countries, charities are granted a favourable tax status. Donors receive tax-deductible receipts for their contributions and the charities themselves benefit from preferential sales tax treatment. This reflects the long-standing consensus that charitable work is a public service to society that serves the greater good and therefore warrants preferred tax treatment.

As explained by the Canada Revenue Agency:

> Registered charities are charitable organizations, public foundations, or private foundations that are created and resident in Canada. They must use their resources for charitable activities and have charitable purposes that fall into one or more of the following categories: the relief of poverty; the advancement of education; the advancement of religion; other purposes that benefit the community.

The rules governing the operation of Canadian charities are established by the Income Tax Act, which are then interpreted by the Canada Revenue Agency. Compliance with the rules is closely monitored and additional guidance is routinely published by the CRA to give additional insight into the application of the law and assist charities in understanding how the law translates practically in their work.

Failure to adhere to the rules can have severe consequences, including the loss of an organization's charitable status. This is true not only with the statutory requirements but also the directives providing additional guidance published by CRA.

The legislation before us seeks to address challenges that stem from two such policy directives issued by the Canada Revenue Agency. The first is CRA's Guidance CG-002, "Canadian registered charities carrying on activities outside Canada," and the second is CRA's Guidance CG-004, "Using an intermediary to carry on a charity's activities within Canada."

Both policies detail the CRA's interpretation of section 149.1(1)(a.1) of the Income Tax Act, which defines a charitable organization. The entire definition is 359 words long, but these two CRA directives focus on just 16 words, which read as follows: ". . . all the resources of which are devoted to charitable activities carried on by the organization itself."

In other words, to qualify as a charity, the organization's resources must be devoted to charitable activities that are "carried on by the organization itself."

CRA puts it this way:

> The Income Tax Act requires a charity to devote all its resources to charitable activities carried on by the organization itself. This requirement is referred to as the own activities test.

The CRA goes on:

> To meet the own activities requirement, when a charity transfers resources to its intermediary, it must direct and control the use of those resources. This means the charity must make decisions and set parameters and significant issues related to the activity, on an ongoing basis, such as: how the activities will be carried on; the overall goals of the activity; the area or region where the activity will be carried on; who will benefit from the activity; what goods and services the charity's money will buy; when the activity will begin and end.

The key words here are "direct" and "control." Any time a charity wants to work through an intermediary that is not another Canadian charity, it must "direct and control" that organization. This has proven to be extremely problematic for charitable organizations. In a publication prepared for the Pemsel Case Foundation entitled *Direction and Control: Current Regime and Alternatives*, Theresa Man and Terrance Carter summarize these difficulties and challenges with the following seven points:

Number one: The policy has resulted in an outdated international development approach.

> Requiring charities to have a top-down approach to exercise "direction and control" to dictate the charitable activities and how they are carried out . . . is imperialistic, parochial and offensive. This approach is fundamentally at odds with current international development philosophy that recognizes the importance of developing empowering partnerships with local communities and non-governmental organizations (NGOs).
>
> This approach is also inconsistent with the Canadian government's policies on working with First Nations and international communities.

Number two: The policy has created uncertain CRA requirements. The Pemsel paper says this:

> Many of CRA's requirements do not clarify which requirements are mandatory and which ones are optional. . . . These uncertainties often result in charities erring on the side of caution by treating all of them as mandatory requirements and thereby making compliance even more difficult.

Number three: The direction and control policy is impractical and unrealistic to comply with.

> The top-down approach to exercise "direction and control" is undesirable, impractical and unrealistic in many respects, reflecting an environment of micro-management that deters and distracts charities from focusing on delivering the programs. Requiring the charities to know all the details of a project from start to finish before the project begins in order to give "direction and control" is impractical and unrealistic. This approach also ignores the benefit of relying on the expertise of the local partner doing the work on the ground.

• (1720)

Number four, the policy creates high administrative costs.

> Compliance with the onerous CRA requirements often require high administrative costs, even in situations where the charity otherwise has no concerns with a trusted foreign partner, where efforts undertaken are ineffective and of little or no value to identify non-compliance issues by the partner. This in turn draws precious and scarce resources away from charitable work and represents a poor expenditure of charitable resources.

Number five:

> The legal relationships referred to in the CRA policies are very restrictive and impractical. They do not reflect the diversity of relationships that charities need to enter into when carrying out programs outside Canada in different contexts.

Number six: The policy is inconsistent with other jurisdictions.

> The direction and control mechanism requiring the programs to be the "own activities" of the funding Canadian charity is an outlier in the world and not easily understood. It is inconsistent with successful mechanisms utilized by other countries, such as the U.S. and England and Wales.

Number 7: The direction and control policy is conflated with the financing of terrorist organizations.

> . . . there is a perception that any alternative solution to solve the "direction and Control" problem might become an impediment to the government's efforts to prevent terrorist activities and financiering by taking away the enforcement tool of direction and control.

The Canadian Council for International Cooperation has noted that the direction and control policy harms charities regardless of whether they are working domestically or internationally. For example, in the international arena, the policy prevents Canadian charities from donating to emergency pooled funds. They cannot be part of a rapid response intervention which pools funds from multiple charitable sources, because to do so would require the Canadian charity to directly control and fully account for the use

of all the funds. Furthermore, they cannot donate to the advocacy campaigns and they cannot donate to non-charitable institutions such as hospitals.

Domestically, the CCIC notes that direction and control policy undermines partnerships, weakens sustainability and hinders coordination. Canadian charities cannot work horizontally with Indigenous partners and communities, and instead have to come in as the boss, directing and controlling everything. They cannot support community facilities like youth or art centres unless they take over control of all their activities, and they cannot donate to shared non-profit platforms.

Honourable senators, the purpose behind direction and control is well-intentioned. The government cannot permit tax receipts for charitable donations without ensuring that these donations are actually for charitable purposes. To do so would be to provide a tax advantage for activities that may not be in the broader public interest. However, in practice, this policy has been a significant hindrance to the efforts of charities to carry out their work.

Last fall, my office was on a Zoom call with representatives from Samaritan's Purse and Canada Foodgrains Bank. They underscored how difficult the direction and control policy was making it for them to respond to the immense needs presented globally by the pandemic. At a time when the need for speed, efficiency and international cooperation could not be greater, the efforts of Canadian charities have been hobbled by an outdated bureaucratic invention which hinders the work of over 1.5 million people working in the charitable sector in Canada.

Honourable senators, that is what this is; the direction and the control policy is a construct of the Canada Revenue Agency, as noted by the Pemsel Case Foundation:

> There is no requirement in the ITA for charities to exercise direction and control on their activities. This is an administrative policy of CRA based on an interpretation on the ITA requirement that charities operate their "own activities" when not making gifts to qualified donees.

Honourable senators, Bill S-222 is somewhat of an outlier approach to the legislative process because it proposes a statutory solution to deal with a regulatory problem. This is not the normal way to develop public policy. However, in this case it is necessary.

The work of the Canada Revenue Agency is important and yet often thankless. I have no doubt that they have done their best over the years to faithfully interpret and implement what the Income Tax Act legislates on this matter, but in this case it has clearly missed the mark.

In discussing this issue with Canadian charities, we questioned them about why the policy has not simply been changed by the CRA. Why has it persisted for so long in spite of the obvious problems it causes? They chalked it up to bureaucratic inertia. After decades of interpreting the Income Tax Act a certain way, the CRA is reluctant to change their approach.

Honourable senators, this is understandable, but it is not acceptable. By amending the Income Tax Act, we will ensure that a better framework is provided, which will be similar to the regulatory requirements in other countries and provides an opportunity for greater efficiency, effectiveness and coherence in our charitable sector, while maintaining accountability and protecting public safety.

As you know, this view has received widespread support, not just from Canadian charities but from parliamentarians as well. In its 2019 report, the Special Senate Committee on the Charitable Sector highlighted this issue as one of the many that need to be addressed and made recommendations about how it could be corrected.

In 2020, the House of Commons Standing Committee on Foreign Affairs and International Development also flagged this issue and unanimously recommended:

> That the Government of Canada take immediate steps to fix the serious problems with the current direction and control regime as it pertains to international development, recognizing that this regime impedes important international development work and perpetuates colonial structures of donor control.

Honourable senators, there is broad agreement that this issue needs to be fixed. Bill S-222 offers us an opportunity to do just that.

As noted by the Pemsel Case Foundation's report on direction and control:

> . . . an ideal solution for the charitable sector in this regard would be to undertake a thorough revamp of the income tax regime governing registered charities to come up with a modern, coherent and empowering framework, including an efficient mechanism for charities to engage in international charitable work or work in Canada with nonqualified donees. However, such a reform would likely take years to accomplish. Instead, it is hoped that the proposed changes suggested in this paper would require as little legislative changes as possible, in providing an interim practical solution to the dilemma faced by charities while leaving the broader restructuring of the framework to be accomplished at a later time.

Honourable senators, no one is suggesting that this bill is perfect, but it is unquestionably a giant step forward. As critic of the bill, I again commend Senator Omidvar for bringing this forward. I strongly support sending this bill to committee for further study and hope you will as well. Thank you, colleagues.

• (1730)

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Omidvar, bill referred to the Standing Senate Committee on National Finance.)

COPYRIGHT ACT

BILL TO AMEND—SECOND READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Carignan, P.C., seconded by the Honourable Senator Seidman, for the second reading of Bill S-225, An Act to amend the Copyright Act (remuneration for journalistic works).

Hon. Paula Simons: Honourable senators, I am honoured to speak today as the official critic of Bill S-225, An Act to amend the Copyright Act (remuneration for journalistic works).

I want to begin by sincerely thanking this bill's sponsor, Senator Claude Carignan, for bringing forth this legislative proposal which addresses an urgent question about the existential crisis facing journalism in Canada, particularly in print journalism.

This debate could not be more timely; indeed, it is long overdue. I want to commend my Senate colleague for putting this issue squarely on the parliamentary agenda and for goading us all to think long and hard about new and creative solutions to the challenges facing Canadian journalism and about what the collapse of the Canadian journalism industry, as we once knew it, means to the well-being of Canadian society and Canadian democracy.

This issue matters profoundly to me, not just as a senator but as someone who dedicated 30 years of my professional life to the craft of journalism, working for newspapers, magazines and both public and private radio. Let me begin by painting you a picture.

When I first started at the *Edmonton Journal* in the fall of 1995, there were hundreds of writers, editors and photographers on staff. There were 40 news reporters in the "city" room alone. When I first arrived in the crowded *Edmonton Journal* newsroom, indeed I had to share a desk. It was mine during the day and belonged to someone else who worked the evening shift. And reporters didn't just compete for physical space; we had to compete for space in the paper. Every day the assignment editors would assign far more stories than the paper had room to hold. The evening editors would then choose only the best ones to print.

We had fully staffed bureaus at City Hall, at the provincial legislature and at the courthouse. We even had a bureau at the University of Alberta campus. As I remember it, we had four reporters and a columnist in the legislature press gallery alone and a team of six or eight covering the crime beat.

Every floor in the five-story building was filled, not just with writers and editors, but with photographers, artists, designers, ad sales people, marketing staff, librarians and circulation sales teams.

But perhaps the most important people of all, and the people I took most for granted, were the lovely ladies who worked on the main floor taking the classified ads. Do you remember classified ads? They were tiny advertisements that cost very little but were the glue that held a community together. That's where people went if they wanted to sell an old piano or a new kitten. It was how they advertised for a nanny or a snow shoveller or someone to work at their corner store. It was where you announced births, engagements and deaths or sought companionship of various kinds.

The ads were cheap, the type face was tiny, and most of us who worked in the newsroom had no idea how important those pages and pages of little classifieds were. But the classifieds, along with all the other advertisements for local businesses, were the newspaper's bread and butter. Sure, we sold subscriptions. We sold newspapers in boxes and at newsstands, but daily newspapers in Canada made the vast majority of their vast income from advertising, not from selling their stories to readers.

Then one day the game changed. Buckle up now: I'm about to bury you in numbers, courtesy of the Canadian news media association.

In 2005, Canada's daily newspapers took in a total of $875 million in classified advertising revenue alone — just the classifieds, almost $900 million.

By 2010, just five years later, the total classified advertising revenues for Canadian dailies had plummeted to just $462 million — a decline of almost 50% in five years. By 2019, classified revenues accounted for just $69 million in daily newspaper revenues. That's a loss of more than $800 million in less than 15 years.

What happened between 2005 and 2010? The explosion of the Internet as an advertising platform. Suddenly, people weren't buying our classified ads. They were advertising on sites like Kijiji and craigslist and then on Facebook and Google, and then on YouTube and Instagram and dozens of other smaller sites.

After the classifieds, the online competitors came for the local advertisements: the ads for local restaurants, car dealerships, movie theatres, department stores and school boards. In 2005, that local advertising brought in revenues of $1.2 billion for Canadian daily newspapers. By 2010, those revenues had

collapsed to just $631 million, again a loss of just under 50%. By 2019, local advertising in daily newspapers brought in just $247 million — about a billion dollars less than in 2005.

The magazine industry faced its own parallel crisis. In 2005, magazine advertising revenues in Canada stood at $665 million. In 2019, magazines made just $116 million in ad revenues — a decline of 82%.

People in our industry used to joke that we had a licence to print money, and that was scarcely an exaggeration. After all, companies and individuals needed to advertise locally, and there was virtually no competition. Sure, the *Edmonton Journal* competed with the *Edmonton Sun* and newspapers competed with local radio and television. But we kept all that nice revenue in the local media family. Local media companies had natural local geographic monopolies, especially in one-newspaper communities such as Victoria, Regina or Fredericton. Frankly, no one imagined it would ever be any other way until the bottom fell out.

Digital platforms didn't just offer cheaper, easier, more user-friendly ways to buy ads. They offered laser-focused micro-targeting. Google knew every time you searched for a product or used Gmail to talk to a friend about buying a new car or getting pregnant, and they could promise advertisers that they would send their ads to exactly the right people, and it was the same with Facebook. The company's data-mining brain read all your posts and sent you ads based on your conversations and preferences. A newspaper had no way to tell advertisers if their print ads had been read or understood. Google and Facebook could effortlessly track clicks and engagement and tell advertisers whether their ads had landed.

Even once newspapers tried belatedly, sometimes clumsily, to get into the game with digital online ads of their own, they simply couldn't offer the detailed demographic data and analysis that Google, Facebook and their successors could. That's why my Instagram feed is clogged with ads for dog toys, shape wear and brassieres, and perhaps why YouTube suddenly and instantly started showing me ads for bed sheets after I complained in a cellphone call how much I hated changing the duvet cover.

Our Alexas, our Siris, our Google Homes and smartphones and browsers deliver up reams of real-time data that allow online advertisers to get their ads in front of just the right eyeballs. No newspaper or news site can possibly match that degree of sociological or demographic specificity.

The upshot? In 2006, Canada's newspapers, both urban dailies and community weeklies, brought in total advertising revenues of about $3.9 billion. In 2019, Canadian newspapers had advertising revenues of just $1.4 billion. That's a loss of $2.5 billion.

In the meantime, newspaper companies have been desperately trying to replace that lost revenue by doing everything from selling off their buildings to printing sponsored advertorial content that dresses up an ad to look misleadingly like a news story or even, in the case of the *Toronto Star*, trying to launch their own online casino.

• (1740)

I hope you'll forgive me. I've been rattling off a lot of numbers, a lot of figures to sum up the fact that the revenue model on which the Canadian newspaper industry was based has collapsed. Those billions upon billions of dollars have been lost to digital platforms, and they are never coming back. I feel I need to stress this so that you can understand the true and daunting extent of the economic problem Bill S-225 is seeking to solve.

Just as papyrus made the clay tablet obsolete, just as Gutenberg's printing press put thousands of monks in scriptoria out of work, the digital revolution has caused a cataclysmic shift in the economic models that long made newspapers, magazines and local television and radio stations solidly profitable, pushing them instead to the brink of failure.

It isn't that people have stopped consuming the news. Far from it. A recent News Media Canada survey found that 86% of Canadians are regular readers of newspaper stories, whether they read them in print or whether they read them on platforms such as Twitter, Reddit and Facebook or via news aggregating services such as Google and Apple.

Here's the catch: People don't have to read their local paper or watch their local TV news anymore. You can fire up your phone and instantly access *The Washington Post*, *The New York Times*, the BBC, *The Guardian* or *Le Monde diplomatique*. Yes, local papers could suddenly share their stories with all of Canada and all the world, but they also suddenly had to compete with the very best international journalism for the eyes and attention of their readers.

Here's the fact that I absolutely need you to understand: These platforms — Facebook, Twitter, Reddit, YouTube, Apple, Microsoft, Bing, Google and Yahoo — didn't steal our stories. We gave them to them. We begged them to take our copy. We built buttons and links on our websites to make it easy to share our content online. We built our own newspaper-branded Facebook pages and started our own YouTube channels. Those of us in newsrooms attended endless seminars on how to create "search engine optimized" headlines, leads and tweets so that our stories would go viral, so that the websites would be more likely to pick them up and share them.

We tracked every click, praying that Google News or Apple News would make us trend. We — I notice I'm still saying "we" — believed that being shared on social media would be our salvation, that social media clicks would drive more eyeballs to our own websites and allow us to sell more ads and more subscriptions. We willingly, eagerly entered into what we thought was a mutually beneficial symbiotic relationship, giving our content away for free, trying to expand our readership, trying to compete for page views, without realizing that the relationship wasn't symbiotic but parasitic and addictive. We got hooked on those social media clicks, and we just couldn't quit them.

By the time newspaper companies started to think that maybe — just maybe — giving their copy away for free was not a sustainable business plan, it was too late. Many papers tried to put up paywalls to hide their content from anyone except subscribers, but digital-savvy readers, raised and trained to get

their news for free, hated the new paywalls and found ingenious ways around them. Even when papers did successfully hide their content away, they lost readers and clicks — and advertisers, too.

Meantime, the appetite for good, solid, trustworthy journalism — journalism that reports on our communities and our politics — is as strong as ever. The problem is we don't have a very good way to hire and pay the journalists who do that work.

This is not an overnight phenomenon. Instead, it has happened gradually, incrementally, over the course of three decades. A 2004 study from Ryerson University's School of Journalism found that staffing levels at small- and medium-sized newspapers across the country fell by 30% between 1994 and 2004, and that was before the collapse in advertising revenues had even begun.

In 2013, the Canadian Media Guild reported that 10,000 media workers in Canada had lost their jobs in the preceding five years, including 6,000 people who worked for newspapers and magazines.

So it went, with each year bringing more cuts and more closures, until it was a wonder there were any reporters left at all. Of course, as the industry shed jobs, it became harder than ever to diversify homogenous newsrooms to better reflect the full multicultural reality of this country.

For years now, Canada's newsrooms have been putting on a brave face. They've started to feel like false-front cities in a western town — facades without much behind them.

Here are some more numbers. Let me try to put things in perspective for you in another way. In 2012, Postmedia, one of the largest newspaper companies in the country, had total revenues of $832 million, including $515 million in revenues from the sale of print advertising. Under expenses for 2012, they listed staff compensation costs of about $350 million.

In 2020, by contrast, Postmedia reported total revenues of $508 million, with just $190 million from print advertising. That's a drop of 40%. Their staff compensation costs, on the other hand, had fallen to $151 million, a drop of 57%.

I've described to you the buzz and the hum of the *Edmonton Journal* building when I started there 25 years ago. By the time I left in 2012 to join you here, most floors of the building were completely empty. It was a five-storey ghost town. On the fifth floor, a dozen or so dauntless, dedicated editorial staff huddled together in one corner of the once-bustling newsroom — wonderful young journalists working flat out to fill the pages of both the *Edmonton Sun* and the *Edmonton Journal* as well as to maintain two different live, 24-hour, seven-days-a-week websites.

I used to joke that we were a homeopathic newsroom — that we had been dissolved and diluted and somehow only got stronger and more potent in the process. In truth, the sorts of young people who somehow manage to hunt down and win jobs in journalism these days are so talented, so driven, so passionate that they are still managing to turn out extraordinary and important work; work that their communities need, in spite of all obstacles and in spite of all terrors. In a Darwinian survival-of-the-fittest world, successful young Canadian journalists today are as good as or, indeed, better than any I've ever known.

While print and broadcast journalists across Canada have been on the front lines of this pandemic, often risking their physical and mental health to tell us what's happening, COVID-19 has taken a lethal toll on the journalism industry.

According to J-Source, a Canadian media research site, 67 media outlets across the country have closed during the first year of COVID-19, some temporarily, others permanently. That includes the closure of 29 newspapers, five radio stations and two television stations. In all, according to J-Source, 3,000 journalists in Canada lost their jobs this past year alone.

Now, lots of people in lots of industries have lost jobs this past year, and I'm not asking you to feel especially sorry for laid-off journalists. I do want you to consider the cost to our community, our democracy and our social contract when we lose newspapers, magazines and radio stations as trusted sources of reliable news, and what it means when we lose diverse voices to tell our stories.

I want you to consider the consequences for small- and medium-sized cities, in particular. It will always be possible to get the hottest political news and gossip from Washington, New York, Toronto or Ottawa. But who is going to tell the people in smaller cities what's going on at their local school boards or city councils? Who's going to report on the zoning decisions and the school closure debates, on the highway contracts and the child welfare case rates? Not Google, not Instagram.

That's why I am so pleased and so grateful that Senator Carignan has started this essential discussion, and compelled us all to pay attention. It is also, alas, why I am so truly sorry to say that Bill S-225 is not the answer to these profound structural, cultural and economic problems.

[*Translation*]

Unfortunately, it is not going to work.

[*English*]

Bill S-225 is a beautiful, elegant tool like a surgeon's scalpel. Unfortunately, given the mountain of challenges facing Canadian media, we might need something more like a jackhammer to tackle the problem.

The bill starts from the core assumption that the reason print media outlets have lost their revenues is because social media sites are stealing — copying — their stories and then monetizing them to sell ads.

But this is a fundamental misunderstanding of how digital advertising markets work. Sure, Facebook absorbs Canadian news stories as "content," but that's not how or why it makes its hundreds of millions of dollars in Canadian advertising. Facebook's algorithm likes content that generates engagements, and a story about the Sault Ste. Marie City Council or the Kamloops-Thompson Board of Education or about a Senate debate on supplementary estimates isn't sexy or juicy enough to do the job. Links to Canadian news stories do get shared on Facebook of course, and sometimes a big, breaking story or a story of a juicy scandal might get a lot of clicks. However, according to Facebook at least, news stories — very broadly defined — make up only about 5% of the content on the platform. Those news stories are not privileged by the algorithm, which would much rather show you that cute video your aunt shot of her cats than link to a story about Ottawa's LRT construction delays.

• (1750)

The Nieman Lab, an American journalism think tank, did its own survey in 2017 of what content Facebook users see when they look at their so-called news feeds and found that 50% of users saw no news at all in their first ten posts, even with news defined in the most liberal way to include things such as celebrity gossip and sports scores. Since then, Facebook has actually taken steps to tweak its algorithm so people see less, not more, political news and commentary.

For their part, Google News and Apple News don't post ads on their news sites at all — certainly not ads for local shops and businesses. These sites, along with TikTok, Instagram, Kijiji, LinkedIn, Pinterest and so many others simply don't make their money by stealing and monetizing news stories. They do it by stealing advertisers, or to put it more fairly, perhaps, by outcompeting legacy media outlets. When social media platforms do post stories, they do it, for the most part, by way of hyperlinks — specialized URLs that take users directly to the websites of newspapers and TV and radio stations.

Bill S-225, it's essential to understand, specifically exempts websites that share hyperlinks from its remuneration framework. That's understandable. There is already a significant body of Canadian case law that says that sharing a link is not a republication. Indeed, the long-standing position in Canada is that a hyperlink is sort of just a technologically sophisticated form of citation, like a footnote. It points the reader towards a work, but is not itself a republication of that work and is hence not an infringement of copyright.

Instead, Bill S-225 would apply only in cases where digital platforms share an entire journalistic work or, to quote from the bill, "any substantial part thereof." If you will allow me a digression, that phrase is the subject of wide judicial interpretation itself. "Substantial," which is not defined in this bill, is not an objective but rather a subjective term. Under Canadian copyright law, taking an insubstantial portion is not copyright infringement. Even when a substantial portion is taken, the Copyright Act's fair dealing provisions often arise.

Either way, honourable senators, most people rarely, if ever, cut and paste a whole article, or even a substantial part of an article, to a site like Facebook or Twitter. That's just not how people share or consume content online. People post and share links. It's just too much bother to cut and paste, especially when you can quickly share a link that takes people right to the original story.

Facebook's design has an actual aversion to sharing large blocks of print. Indeed, it has character limitations that make it impossible to share something much longer than about 3,000 words as a Facebook post. So you can cut and paste a 750-word column, but not a major feature story.

Twitter, the newsiest of all social media platforms, a platform built to share news, has even stricter limitations. You're only allowed 280 characters. Again, the whole Twitter design is engineered to share hyperlinks, not entire articles. Apple News and Google News simply don't share text beyond a short headline. They link right to the news organization's original website, and any very brief introductory text they do use would likely qualify as a fair-dealing exception under Canadian copyright law.

The number of times the conditions would trigger remuneration under the terms of Bill S-225 would be tiny, and it would only come into effect when some user of a digital platform shared a work without a hyperlink. That happens so rarely that claiming royalties would reap almost no one any substantive economic benefit and could in no way come close to replacing the $2.5 billion lost annually in newspaper ad revenues.

Putting aside the very practical concern, how would Bill S-225 propose to work? The legislation seems to beg the question of whether Canadian journalists and journalistic organizations own the copyright to their work. While it is true that journalism and journalistic works are not specifically enumerated in the opening of the Copyright Act, Canadian jurisprudence has long held that journalism is covered as a literary or artistic work, which are areas protected by copyright.

Bill S-225 would seek to allow journalism organizations to seek remuneration by way of royalties whenever their work is republished by a digital platform. It would establish a right to claim royalties until the end of two years after the end of the calendar year in which the first publication of the journalistic work occurs. The proposal is closely modelled on that accepted by the European Union in 2019.

Transposing that EU model doesn't quite work here. I am no expert in copyright and I am no lawyer, but I've spent the last few days speaking with many who are both. For them, Bill S-225 raises a red flag because, they say, it may actually undermine the

long-standing copyright protections that Canadian journalists and publishers already have in Canadian law. They also have concerns that much of the meat of Bill S-225 is modelled on the European Union's concept of new neighbouring rights — or *droit voisin* — a system that is not entirely analogous to the Canadian copyright paradigm. Bill S-225, incidentally, also takes its two-year remuneration term directly from the 2019 EU legislation.

In Canada, full copyright law, not just neighbouring rights, has traditionally applied to journalism and journalism organizations both print and broadcast. If you are a freelancer and retain the rights to your magazine story, for example, your copyright endures for 50 — and soon 70 — years after your death, so even your heirs can benefit. Copyright law in Canada provides that the first copyright owner of a work is its creator. However, there's an employment carve-out: If you are employed expressly to produce copyright-protected works, such as news stories, then your employer owns the copyright. Thus, if you are a staff writer — an employee of a newspaper as I was for so long — then most likely the copyright belongs to the paper and endures for 50, and soon 70, years after publication. If anyone infringes on your copyright by copying, plagiarizing or distorting your work, the copyright holder can take civil action.

Several of the copyright experts I spoke with were worried that S-225 might unintentionally give Canadian journalism a lesser copyright protection than it currently enjoys. Why, after all, would you risk trading a copyright that endures for 50 or 70 years for remuneration or royalty rights that last only two years after the year of publication, especially when good investigative journalism, intriguing feature stories and funny columns are often shared on social media for years and years after publication?

Several of those experts I consulted raised additional concerns about section 26.3 (4) of the bill, which deals with freelancers. Freelancers are writers who are not employees. Right now that section reads:

> For the purpose of subsection (1), if a journalist owns the copyright in a work and has granted a licence to a Canadian journalism organization to reproduce or publish that work, the Canadian journalism organization is deemed to own the copyright.

But that's not how journalism copyright law for freelancers works in Canada. It is possible as a freelancer to assign all your rights in perpetuity to the magazine, newspaper or broadcaster who commissions your article or documentary. However, many of the freelance contracts give a magazine, say, first serial rights and allow the freelancer to retain the enduring copyright. For example, a couple of years ago I wrote a long feature story for Eighteen Bridges magazine. A year later, the Alberta Ministry of Education contacted me to ask if they could use my essay as part of a reading comprehension test on an English 30 diploma exam. Because I still held the copyright to my story, I was able to negotiate for payment for that reuse. But as it's worded now, Bill S-225 would appear to strip freelancers of some of their existing rights for the benefit of publishers. That can't be the logical or appropriate way to support the writers who actually create the works and the freelancers who are the most economically vulnerable precisely because they are not employees.

To go on: Bill S-225 suggests that Canadian journalism organizations should collect royalties for reuse by forming a copyright collective — a parallel, say, to the Playwrights Guild of Canada, or Access Copyright, which represents authors, or SOCAN, which represents 150,000 Canadian songwriters, music producers, music publishers, visual artists and crafters.

I think the comparison with SOCAN is, perhaps, instructive. SOCAN licences the sale of music to video game producers, nightclubs, fitness studios and theatre companies, and it tracks every single song played on a Canadian radio station or on digital streaming services such as Spotify, YouTube, Deezer and Apple Music. SOCAN does its work zealously. It has purchased sophisticated software to track which streaming services are streaming which Canadian songs. It counts not the fall of every sparrow but the play of every song — something that's difficult, to be sure, but far easier than tracking every time someone's cousin or uncle copies and pastes a news article into a Facebook post.

• (1800)

Fiscal year 2019 was a record-breaking year for SOCAN. The copyright collective collected $405 million in royalties that year, the most in its history. Now, $405 million is a lot of money, and that makes sense given how often Canadians listen to music. But SOCAN members who received royalties earned an average of only $67 from domestic digital royalties, up from $54 in 2018. Of course, that's the average. The big stars whose songs are streamed the most got paid much more since SOCAN distributes its money based on individual plays. But an average of $67 is pretty much a pittance, and it should serve as a lesson in how a copyright collective for journalists might work in practice, were it ever brought into effect.

What apps like Google News and Apple News share most often are the stories from the big Canadian journalistic websites — *The Globe and Mail*, the *Toronto Star*, the *Toronto Sun*, the CBC, CTV, Global. You have to look long and hard to find a story from the *Saskatoon StarPhoenix* or *The Telegram* in St. John's or *L'Avantage Rimouski* or the *Penticton Western News*.

The Hon. the Speaker: Senator Simons, I regret to interrupt you, but you will be able to resume speaking for the balance of your time at 7 p.m.

Honourable senators, it is now six o'clock and pursuant to rule 3-3(1), the orders adopted on October 27 and December 17, 2020, I am obliged to leave the chair until seven o'clock unless there's leave that sitting continue. If you wish the Senate to be suspended, please say "suspend."

An Hon. Senator: Suspend.

The Hon. the Speaker: I hear a "suspend." The sitting is suspended until 7 p.m.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Carignan, P.C., seconded by the Honourable Senator Seidman, for the second reading of Bill S-225, An Act to amend the Copyright Act (remuneration for journalistic works).

The Hon. the Speaker pro tempore: Senator Simons, you still have 15 minutes for your speech.

Hon. Paula Simons: Honourable senators, I will begin again by saying that a model that might work in Europe may not translate well to Canada.

A few months ago, France and Google, after years of legal battles, came up with a formula that will see Google compensate French publishers for sharing their news content. In January 2021, Google announced it had signed a deal with l'Alliance de la presse d'information générale, which represents the interests of 300 political and general information press titles in France.

Under the terms of the deal, royalties would only be paid to news organizations with IPG certification — certification from Service de presse en ligne d'information politique et générale — a status French news sites can gain if they meet certain criteria and quality standards, such as having at least one professional journalist on staff and having a main purpose of creating permanent and continuous content that provides political and general information of interest to a wide and varied audience. But France has a very different cultural tradition than Canada when it comes to media.

In Canada, journalists generally — and vehemently — oppose any kind of professional regulation or quality control for profound historical reasons.

If I ask you who was a doctor, an engineer, or a teacher, you could tell me. You can't call yourself a lawyer or a plumber until you take a prescribed set of courses, pass a prescribed set of tests and serve an apprenticeship. You can't call yourself a pharmacist or nurse until you are licensed by a professional college. But journalism is different. You don't have to go to journalism school to be a journalist. You don't need a degree or diploma of any kind. There are no qualifications, no exams, no gatekeepers. That's a fundamental part of our free press culture and no one can stand in the way of anyone who calls themselves a reporter.

In Canada, it's not easy to define who a professional journalist is, and it is not easy to define what a work of journalism or a journalism organization is. The internet, while it has devoured conventional media's advertising base, has also given a voice and platform to dozens, no thousands, of websites, podcasts, blogs and digital newsletters that define themselves as journalistic organizations. Gone are the days when we had a set number of established papers that made up our journalistic ecosystem.

It is hard to see how we could parallel the deal Google has made with l'Alliance de la presse d'information générale.

We don't have a media environment or culture with 300 "official" and recognized authoritative news outlets. And any effort to set up a combine or compact of "professional" and accredited legacy media outlets to receive support, like they're trying to do in France, would be unlikely to work here — not least because it might be perceived as unfair to new media start-ups.

Here is where we come to the fundamental and most uncomfortable question of all, the one I hate to ask, but the one I feel I must. How far should we go to try to protect or bail out legacy media companies?

At what point is it unfair and anti-competitive to prop up big companies like Postmedia, Torstar, Bell Media and Corus, and to make it harder for start-ups and innovative news platforms to get a foothold? Is there a point at which we have to acknowledge that the era of the big newspaper companies is simply over? When we acknowledge that even if we demand annual compensations from Google, Apple, Facebook and the like, we are still only helping failing companies on life support that cannot compete in the digital era?

I don't have an easy answer. I spent 30 years as a journalist, 23 of them working for a daily newspaper. My freelance magazine work appeared in all kinds of Canadian publications — *Saturday Night*, *Western Living*, *Brick*, *Today's Parent*, *Legacy* and *Eighteen Bridges*. I still write a regular column for *Alberta Views* — though I do it for free — a column that was just nominated for a National Magazine Award.

Canadian journalism is part of my heart and soul. I believe passionately that we need Canadian journalists to tell Canadian stories, and that we need Canadian foreign correspondents bringing the stories of the world to us from a Canadian perspective. I believe we have a healthier democracy and society when we have a shared body of knowledge about what's going on in our own communities, and a shared, fact-based understanding of the challenges facing us in our towns, cities, provinces and nation.

I worry about what it means for political sovereignty and freedom of speech that we have turned giant American commercial platforms like Twitter, Facebook, Google and Apple into the curators of our news. Their algorithms decide what we see and what we don't, reshaping our vision of our own country through American corporate eyes.

Canadian journalism matters. Canadian journalists matter.

I'm not sure that creating substantive subsidies for big media corporations is the best way to revitalize and reinvent Canadian reporting and writing. Maybe we shouldn't be looking for ways to prop up a dying business model, but for ways that we can stimulate and support bold new experiments and innovations in journalism delivery and start-ups designed for our digital universe.

However, honourable friends and colleagues, we would miss newspapers. Newspapers really worked. For decades, for generations, they were forums where the whole community came together. They were an agora; a marketplace of ideas where citizens met to debate public policy and share information. They gave us a shared community literacy about the places we lived.

Now that so many local papers have been cannibalized and stripped down for parts, I'm not sure we can ever recreate that model again, even if we somehow convinced social media platforms to share some of their enormous wealth and to dilute some of their enormous competitive advantage.

How grateful I am to my honourable friend Senator Carignan for bringing this debate to the floor of the Senate and for thereby calling attention to the growing gap in Canada's culture and the resulting threat to the well-being of Canadian society and Canadian democracy. How doubly grateful I am to have been allowed to be the critic of this bill, and to have had this platform, this bully pulpit and all this time to deliver my own message.

I must tell you that a reporter's ability to write to deadline has paid off today. I have what you might call "breaking news." While we were on dinner break, Senator Miville-Dechêne, who is, like me, *une ancienne journaliste,* sent me a hot-off-the-digital-presses story from the Canadian Press — she says it's from this morning and we just missed it, but we'll pretend it's hot off the digital presses because that's what I wrote — announcing a deal between Facebook and an interesting cross-section of Canadian media sites.

This morning Facebook announced a plan to pay 14 publishers, including *Canada's National Observer, Le Soleil, Le Devoir, the Tyee* and FP Newspapers, which publishes the *Winnipeg Free Press,* an undisclosed sum to link to their articles on COVID-19 and climate change, as well as certain other unspecified topics.

Facebook has also made deals under their News Innovation Test program with a group of alternate news sites, exactly the kind of upstart, regional and local websites I was talking about. Among them are *The Sprawl, The Coast, The Narwhal, Village Media,* the *SaltWire Network, Discourse Media, Narcity*, *blogTO* and the *Daily Hive.* Facebook won't say how much the news sites will receive, only that this plan would not include payment for news links already posted on Facebook by publishers.

Perhaps I need to walk back some of my criticisms. However, I think the real value of a bill such as Bill S-225 may simply be that it helps bring digital giants to the table. It shows we are serious about tackling this problem. Maybe Bill S-225 isn't the answer to this problem, but it's a goad and provocation, and maybe we need to be goaded and provoked.

Despite some of the concerns I've raised today, I am desperately glad we have this bill before us. I urge us to send it to committee as soon as practically possible, so we can discuss and debate it in depth there, with expert witnesses to help us hash things out.

Thank you to you, my honourable Senate colleagues, for listening to me, at some length, today. Thank you to all my friends in the trenches of Canadian journalism. Thank you to every reporter, columnist, photographer, news anchor, editor and producer working against impossible odds to bring Canadians the stories they need to hear. Thank you, most of all, to all my *Edmonton Journal* family. It was an honour and a privilege to be able to tell Edmonton's stories for so long. I hope I can be the voice you need to tell journalism's story here and now.

Thank you, *hiy hiy*.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Julie Miville-Dechêne: Madam Speaker, I have a question.

The Hon. the Speaker pro tempore: Senator Miville-Dechêne, Senator Richards would like to ask a question.

[*English*]

Hon. David Richards: Thank you for your great talk. I'm a fan of the *Edmonton Journal*. When I taught out there, I loved the paper.

Years ago, I was thinking of this problem, and I was talking to one of the Irving gentlemen who runs some of the papers back here. I thought that the local papers might be able to survive because of local content and interest. I also thought that age might help; that after a person got married and got into a home they would start getting the paper again. That was in 2005, 2007. Perhaps I was a little naive, so I'm wondering if you think that local papers might be able to survive because of local content and interest in local things like local sports, local weddings and whatever — if they might have a chance to survive this onslaught from the media?

• (1910)

Senator Simons: That is an excellent question. I think that the smaller the paper and the more intimate the community, the greater the likelihood that will happen. I think for really small town weeklies, that is the only place people can go to get local news. It is, frankly, the only place advertisers can go to advertise exactly to the people who live in their small town. It is really the medium-sized papers that are in the biggest squeeze, in cities like Fredericton or Regina or Whitehorse. The smaller the community, the more dependent people are on that hyperlocal

news. It's the medium-sized papers that don't have the clout of the really big players in Toronto and Montreal that are in the most trouble.

I don't think you were naive — or to the extent we all thought that. I think we all thought that would be the salvation, but we have had a complete paradigm shift in the same way that the monks never went back to illuminating their manuscripts — we're not going to go back to having robust, hand-delivered papers coming fresh to your door every morning.

Senator Miville-Dechêne: Senator Simons, this testing period of revenue sharing announced by Facebook is considered very good news by many regional newspapers in Quebec and even the serious *Le Devoir* is extremely happy. *Le Devoir* has said it obtained everything it wanted from Facebook after fair negotiations. This is surprising I have to say.

What do you think, is Facebook buying peace? Do we still need a bill, a private member's bill or a government bill as it was promised? Does it also say that, even for Facebook, regional news has some value?

Senator Simons: To a certain extent Facebook, Apple and Google know that they have a public relations problem. After seeing the experience of Australia, which forced them to the table and called their bluff, I think they are recalculating, and based on what is happening in the European Union too.

We need to be careful here because we will never replace the revenues that the digital platforms have taken from conventional media. There is simply not that volume of revenue to be shared. The other concern, which is a subtler one perhaps, is that we are still then in this symbiotic, parasitic relationship with the big platforms. We still have Facebook curating the news that Canadians see and mining our information while they do so. These deals are double-edged swords.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Carignan, bill referred to the Standing Senate Committee on Transport and Communications.)

HEALTH-CENTRED APPROACH TO SUBSTANCE USE BILL

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Gwen Boniface moved second reading of Bill S-229, An Act respecting the development of a national strategy for the decriminalization of illegal substances, to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts.

She said: I rise today to speak to second reading of An Act respecting the development of a national strategy for the decriminalization of illegal substances, to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts, or more simply titled, the Health-Centred Approach to Substance Use Act. This bill is extremely important to me. As a former front-line police officer, I have seen first-hand the often tragic consequences of substance use. This has been most recently reflected in a Canadian Association of Chiefs of Police report, an unlikely group that we wouldn't normally expect to support this. I would contend that the current criminalization in the oft-quoted war on drugs approach has proven to be ineffective and ineffectual. Transitioning to a health-based approach is beneficial not only for the people who use substances, but also for the police, the justice system, and health and social services.

Canada is not immune to the presence of drugs and substance use. We are currently overwhelmed by an overdose epidemic, in large part due to the presence of fentanyl and carfentanil in Canada's street supply. These toxic synthetic opiates have infiltrated not only large urban centres but small towns, including Indigenous and rural communities. Late last year, I spoke with Matt Ingrouille — who has been an officer with the Saskatoon Police Service for 14 years — about his experience working on the street with people who use drugs. He said:

> The lowest end of the drug trade is a violent and desperate place . . . . The rise of fentanyl, which was initially used to taint our heroin supply, is now a drug of choice for many. In 2018, the opiate crisis brought us a death every two hours in Canada; 2019 brought 3,823 deaths . . . . Each of these deaths brought pain and suffering to Canadian families and a drain on resources for first responders.

Statistics Canada information from 2019 verifies what Constable Ingrouille is seeing in Saskatoon. Among all drugs, possession of methamphetamine has an incidence rate in Canada of 29 per 100,000 of the population. This incidence rate is second only to the importation and exportation of cannabis, which remains an offence in Canada after legalization. Police services across Canada have indicated that the illegal use of methamphetamine is a growing issue and could be contributing to increases in other types of crime, including violent and property crime.

British Columbia, which continues to be a hub of substance use in Canada, has seen its highest number of overdose calls for medical services in 2020; there were 27,067 calls, which is on average 74 calls per day or one every 20 minutes. In all of 2020 in British Columbia, there were 1,724 suspected illegal drug toxicity deaths, and 2021 has seen 174 deaths in January alone and another 155 deaths in February alone. Four out of five health regions saw an increase in overdoses, and overdose calls were up dramatically in rural areas of this province. It is not just the big cities. Take Fort Nelson for example. They had 20 calls related to overdose. While this number may seem small, Fort Nelson has a population of under 3,700, and 20 calls was a 233% increase over 2019. Perhaps to drive the point home, in 2020, nearly 500 more people died of an overdose than of COVID-19 in British Columbia.

• (1920)

From January 2016 until September 2020, there have been almost 20,000 apparent overdose deaths across Canada. According to the Government of Canada statistics, there were over 1,628 apparent overdose deaths in one quarter alone, April to June 2020. This is an increase of 58% compared to the first quarter of 2020 and an increase of 54% compared to the same time frame in 2019. Calls for help are up across the board.

It is very clear that Canada has a substance use and overdose problem. The current policy of criminalizing people who use drugs has little deterrent effect. Statistics from 2017 show that 30% of all drug offences in Canada were for possession other than cannabis. That's almost a third of all substance-related arrests. Statistics Canada indicates that from 2010 to 2019, the number of possession-related incidents and charges have increased year over year for most drugs. The drugs that are exceptions to this are cocaine and ecstasy, but overall, the trend is pointing to more incidents and more charges.

The picture I'm trying to paint for my honourable colleagues is that substance use and overdoses are increasing rapidly and dangerously, as are the number of arrests and charges. If criminalization was the way to address substance use, I submit that we should at least see a decrease in use and overdoses, but this simply is not our reality. We must consider an alternative route to assisting those with substance use and addiction problems, and that is what I hope the bill will do.

Bill S-229 will do two things: It compels the government to create a national strategy in order to decriminalize possession of illegal substances for personal use, and it actually follows through with the decriminalization of possession of illegal substances for personal use by repealing certain provisions of the Controlled Drugs and Substances Act at the federal level.

A national strategy would enable appropriate discourse among governments on such a complex issue. There are many factors that need to be considered when suggesting a shift in policy as critical and immense as the one before us today. The idea of decriminalizing possession of illegal substances for personal use constitutionally would require consultations with the provinces and the territories as they are the administrators of health. But public safety and judicial lenses are necessary as well when taking all factors into consideration. Decriminalization intersects many institutions, necessitating leadership and expertise at all levels of government.

Along with government expertise, the health community, the policing community, Indigenous perspectives — those would be crucial — provincial and national organizations and associations, relevant regulatory bodies, those with substance use disorders and so on will all have relevant experience to make the strategy as fulsome and encompassing as possible. Consultations are required to develop the best strategy possible and are mandated in the bill.

There are many considerations laid out in the bill that will contribute to a national strategy, for example, setting specific national objectives to improve the health of those managing a substance use disorder; modifying health and social services to increase access and availability; and defining the roles of players in the health system, in the social services, in police services, or any other actor in the decriminalization regime. It also indicates that an administrative sanctions regime must be considered. This doesn't mean they must move forward with such a regime, just that it must be studied to see if it is worthwhile in our Canadian context. If deemed not applicable, the relevant government can do away with it. This list, however, is not exhaustive and the discussions can include other topics of import not found within the confines of this bill.

After the national strategy has been developed, there is an obligation to report it to both chambers of Parliament and to subsequently publish the report on the Minister of Health's website.

The second part of this bill will actually decriminalize the possession of illegal substances for personal use. Now we have used the term "decriminalization" many times. Let me tell you what it means and what it doesn't mean. A 2014 report by the Global Commission on Drug Policy defines decriminalization as a term:

> Most commonly used to describe the removal or non-enforcement of criminal penalties for use or possession of small quantities of drugs or paraphernalia for personal use . . . .

So, there are still penalties but not criminal penalties. Decriminalization can either be de facto — meaning informal and non-legislative and is an approach currently being explored in Vancouver — or de jure, which is reflected in formal policy or legislation.

Section 4 of the Controlled Drugs and Substances Act would be repealed. This section of the act outlines the offences and punishments for possession of illegal substances, and with the removal of this section, so too would be removed the criminal punishments associated with the behaviour. This bill is taking a de jure or formal policy approach to decriminalization. I draw to your attention, however, other sanctions associated with illegal substances, like trafficking, would remain in place and unaffected.

An important aspect of Bill S-229 can be found in the "coming into force" provision that occurs in two parts. The national strategy portion commences upon Royal Assent, but the actual decriminalization portion comes into force on a day to be fixed by order of the Governor-in-Council. There is a very specific reason for this, explained best in the report of the Canadian Association of Chiefs of Police in July 2020 on decriminalization. It states:

> It will be key in a Canadian context that treatment facilities are established and operational ahead of decriminalization and have the capacity to take in individuals diverted through police contact. . . .

The national strategy must be considered and completed before the decriminalization of possession of illegal substances for personal use. Otherwise, we would be putting the cart before the horse. Without the necessary time allotted for all levels of government to ensure proper supports are in place, the decriminalization of illegal substances would create a scenario in which first responders, usually police officers, would have nowhere to divert those needing treatment-facility support and would instead exasperate the current challenges they face. Supports must be in place before we decriminalize should we wish to have positive outcomes.

Honourable senators, now that I have explained what the bill does, and keeping in mind the statistics I mentioned earlier in relation to Canada's circumstances, let me tell you why I believe this bill is necessary. For over a century, Canada's status quo has been to criminalize people who use drugs. This is not only a Canadian reality. Criminalization has not curbed drug use in comparable nations either.

Criminalization of possession for personal use stigmatizes and marginalizes drug use, those who use drugs and the communities in which they live. I'll speak more to this later. But it leaves people — including many young people — with criminal records, which can then lead to their exclusion from education and employment, and, in turn, increases their vulnerability to social, health and economic problems. It becomes a vicious cycle. It also deters those who use drugs from accessing the health and social supports that are available and designed to help them. They fear criminal repercussions for even attempting to get help. It increases people's vulnerability to criminality, violence and health risks. Perhaps more importantly, criminalization has proven to have no deterrent effect. You need only look at the statistics.

The judicial system is crowded and slow in part because of the prosecutions of non-violent, drug-related offences. It increases costs throughout the criminal justice system by having to allocate sufficient resources to law enforcement, the judiciary and correctional facilities to just maintain the current standard. Consequently, it leaves a scarcity of resources for public health and social development approaches. It also contributes to the promotion of infections such as HIV and hepatitis C due to unsafe injection practices such as the reusing or sharing of syringes in unsafe vicinities.

• (1930)

Much of this is attributable to the visible drug use found on the streets of cities, and it's what many people picture when a discussion about illegal drugs is broached. The individuals on street corners are some of our most vulnerable, but they are not the majority of those living with substance use disorder or even those dying from overdoses. A November 2019 report from Public Health Ontario — the province I live in — estimates that over 75% of individuals who overdosed were located in private residences. The pandemic has driven this home.

People who use illegal substances are found among all races, ethnicities, genders and socio-economic status. Whether diverted by emergency services or seeking out their own help with personal substance use, the health supports must be able and willing to take on people from all walks of life in order to have an impact.

Tackling drug use as a health issue would be a positive step forward in diminishing the crisis we face in Canada as well as drug use generally. Decriminalization takes a few steps in this direction but not without appropriate health supports and treatments. I'm hoping that the national strategy will address these supports to find a path forward in a comprehensive and holistic way.

Honourable senators, there is so much evidence in Canada and internationally that demonstrates that the current tactics of prohibition and imposition of criminal sanctions for personal possession and use of drugs are ineffective. Decriminalization has been the recommended approach by stakeholders and organizations all over the world, such as the World Health Organization, the United Nations Office on Drugs and Crime, the United Nations System Chief Executives Board for Coordination, the Global Commission on Drug Policy and the Drug Policy Alliance in the United States. I assure you there are many more.

In Canada, this call has been echoed by the Canadian Public Health Association, the Canadian Mental Health Association, the Canadian Nurses Association, the Canadian Drug Policy Coalition and most recently by the Canadian Association of Chiefs of Police. Again, I name only a few.

The House of Commons Health Committee made this recommendation in their report entitled *Impacts of Methamphetamine Abuse in Canada*:

> That the Government of Canada work with provinces, territories, municipalities and Indigenous communities and law enforcement agencies to decriminalize the simple possession of small quantities of illicit substances.

This notion is exactly what I envision for the national strategy portion of the bill before us today, but with wider consultation than those listed in that recommendation. As mentioned previously, there are many topics of discussion that revolve around decriminalization that are integral to an effective and compassionate health regime. Working with the provinces, territories and other stakeholders, as stated in the House of Commons Health Committee report recommendations, can be found in a national strategy process.

There are many elements that must be considered when taking a health approach to substance use. Supervised consumption sites are already operational in many Canadian cities and there is evidence to suggest there are benefits to these sites, some of which include decreased fatal overdoses; decreased drug litter; decreased high-risk injection practices; decreased public injections; and an increase in contact with health and social services, including substance use treatment services among marginalized clientele.

Yes, opposite reports have also stated that litter has increased and there was a reduction in clientele for local businesses. It seems there is a fight for every site, no matter the benefits for those who need them which, in some circumstances, is the benefit of living rather than dying.

For example, in Barrie, Ontario, which is located very close to where I live, a group of business leaders in the city has raised concerns about the supervised consumption site in the downtown core. This is in a city where the overdose rate is eight times higher in the health unit than the rest of Ontario, but it's an important discussion that needs to be had. It's always a balancing act. Perspectives on the use of these sites are dependent upon the respective communities and their degree of tolerance toward drug use and overdoses, but the positive effects for people who use drugs are unquestionable.

Another health-based option that could be considered through the national strategy process — and should be considered — is an increased safe supply of drugs. Fentanyl and carfentanil have had a devastating effect on the street supply, while additives and contaminants to street-level drugs have been a mainstay for quite a long time. The introduction of fentanyl and carfentanil into the Canadian market has created a situation where the traditional street-level supply is deadly and increases the risk of overdose. In terms of the creation of a higher risk for overdose, the BC Coroners Service is now seeing common opioids being contaminated with benzodiazepines, such as Valium or Xanax. While it is possible to reverse overdose effects of opioids with naloxone, naloxone itself can't fend off the overdose symptoms of benzodiazepines. This is creating a situation where naloxone isn't preventing overdose deaths. Constable Ingrouille, mentioned earlier, signals an additional problem with the influx of fentanyl in our society:

> As fentanyl began flooding into the market, Canada saw a dramatic reduction in methamphetamine prices. The drug once used only by a small group of users due to its relatively high cost, saw a shocking price reduction. What once cost a user $30, now only costs $5. The dramatic reduction in price shows that Canada's methamphetamine supply is linked with the fentanyl supply . . . . Five dollar meth, means that now every user can afford to be a trafficker and we are seeing methamphetamine addiction spread like an STI across our country.

Fentanyl and carfentanil have created a situation where the street-level drug supply is more toxic, leading to increased numbers of overdoses while at the same time causing reductions in the price of drugs laced with these synthetic opiates, making them easier to obtain and resell.

What can we do to combat this current trend?

A safe supply of drugs reduces the chance of overdose as the product is "cleaner," so to speak. It is far easier to ensure the right dosage is administered with a substance that is regulated and with an understanding of what's in it and, more importantly, what's not in it. Safe supply can be both treatment with pharmaceutical-grade medications and harm reduction through quality-controlled alternatives. But to achieve the sought-after harm reduction, safe supply needs to be accessible and flexible. Delivery options could include mobile clinics, safe consumption sites or community health centres. Constable Ingrouille had this to say about safe supply:

> When drug users no longer need to access the criminal market to receive their substance, there will be a dramatic decrease in associated crimes. Our prisons are filled with individuals who were born into trauma and developed substance use disorders. The only means of supporting their addiction was through associated crime. This associated crime is burdening police services across our country.

So not only is a safe supply of drugs necessary for consideration to prevent overdose deaths, but it also has the potential to prevent associated crimes of substance use, such as thefts and break-and-enters.

With a safe supply of drugs comes a safe supply of needles. A safe needle supply would diminish reuse and sharing, and could help reduce cases of hepatitis C, HIV and other blood-borne infections and viruses.

A process that has been used prevalently in Europe for over 25 years has been drug checking. Drug checking involves analyzing drugs in an effort to mitigate the risk of hazardous contaminants such as fentanyl. While there hasn't been much research on the health implications of drug checking, there is evidence to suggest that it can be a component of a comprehensive harm reduction strategy. Drug checking helps by decreasing the presence of contaminated drugs in a community, helping to monitor the local drug supply to inform public health initiatives and providing opportunities for intervention, education and referral to services if needed.

• (1940)

Other innovative harm reduction strategies can be found at the municipal or community levels. For instance, Abbotsford in British Columbia has deployed a strategy called Project Angel. It

connects people experiencing substance use, mental health challenges, homelessness and related issues with important supports and services. This program was developed between the Abbotsford Police Department and those with lived experience of substance use. Essentially, anyone can refer someone to Project Angel and then those great people will match them with a peer support worker who will help them with whatever is needed. It can be anything from a conversation over coffee to a connection to a treatment program.

Chief Constable Mike Serr of the Abbotsford Police Department says that many crimes in the community are merely survival crimes committed by repeat offenders. For example, someone whose drug habit costs them $100 a day would need to steal upwards of $1,000 worth of goods. Chief Serr states, "If we can divert 10 people who are doing that, the change we can make is significant." Project Angel is one of the ways diversion is taking place.

Colleagues may also know that there are community-based programs in Ottawa. Even the nation's capital isn't immune to substance use. Ottawa Inner City Health, stationed just a few blocks away from the Senate Chamber in the Byward Market, deploys multiple programs to help some of Ottawa's most vulnerable, including those with mental health issues, homelessness and substance abuse disorders.

OICH, run by Dr. Jeff Turnbull, is seeing some compelling evidence in which treating substance use with health approaches and treating people with dignity creates positive outcomes. In 2017, OICH started the first supervised injection site in Ottawa, which has now become one of the largest in Canada, with over 100,000 visits in its first year. Dr. Turnbull says there are about five overdoses a day but there haven't been overdose deaths.

OICH is also running a residential managed opioid program, a first for Canada. This program involves 25 participants addicted to heroin who have been offered lodging in Hintonburg — just west of Centretown — as well as a safe supply of pharmaceutical-grade heroin, also known as hydromorphone. A year after implementation there have been no overdoses or deaths in this vulnerable group.

These health-based approaches cannot operate in their own singular vacuums; there must be interplay between them to achieve the desired goals of reducing harms and deaths associated with substance use. But in order for these somewhat contentious treatment options to be considered across jurisdictions in Canada, public perceptions around substance use must change.

The current approach of criminalizing those who use drugs has clearly led to a stigmatizing and marginalizing effect. More and more, these people have been pushed to the fringes because any attempt on their part to reach out or better their lives is met with resistance by many sectors of society. A fear has been generated in even asking for help. The UN system coordination Task Team on the Implementation of the UN System Common Position on drug-related matters stated in their 2019 report:

> The criminalization of drug use for other purposes than medical and scientific ones can . . . increase stigma and discrimination and thus deter affected persons from seeking treatment and rehabilitation services, thereby rendering them more vulnerable to violence and abuse from both private and state agencies.

A report of the Johns Hopkins – *Lancet* Commission on Drug Policy and Health indicates:

> Not only do punitive laws drive [people who use drugs] away from health services, they may also contribute to stigmatising or disrespectful treatment in health services.

If our current system of criminalizing people who use drugs is creating stigmatization and driving them away from available health services, then it is clear we have a perception problem around drugs. It doesn't help that this stigmatization has been ingrained in us for decades. Drug use has been framed as a moral, ethical and societal wrong and has been perpetuated since the creation of the Opium and Drug Act of 1911.

Honourable senators, the perception of drug use as not only a legal wrong but also a moral or societal wrong is part of what is keeping the status quo of criminalization in Canada. We have to move away from the inaccurate and condescending terminology surrounding substance use if we want to bring a health approach to it.

For this reason, in Bill S-229 the word "illegal" was chosen consciously rather than using the term "illicit." "Illicit" implies that drug use is forbidden — not only at a legal level but also at a moral, societal or principled level. It would be undermining the bill to say that substance use disorders should be treated in a health-focused manner but imply through the words used that it remains morally or socially wrong. In order to change perceptions, sometimes we need to change terminology in order to make a topic more palatable and remove misconceptions. The more appropriate term "illegal" indicates that this is only forbidden or wrong according to law. While I may still on occasion use incorrect terminology, I am trying to make a conscious effort to normalize "illegal" rather than "illicit."

It won't be an easy task to change perceptions about drug use. The "out of sight, out of mind" or "ignorance is bliss" approach has been thoroughly ingrained in our society. It will take political actors and a bold stance to move this forward for the next generation to pick up and address in its entirety.

A 2014 Canadian Public Health Association report substantiates this assertion. In its research it found that:

> . . . with the adoption of a public-health-focused drug policy in Switzerland, the perception of opioid addiction among Swiss youth has changed from that of a rebellious act to one of an illness requiring maintenance and treatment.

A strong step towards changing perceptions around drug use and misuse would be to decriminalize illegal substances and provide health-centred treatment options. This would become more normalized the longer it is in place and would then alter the perspectives of our future generations.

With the advancement of decriminalization, those who use drugs would be less fearful of criminal sanctions and could seek out proper health supports, either on their own or through diversionary measures, should they come into contact with police or other first responders. This would, in turn, reduce some of the stigma and perceptions around substance use. Decriminalization is possibly the most important initiative to change perceptions.

Colleagues, substance use and how to deal with it is an issue many countries are wrestling with, and Canada can learn from their experiences. Other jurisdictions have moved quickly and efficiently, and their knowledge and best practices are worth examining.

Portugal decriminalized possession for personal use of any drug through statutory reform in 2001 and is a leading example of approaching substance use through a health lens. Portugal created the Dissuasion Commission, whose job it is to implement the decriminalization model and impose administrative sanctions, though they prefer to take other actions such as offering voluntary referrals for treatment, harm reduction or other social and health services. It is up to police to determine whether possession of a substance is for personal use, which is usually equivalent to 10 days' quantity. If deemed personal, police will refer the individual to the Dissuasion Commission. If it is deemed that one holds more than the 10-day threshold, criminal proceedings will be initiated, but the courts can take into account the person's circumstances and other considerations to determine if it was, in fact, for personal use.

This Portuguese law went hand in hand with significant investments in harm reduction, treatment and prevention. Because of these investments, Portugal has seen reductions in overdoses, in transmission of blood-borne infections and viruses, and in prison overcrowding. Portugal has also seen increases in access to treatment and the ability of law enforcement to focus on organized crime and trafficking of substances.

In 1999, before decriminalization took effect, Portugal had 369 overdose deaths, 907 new HIV cases due to injecting, and there were 3,863 people incarcerated for drug offences. In 2016, 17 years later, Portugal had 30 overdose deaths, 18 new HIV cases due to injecting and 1,140 people incarcerated for drug offences. While decriminalization doesn't explain the extent of these reductions in itself, they are drastic enough to demonstrate that decriminalization did have an effect in Portugal.

• (1950)

Switzerland's decriminalization regime has been in place since 2013. If found in possession of scheduled drugs other than cannabis by the police, the administrative penalties can include a fine, confiscation of a driver's licence, referral to a voluntary treatment or, if a minor, a referral to an education course. It is interesting that this also applies to the supplying of drugs where there is no financial gain, such as freely sharing with a friend. There is no threshold amount in Switzerland for police to use as a determinant of personal use. It is assessed case by case, and that is what differentiates its model from Portugal.

In the Czech Republic it is also the police who are the decision makers on whether to pursue criminal proceedings or take an administrative route. They assess more than just the quantity of drugs in possession. They also assess the intent of the person. Akin to Portugal, the police focus more on severe drug crimes rather than those using them. This reduces the stigma, while at the same time it creates more trust in first responders.

If we move to our American colleagues, in Oregon Measure 110, the decriminalization of substances, was passed just last November. Oregon is the first U.S. state to take this step, and we are already seeing other states following suit. For example, Bill S1284 in New York and Bill HD3439 in Massachusetts have already been introduced, and Washington State, Virginia and California have all signalled their desire to move forward with decriminalization in some fashion. The Oregon legislation eliminates criminal penalties for possession for personal use and administrative sanctions are then attached, which could include a maximum fine of up to $100 or the completion of a health assessment with an addiction-treatment professional.

Measure 110 goes further. It also mandates the establishment of at least one addiction recovery centre in each existing coordinated care area in the state. These centres triage the acute needs of patients, free of charge, and provide connections to other services. How did they fund it? Oregon previously legalized cannabis, and with legalization came taxation. Much of the quarterly tax account balances above $11 million from cannabis is redirected to the Oversight and Accountability Council also established in Measure 110. This council provides grants to existing agencies or organizations to establish the centres. It is mandated that these centres open by October 1, 2021, so there isn't yet any longitudinal data to form conclusions, but pulling tax dollars made from cannabis sales is certainly something Canadian governments can look at in our approach.

As you see, other countries have taken a de jure or legislated approach to decriminalization already. Many of the example models given have been around for some time and offer valuable insights and potential best practices into what a Canadian model could strive to look like. Should we use thresholds like Portugal and the Czech Republic and, if we do, where should they be set? Who will be the initial decision maker? In all given examples, it is the police who make the first determination because they are the first to run into them. There are a couple of questions set out in the national strategy for consideration.

The final question that could be asked is: Does decriminalization conform to Canada's commitments under international law? As legalization of these substances is not currently being sought in this bill, the short answer is yes. As many of us learned in the Forty-second Parliament through the Bill C-45 process of legalizing cannabis, Canada is a party to three international drug conventions: The 1961 UN Single Convention on Narcotic Drugs, the 1971 UN Convention on Psychotropic Substances and the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Certain articles within these conventions decisively indicate that possession and use of drugs must be criminalized at the domestic level. For instance, Article 4:

> The parties shall take such legislative and administrative measures as may be necessary . . .

> c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.

Article 33 of the same convention simply states: "The Parties shall not permit the possession of drugs except under legal authority." While these articles indicate an absolute, the convention against illicit traffic, the most recent convention, provided some leniency in terms of the use and possession in Article 3 of that document. It reads as follows:

> . . . in appropriate cases of a minor nature the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

University of Ottawa Professor Line Beauchesne agrees with this understanding. In her brief to the Standing Senate Committee on Foreign Affairs and International Trade during that committee's study of certain elements of Bill C-45, she stated:

> While the conventions demand prohibition, it is up to the parties to determine how stringent the restrictions are. Under the conventions, criminal sanctions are supposed to be proportional to the seriousness of the offence, but governments decide on the degree of seriousness.

This degree of seriousness must be balanced with the available evidence. It is a statement in itself that the UN Single Convention on Narcotic Drugs as well as the UN Convention on Psychotropic Substances both begin with, "The Parties, Concerned with the health and welfare of mankind . . ." in their respective preambles. Health should be at the forefront of personal substance-use issues. It's not only indicated in the preambles guiding international laws on drugs, but also in the overwhelming evidence in support of this notion since these conventions were first drafted and adopted.

Honourable senators, the pursuit here is for decriminalization, not legalization. As a result, Bill S-229 would in no way be in contravention of Canada's international obligations on drug issues. There is a nod to health being a primary reason for the development of these conventions and an explicit reference to alternatives to criminal conviction in cases that are minor in nature, such as possession for personal use cases. This bill's very intentions are to ensure that illegal substances remain illegal, while at the same time requiring safer, healthier choices for those in need of them.

Honourable senators, before I conclude, let me read to you some headlines that I've rounded up in just the last number of months. From January 2021, these are the headlines: "B.C. paramedics responded to record average of 74 overdose calls a day in 2020: BCEHS" from the CBC; "Rows of white crosses in downtown Sudbury, Ont., honour those lost to opioid crisis" from the CBC.

From February: "'I surrender. Just please help me': A son's moving note to his parents underlines the pain of addiction" from *The Globe and Mail*; "Toronto Public Health announces record of opioid-related deaths in a month: 38" from the *Toronto Star*. "Stigma, isolation, inadequate services blamed for highest opioid death rate in BC's north" from the *Toronto Star*; "Opioids killed my brother but societal inaction was the cause" from *The Globe and Mail*.

From March: "Overdose deaths continue to climb in Manitoba, renewing calls for government action" from the CBC; "Opioid-related overdose deaths jump by 59 per cent in Ontario" from *The Globe and Mail*; "Substance users need solidarity and support, not judgment" from the CBC; "B.C. records deadliest February yet for illicit drug overdose deaths" from the *Toronto Star*.

• (2000)

From April 2021: "'Harm is happening right now' as overdoses increase in Regina, says Regina police chief" from the CBC; "Battle against rising overdose deaths must involve 'the entire community'" from my hometown newspaper *OrilliaMatters*; "'Demonizing' substance use won't stamp out toxic drug supply, says mother of overdose victim" from the *Toronto Star*; "Can we beat addiction by making it a crime? No" from *The Globe and Mail*.

The Hon. the Speaker pro tempore: Senator Boniface, I'm sorry, your time has expired. We have to move to the next speaker.

Hon. Mohamed-Iqbal Ravalia: Honourable senators, I rise today to speak in support of Bill S-229, An Act respecting the development of a national strategy for the decriminalization of illegal substances, to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts. The abbreviated title of this bill is the Health-Centred Approach to Substance Use Act.

A primary focus on health rather than punishment is what has been missing from our national approach to controlled substances. For over 35 years, I practised as a rural family physician in my home province of Newfoundland and Labrador, and, as such, a health-centred approach is the lens that I instinctively default to, and it will be the framework for my remarks today.

I want to first thank Senator Boniface for her exceptional efforts in advocating on this issue and for sharing her experiences and wisdom. As the former commissioner of the Ontario Provincial Police and with her strong international perspective, she, more than most, knows first-hand the often tragic consequences of substance use and recognizes the inequities that too often result from treating those requiring health care as criminals.

Honourable senators, there is ample evidence to show us that criminalizing addiction and illegal substances does not remedy the harm for individuals or for society. As Senator Boniface has so thoroughly explained, despite ongoing efforts to criminalize personal use, the use of illegal drugs persists and grows. The number of people charged with possession of prohibited non-cocaine or heroin-based drugs in Canada has tripled in the past decade, while the number of people charged with heroin possession has quintupled.

Every single one of these thousands of charges represents a cost. They each represent an allocation of time and money for police and Crown prosecutors and for the judicial system — time that could be devoted to other pressing needs. These charges represent a cost in lives and families and communities disrupted, and they represent a cost in the necessary medical treatment deferred.

Indeed, the harsh reality is that all these costs are not buying solutions. Incarcerating individuals does not improve their health or treat their addiction. The use of illegal drugs continues. Canadians are dying from preventable drug overdoses every single day. The increase in overdose deaths amid the pandemic, particularly in British Columbia and Ontario, can no longer be ignored.

The time has come for this country to recognize the lessons of history and to stop trying to treat a public health crisis with the coercive tools of criminal law. Make no mistake, honourable senators, this is a public health crisis.

While we have been understandably consumed by the current pandemic, as former Senator Hugh Segal pointed out recently in an op-ed in *OrilliaMatters*, "There have been days when deaths from drug overdoses exceeded deaths from COVID and traffic accidents combined." Every life lost is a tragedy and a reminder that we can do better.

In the most practical sense, we need an alternative approach that seeks to maintain and improve the health of populations based on the principles of evidence-based policy and practice, social justice, attention to human rights and equity, and addressing the underlying determinants of health.

Honourable senators, there is a wide-ranging continuum of substance abuse and substance use disorders. Some patients can be prescribed controlled drugs for illness and injury or to cope with the stress of trauma. Some individuals can also access a dangerous, unregulated supply of drugs through illegal channels. Some individuals can also experience negative consequences from their substance use and become physically or psychologically dependent on drugs, as I know only too well.

The reasons people develop substance use problems are complex and can include genetic, biological and social factors, including experiences of trauma. However, statistics demonstrate that marginalized groups, including Indigenous and racial minorities, disproportionately experience these negative health and social outcomes typically associated with the use of drugs. Structural factors force these people to use in unsafe environments and create barriers to accessing health care and social services.

For example, it is recognized in the medical field that criminalization contributes to the promotion and acceleration of infections such as HIV and hepatitis C, as the legal consequences and stigmatization may drive unsafe injection practices such as the sharing and reuse of syringes in unsafe locations. Having managed patients with these conditions, let me assure you that it is an incredible burden not only on the patient and the families but on society as a whole. The evidence demonstrates that decriminalization typically encourages drug users to use in safer spaces where they can access medical care and clean supplies.

Honourable senators, there are existing efforts by different levels of government that help mitigate the risks and harms associated with substance use. For example, in Newfoundland and Labrador, we have a Prescription Monitoring Program that is aimed at addressing the growing opioid crisis. This program helps prescribers and dispensers make the most informed decisions when choosing a monitored drug to treat a patient. Using the provincial Electronic Health Record, prescribers and dispensers have access to up-to-date and accurate patient medication profiles to help inform and support the needs of their patients. The benefits of this program include increased quality of patient care, greater confidence when prescribing and dispensing drugs and greater efficiency and coordination of care. It prevents the phenomenon of double doctoring. The program is designed to lead to a decrease in drug misuse and prevent or reduce hospitalizations and deaths related to drug misuse. Every province, with the exception of Quebec, has some type of prescription monitoring program.

Looking to our West Coast, as British Columbia recently marked the five-year anniversary of declaring a public health emergency due to opioid deaths, the provincial government announced that it will be making an official request to become the first province in the country to decriminalize the possession of small amounts of illegal drugs. This would be achieved by a province-wide exemption from the Controlled Drugs and Substances Act to eliminate criminal penalties for people who possess small amounts of drugs for personal use. The government also announced $45 million over the next three years to expand overdose prevention services like supervised consumption sites, Naloxone supply and integrated response teams.

Local health authorities, including Toronto, Montreal and Vancouver, have also implemented public health principles into their strategies. A few weeks ago, the federal government gave $7.7 million to help fight the opioid crisis in Toronto, with funds allocated for three projects that will increase access to safer supply and provide a new harm reduction and treatment option for people living with opioid use disorder in the city.

Honourable senators, Bill S-229 could further enhance these measures and stitch together the existing patchwork by creating a national strategy based on health, equity and harm reduction principles.

Across Canada, there have been several institutions that have taken a strong stance in favour of decriminalization and of treating substance use as a health and human rights issue, and the list is long. It includes the Canadian Public Health Association, the Canadian Mental Health Association, the Canadian Nurses Association, the Canadian Drug Policy Coalition and others.

• (2010)

More recently, institutions that have historically not supported decriminalization, including the Public Prosecution Service of Canada and the Canadian Association of Chiefs of Police, have acknowledged the futility of criminalizing drug use.

This change is dramatic and has been echoed by several public health agencies and authorities and local, provincial and national groups.

If we look outside our own borders, we will note that several countries, including Switzerland, Norway, Austria and Portugal, as well as the state of Oregon, have integrated one or more of the cornerstones of a public health approach to substance use disorders. These policy changes have proven to be effective.

Honourable colleagues, with the pandemic exacerbating existing inequities, this is a critical time for Canada to further investigate what an alternative model could look like. There remain several outstanding questions that are beyond the scope of this bill: Is decriminalization a viable option for Canada? Can the different levels of government and relevant stakeholders reach a consensus on what should be included in the national strategy? How will objectives be measured and monitored?

However, putting all that aside, Bill S-229 simply compels all levels of government to study how best to provide a health-centred approach to substance abuse. The federal government would have two years to repeal the criminality of possession for personal use of drugs. Simple possession of certain classes of drugs would result in fines, mandatory treatment orders and other remedial measures.

Colleagues, we need to take an evidence-based approach to addressing this public health crisis. This bill is a first step in the right direction toward creating a comprehensive, equitable and, most importantly, effective national strategy to help mitigate the complex harms associated with substance use.

Simply put, criminalization is not an appropriate prescription.

Thank you, *meegwetch*.

Some Hon. Senators: Hear, hear.

Hon. Bev Busson: Honourable senators, I rise to support Bill S-229, An Act respecting the development of a national strategy for the decriminalization of illegal substances, to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts. In its simplified form, it is also known as the Health-Centred Approach to Substance Use Act. Despite being a mouthful to say, this is a critically important initiative.

I wish to thank Senator Boniface for taking the brave and historic decision to lead this chamber in confronting such a pressing social and economic problem. I'm proud to stand with her and support this bill.

Fellow senators, we discuss and debate many issues together, but I will argue that rarely do we take up such an important and immediate national problem. The country from coast to coast to coast continues to face a crisis in the use and abuse of illegal drugs and substances. People are dying every single day. Statistically, in the first half of 2020 alone, an average of 15 people died of an overdose in Canada each day. We are yet to tally the full impact of the COVID-19 pandemic on these horrific numbers for the remainder of last year and this year. Even in the time we will take to complete the session in the chamber, someone will die of an overdose.

It is a human tragedy that also leaves a trail of sorrow and anguish in too many Canadian families, and personal trauma for police, other first responders, hospital staff and many others.

British Columbia, which I am proud to represent, is in many ways at the epicentre of this other epidemic, but the crisis affects the entire country from Vancouver to Toronto to St. John's and in so many other cities and towns, large and small, targeting every culture.

In her thoughtful speech, Senator Boniface has already meticulously laid out the often frightening facts and shocking figures of substance abuse, especially in my province, and I will not repeat those here.

The specific drugs of choice shift and change over time. Fentanyl and carfentanil are in the headlines nowadays. In the past it was heroin, oxycodone, OxyContin and cocaine. The challenge remains the same regardless of the drug or the class of drugs. What can we do now to effectively address the tragedy, as the current approach is not working? It is now urgent to answer this pressing question.

Like Senator Boniface, this is an issue close to my heart. Before my Senate appointment, I spent a career in policing, in many instances seeing young lives wasted by addiction. For me, it is no accident that the Canadian Association of Chiefs of Police has joined company with the Canadian Public Health Association, the Canadian Mental Health Association and the Canadian Nurses Association, to name but a few, in asking for a new approach to this crisis. Bill S-229 is a concrete and serious solution to address this unacceptable death toll.

The problem of substance use itself is a complex interplay between addiction, mental illness, homelessness, poverty, family stress and more — all intensified currently by the COVID-19 pandemic. Any solution must be integrated, backed by

substantiated political will from the federal, provincial, territorial and municipal levels and provided with sufficient and sustained resources and public support.

But as complicated as this problem is, the core of this bill is almost radical in its simplicity. The key is to decriminalize the simple possession of illegal drugs. This problem is a health matter, not primarily one of law enforcement. The solution will only be found in a health-centred approach. Therefore, we need to focus on treatment and harm reduction in the immediate term, along with affordable housing and mental health supports that lie at the heart of the public health challenge. The police are equipped to do many things in meeting their mission to protect public safety, but they are not specifically equipped to solve public and mental health dilemmas.

This explains why Bill S-229 is structured as it is. The first part calls for the elaboration of a national strategy to decriminalize simple possession of illegal substances. The complexity of the challenge requires a truly national strategy that brings all voices, expert knowledge and experience to the table to design a solution.

Decriminalization cannot take place in a vacuum, but it needs a plan in place to provide programs for addiction treatment, harm reduction and homelessness. The bill then calls for decriminalization by repealing certain clauses of the Controlled Drugs and Substances Act, but only after the national strategy has been developed and adopted. This flexibility is both realistic and necessary.

It's clear to me that homelessness and substance abuse are linked together. My experience as a young officer is personal and anecdotal, but the academic evidence over the years has confirmed my conclusion of this tragedy. The Addiction Center in the United States has summed up the solution in different terms. They say:

> Tragically, homelessness and addiction go hand in hand. The end result of homelessness is often substance abuse, and substance abuse often contributes to homelessness.

In Canada, in the Greater Vancouver Region, as early as 2005, 48% of homeless people reported that they were suffering from addiction. I mention this to point out the problem is not new.

This tangled connection between substance abuse and homelessness contributes to a social disaster that goes far beyond the tragic personal suffering. It creates social pressures as well. Conflict arises when people share their civic space in parks et cetera with fellow citizens who are living on the street, and there are hard economic costs as well. The fallout is hard to estimate, but it has been suggested that the financial cost of homelessness to taxpayers in Metro Vancouver alone is $55,000 annually per homeless person and over $200 million a year. This does not include the overdose death analysis in these numbers.

One can reasonably wonder why a former commissioner of the Royal Canadian Mounted Police would be so supportive of a draft bill to decriminalize illegal drug possession, presented by a former commissioner of the Ontario Provincial Police. Presumably, every honourable senator in this chamber is witness to a world where the so-called "war on drugs" has been a steady feature, and has also come to realize and find the conclusion that this enforcement model simply has not worked.

• (2020)

But another reason lies in a core principle of policing in a modern democratic society. Ironically, one has to go back over 100 years when Sir Robert Peel, as Home Secretary, laid out his vision of professional policing when he established the Metropolitan Police in the United Kingdom. His philosophy of policing, in a nutshell, emphasized that the effectiveness of the police is not measured by the number of arrests, but by the lack of crime. To prevent crime, the police must work with the public to support community principles. In what is probably the most famous quote ascribed to Peel, he said, "The police are the public and the public are the police . . ."

Our fellow citizens who are dying every day of drug overdoses in alleyways, enduring homelessness or battling mental illness are the public. The effectiveness of the police in confronting this crisis cannot be measured in arrests in pursuit of the Controlled Drugs and Substances Act or other laws, but rather in the decrease in the number of people dying or forced to the street, often committing crimes to feed their drug addiction.

In this context, I'm delighted that Senator Boniface has purposely chosen to use the word "illegal" to avoid the demoralizing stigma attached to addiction. When the problem is framed as a public health issue rather than one of criminality, it will help to further focus community efforts to concentrate resources on reducing crime rather than increase arrest statistics.

Bill S-229 provides us a road map to a reimagining of the solution to the deadly crisis in Canada today. It calls on us to decriminalize simple possession of drugs and reinforce efforts and resources available for crime reduction and treatment of mental health and drug-addicted individuals.

The COVID-19 pandemic has affected the country and all of us in so many ways. But one of the most shocking numbers that Senator Boniface has placed before this chamber in her speech was that, according to a November 2019 report from Public Health Ontario, a majority of drug overdoses have happened in private residences. The pandemic has obviously magnified this situation. It has also laid bare a number of social issues and prompted calls for corrective action as soon as the COVID-19 pandemic comes under control. I submit that, with this other devastating epidemic, the drug-related homelessness and corresponding unnecessary deaths are also ravaging our country. Bill S-229 is a clarion call for corrective action on this front.

There are many times in the history of this country when transformational change has been sought and achieved. It demands new ways of thinking and total commitment at every level. The creation of our public health care system, for example, in the 1960s comes immediately to mind. Our Canadian national identity has come to include the widely held belief in universally accessible health care. Bill S-229 provides us with an opportunity to reach again for that transformational change, to abandon the failed "war on drugs" and to take a new, bold, health-centred approach to saving lives that will equally come to define the Canadian way. Thank you, *meegwetch*.

Hon. Donald Neil Plett (Leader of the Opposition): Your Honour, I'm wondering whether Senator Busson would take a question?

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

Senator Busson: Certainly, Senator Plett. I would be happy to.

Senator Plett: Thank you and thank you for your speech. I have actually two questions. I'm trying to get my mind around some of the rationale here, and I didn't have time to ask Senator Boniface a question. But there are two things that you talked about that I'm trying to figure out how this bill will prevent that. At the beginning of your speech you talked at length about the number of deaths and that we want to prevent deaths, and I think we all agree with that. But I just can't get my mind around how making drugs more available will prevent overdoses. It has nothing to do with the legality of it. I have been in your province and in your city and I've walked through some of the horrible areas. I cannot understand how decriminalizing will prevent deaths. Could you give me the Reader's Digest version of that?

I will ask my other question right away for the sake of time. You also talked about the demoralizing stigma of addiction. Addiction is addiction is addiction whether it's illegal or decriminalized or legal. If you are an addict, you are an addict. So how does Bill S-229 prevent the demoralizing stigma of addiction? Two questions there, Senator Busson. Thank you very much.

Senator Busson: Thank you very much, Senator Plett, for your questions. I'm not sure if I can satisfy the conundrum of the question you ask about decriminalizing versus legalizing drugs and how decriminalizing drugs might help the problem. But you also said that you had spent time in British Columbia. If you've been at Hastings and Main, you will see that the approach that is being used now is, if anything, exacerbating the situation because there are no or very few resources or the integration of resources around actually addressing the real problem, which is a problem of crime reduction.

You just don't become an addict and, of course, you know this, but it becomes an issue of lifestyle and becomes an issue of getting help. Being arrested for simple possession of drugs and being put in detox for two or three weeks has no ability to make any kind of a dent in the problem. We need to find a new paradigm to deal with this. Crime reduction and addressing the homelessness issue rather than the symptom of drug use is an approach that I believe has more ability to have a positive effect on the lifestyle of so many people, and the numbers are only getting worse.

As you said, "addiction is addiction is addiction." Well, recovery is recovery is recovery, and if the money spent on enforcement and dealing with these things as a police matter could be used in other ways, I believe we could treat addiction as an illness and make a dent and make a positive change in the way our world is.

The Hon. the Speaker pro tempore: Thank you, Senator Busson. Your time has expired.

(On motion of Senator Martin, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Wells, seconded by the Honourable Senator Seidman, for the second reading of Bill C-218, An Act to amend the Criminal Code (sports betting).

Hon. Brent Cotter: Honourable senators, I serve as the critic of this bill, though I am more a proponent, I think, than a critic. It's a pleasure, though, to speak to the bill.

Senator Wells offered a concise, comprehensive account of this bill a few weeks ago and what it will achieve, and I will not attempt to replicate his thoughtful presentation. I have five specific points I would like to make, but I may only address three of them at this stage of the bill's consideration.

The first is a point of principle, the problematic nature of sports betting in the criminal law of Canada. The second point, and related to the first, are thoughts on the subject of sports, the integrity of sports and the positions of the major sports leagues in relation to this question of betting. The third point is that, well, gaming — gambling — presents social risks, and the ways in which this bill has the potential to mitigate or moderate rather than exacerbate those risks. Fourth is the opportunity for constructive federal-provincial relations that this bill presents. Fifth is the significant opportunity this amendment presents for people, businesses and communities, particularly Indigenous communities. I may postpone comments on a couple of these points in my remarks so that others can have an opportunity to speak this evening.

• (2030)

First, the nature of criminal law. At law school everyone studies criminal law. One of the first things you learn is that the criminal law largely deals with and essentially forbids *malum in se*, that is, things that are bad in themselves. I would like you to think about serious matters that come within the purview of criminal law — fraud, drug trafficking, sexual assault, murder, robbery and many others — but I hope you're seeing the point. We use criminal law primarily to identify and punish serious, harmful, hurtful types of antisocial behaviour that our society denounces.

By nearly every measure, the prohibition against sports betting does not come close to this criterion. Indeed, its history is unusual and far from the criminal law norm, far from *malum in se*. Senator Wells noted the evolution of the Criminal Code

positions in the mid-1980s, talking as well about the restructuring and lottery schemes developed then, but I'd like to go back further in history to talk about the prohibition on sports events generally.

It grew out of an era where there was moral disapproval of gambling and some match fixing did take place. The general illegality of many forms of gambling including sports betting continued into the 1980s when a range of liberalization amendments, noted by Senator Wells, were adopted. Space was created for large-scale lottery betting and revenue generation for the provinces all in one.

Directly related to the issues before us today, in 1985 we went from gambling on sports being a crime to being just fine if you bet on two or more sports events at the same time. However, betting on one event, other than between friends, continued to be illegal. When we say "illegal," we are not talking about jaywalking or speeding. We are saying that it is a criminal offence for which, if you are caught and convicted, you would have a criminal record. Let's think about this for a moment. Let me offer you four examples.

My grandfather was a decent, God-fearing, intensely competitive man. He ran a small plumbing and heating business in the metropolis of Kamsack, Saskatchewan, earning a modest but adequate living to support his family. He was an excellent athlete, as most plumbers are. He played hockey for the Kenora Thistles in the era when Kenora was the smallest community to win the Stanley Cup. In the excellent book on hockey and the Stanley Cup, our former Prime Minister touched on this history lightly. I, and I'm sure my grandfather, wished he would have said more on that topic. Given my grandfather's love of sports, when he could afford to he occasionally placed bets on the outcome of sports contests, but not for one minute did he ever consider he was committing a crime by doing so.

In a larger and more modern context, as Senator Wells told us, Canadians are betting $13.5 billion each year outside the legal framework of sports betting. We are talking about tens of thousands of Canadians committing crimes. We are talking about members of our own families, putting it bluntly, committing criminal acts on a daily or weekly basis.

I taught a course in sports and the law at my law school in Saskatoon for the last decade. When we discussed sports betting, I asked the students to indicate anonymously whether they place single-event sports bets online. These are budding lawyers. Approximately half of them said they do. I asked the question anonymously because I'm actually asking them to confess to a crime, but none of them think it's a crime, at least not in the way we think about criminal law. Many ask the same question Senator Wells raised: How can betting on one game at a time be a crime and betting on two or three at the same time be perfectly legal?

One fourth and last example: When the mayors of Regina and Winnipeg place a bet with one another about who will win the Banjo Bowl between the Blue Bombers and the Roughriders — which sadly the Blue Bombers win most of the time— maybe the bet will be for the loser to wear the other team's sweatshirt or buy dinner. We applaud thinking of it as community building, a loyalty statement. If those same mayors were to bet $20 on the same game with an online betting agency, they would be committing a criminal offence.

The question arises, how seriously do we treat these crimes? I've had extensive research done on this question and, as far as we can determine, despite $13.5 billion in crimes being committed by Canadians every year in the form of criminal sports betting, we could not find a single criminal charge anywhere in Canada having been laid against anyone in the last 20 years. Not one. No one actually gets prosecuted — says something about what we think of this — but it hasn't changed the fact that we have preserved this as a crime in our Criminal Code. You might ask why. I'm going to try to address this point, and one other, and maybe save remarks on other points for a bit later.

The answer seems to be that this legal absurdity rests less in the criminal law than in the historical concerns about gambling and the integrity of sports, particularly professional sports in North America. I turn to this as my second point. All of us had or have had some connection with sports, whether it's a form of recreation to keep healthy or as a form of competition as sports fans or enthusiasts. Some have made significant and honourable careers in sports, such as our own Senator Smith, Senator Petitclerc, Senator Marty Deacon and many others who have served honourably in this place. Our infectious enthusiasm for sports is captured in Jerry Seinfeld's statement, "I could watch sports if my hair was on fire."

It is escapism for many. Famous sports broadcaster Howard Cosell once described sports as the "toy department of human life." That is something of a self-mocking statement. Cosell himself became wealthy and famous as a pre-eminent sports broadcaster.

In fact, the world of sports is a serious project for those close to sport, in particular modern professional sports. The major sports leagues in North America are multi-billion-dollar businesses. Professional sports generate hundreds of thousands of jobs across North America, and thousands of those jobs are in Canada. Some are extremely high paying, as we know, but many thousands are good, basic jobs, whether in employment with sports teams or as employees with media organizations that do the broadcasting or the people who sell popcorn and hot dogs in the stands. So a lot, for many people, depends on the sound operation of these sports enterprises. Here I'm coming to my point.

For all sports to prosper, particularly in an era of significant fan engagement, they require a level of athletic skill on the part of the athletes, but also confidence in the integrity of the competitions themselves. This latter fundamental has been a preoccupation of leaders of major sports leagues for the last century in North America.

So now a little bit about history on this point. The significant and legitimate focus on integrity of sport in North America began almost exactly a century ago when the so-called Black Sox scandal of 1919 nearly destroyed Major League Baseball in the United States. A group of players with the Chicago White Sox had probably taken money to intentionally lose games in the

World Series. Even though the players were acquitted, this chicanery had profound implications for baseball, and in subsequent decades for all major North American sports leagues.

For baseball, new and principled leadership was desperately sought, extending even to an effort to persuade the outgoing President of the United States to become the Commissioner of Major League Baseball.

The Black Sox scandal has so much resonance in the world of professional sports, even today, that when newsreels relating to the trial of the Black Sox were discovered last year, in of all places the Yukon, more than 100 years after the events in question, it was an international sports sensation. Indeed, in books and movies, one of the Black Sox players, Shoeless Joe Jackson has been immortalized by Canadian author W.P. Kinsella in his book *Shoeless Joe* and the blockbuster movie *Field of Dreams*. This anxiety about the integrity of sports teams through the decades of growth of major professional sports in North America made sports leaders rightly vigilant in ensuring the integrity of their respective sports and understandably wary of the ways in which betting on sports games could have a negative effect on that integrity.

The more insulated sports were from betting on game outcomes and the associated temptation to lure players or others into fixing outcomes of matches, the greater assurance of integrity. This helps to explain the structure of Canada's prohibition against single-event sports betting and major leagues' historical opposition to it being allowed.

• (2040)

As Senator Wells noted, from a bettor's perspective, it's difficult to win a bet when you have to predict the outcomes of multiple games, but on the other side of the coin — this even more important to sports leadership — it was thought to be much harder to fix multiple matches than it might be to fix a single match. So the single-event betting prohibition, at least at the margins, promoted integrity by making unscrupulous behaviour almost impossible, at least among legal bettors.

What sports leaders have come to recognize and accept is that single-event sports betting is taking place widely and under the table, most of it in shadowy precincts where the law never goes. Consequently, allowing above-the-table betting on sports teams, in the sunlight so to speak, cannot be worse than the status quo and is probably better.

These commissioners of sports leagues have also recognized that they can contribute to a more regularized and fairer sports-betting regime by making arrangements to provide betting agencies and bettors with superior, up-to-date information on games and game results. This transparency actually protects the integrity of the product on the field. Fairer to bettors, nearly all of whom are sports fans and who would remain so only if they themselves can trust the integrity of the game and the information about sports games.

This evolving perspective, combined with the liberalization of legal sports betting in the U.S. beginning in 2018, and the opportunity to achieve some limited economic benefits from these developments, has led sports leaders of all the major sports leagues in America and the leagues themselves to accept and even embrace the change.

Let me read a joint statement from the commissioners of five major sports leagues put out last year:

> The National Basketball Association, the National Hockey League, Major League Baseball, Major League Soccer, and the Canadian Football League support an amendment to Canada's federal laws that would authorize provinces to offer betting on single sporting events. Sports betting gives fans another exciting way to engage with the sports they love.

These are the commissioners speaking now.

> Because a legal and regulated sports betting market in Canada would be beneficial to sports and their fans, we urge prompt action to make this a reality. Sports betting already happens illegally in Canada; creating a legal framework would shift consumers from illicit, unregulated markets to a legal and safe marketplace. Regulating single-game betting would allow for strong consumer protections as well as safeguards to further protect the integrity of sports.

There are two key passages. Their message: This change would be beneficial to sports, and they are essentially speaking to us.

Second, a regulated market would allow for stronger consumer protections and safeguards to protect the integrity of sports.

Each of us may have views on this legislation, but the leadership of the major sports leagues, who have by far the most to lose, support this amendment and are satisfied that it does not compromise the integrity of their sports — the foundational concern that led to the structure of the 1985 law.

This foundational concern for the sports leadership has eroded, and if sports leaders are fine with it, who are we to say otherwise? It should cause us to at least appreciate that the structure of our existing law is needed no longer. It is a call to move from criminalization to regulation. It took these leagues 100 years to see this better path. We should too.

I want to speak ever so briefly about the issues concerning problem gambling. I had concerns myself dating back two decades or more regarding the risk to some people with gaming becoming too readily available, at a time when casinos began to appear in Canada in the 1990s. As the Deputy Attorney General at that time in Saskatchewan, I was involved in negotiating the original First Nations gaming compact in Canada. This led to the establishment of First Nations-run casinos in Saskatchewan. I served on the governors board with now-Grand Chief Perry Bellegarde for a number of years.

The conclusions I drew from that work, and work with Grand Chief Bellegarde and other First Nations leaders and government regulators, gave me confidence that a sound, responsible gaming regime can be put in place to moderate and minimize those risks.

It is true that there are some risks, but if we are primarily — and I believe we are — bringing this type of gambling out of the darkness and into the sunlight, this amendment would provide greater opportunities to identify people who are at risk and help them address their addictions. Legalization and regulation by the provinces is a far better approach, a humane approach, a public health approach, to this question and to this group of gamblers, and it is superior to the status quo.

One way of thinking about it is, there are problem gamblers out there right now, but organized crime, which has a decent role in the illegal-gambling regime, has no responsible gaming program. In fact, they probably have the opposite.

On balance, and if there is another opportunity, I will return to the question of the economic benefits, but let me close with these two or three fundamental points.

This is a simple bill. It is grounded in principle. Its goals are sensible. Its benefits vastly outweigh its disadvantages. There are risks related to problem sports gambling, but those risks already exist and are going unaddressed presently. This bill will help to correct that.

Presently, the investments in responsible and problem gambling in Canada are in the neighbourhood of $125 million a year. They would expand with this bill, especially dealing with the sports-betting world. The bill is widely supported in all of the constituencies to which it is relevant, and it was supported almost unanimously by our elected representatives from all political parties in the other place. We should support the bill and unlock its benefits for Canadians. Thank you.

Hon. Ratna Omidvar: I have a question for Senator Cotter, if he will take one.

Senator Cotter: I'd be pleased to.

Senator Omidvar: Thank you, Senator Cotter. I agree with almost everything you have said, bringing this practice into the sunlight and amending the Criminal Code so that people are behaving within the parameters of the law.

You did speak about responsible gambling, and I want to focus on that. Is there anything in the bill or the regulations that would help us determine or would help us gather evidence around those who are at risk? In my own research with the Responsible Gambling Foundation, I have been informed that, of course, young people are at risk. I have been informed that Indigenous people are at risk, and I have been informed that South Asians and Asians are at risk.

Is there any capacity in the bill as it is written or in the proposed regulations to gather evidence based and age, gender, race and ethnicity or is this something the committee should deliberate on?

Senator Cotter: I'd be pleased to answer. Let me try to offer maybe three points to that, Senator Omidvar.

First, this is actually an amendment to the Criminal Code, and we don't usually use the Criminal Code for regulatory purposes but more for sanctioning purposes. What this bill will do is make available to the provinces both the opportunity and the responsibility to regulate single-event sports betting in their provinces. I think that's the first point.

Based on what has happened with the conversations around casinos being established and responsible gaming practices there, there's a rich array of commitments by both provinces and gaming operators to meet the expectations of responsible gaming. It's in their interest to do so. Making customers addicted and broke is not in their interest, and there would be an enormous backlash. So there's sympathetic interest across the piece.

With respect to that, the responsible gaming leadership, including the RGCC, with which I know you are familiar, has done extensive research to understand patterns of games and patterns of behaviour. Sports betting has got a different flavour to it. It attracts a different crowd. Some of the points you made about younger people, that's true. Interestingly enough, they're often more highly educated younger people, mostly young men. There's a different dimension to betting on sports. The example of me betting on the Roughriders in the Banjo Bowl is a perfect example. I'm too emotionally connected to the Saskatchewan Roughriders to make a wise betting decision. That's a common factor in sports betting. However, the responsible gaming folks have done research already, and a significant amount of that $125 million does get focused on research.

• (2050)

I can't comment on sports betting and particularly racialized communities of interest. There's a range of vulnerabilities. I wouldn't be comfortable putting them down to those forms of categorization. I think it's more a pattern in certain communities — and those may be racialized communities — where there's kind of a culture of gaming and gambling, and that might be a dimension of it. I hope that's helpful. I'm impressed with the amount of commitment to the whole initiative and the parts about investing in prevention, investing in research, targeting more vulnerable communities and recognizing the value of investments by the Government of Canada — they would get more tax revenue out of this — and the provinces in strengthening the mental health vulnerabilities of some. I hope that's helpful.

The Hon. the Speaker pro tempore: Senator, do you have another question?

Senator Omidvar: Just a quick clarification to help me understand. So you're telling me, senator, that this collection of data would fall within the purview of the provinces and they would do the needful. There would be no way that we could get a national picture. Or could we?

Senator Cotter: My impression of what is happening now is that there's an enormous amount of coordination among the responsible gaming dimensions across the provinces, but this becomes a matter of provincial regulation. The exercise is basically interprovincial and interterritorial cooperation in the gaming sector, which, in my understanding, is happening very well presently. There's a national body that accredits casinos, for example. Every First Nations casino in Saskatchewan is accredited under this national accreditation approach, which has

built into it, both identifying through research and the gathering of information on problem gambling issues, and develops strategies to address it pursuant to this national model.

Senator Omidvar: Thank you.

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

Hon. Yuen Pau Woo: Your Honour, I'd like to ask for leave for us to complete this item through all the speakers who have expressed interest to speak tonight right through to, I hope, the vote to send this to committee.

The Hon. the Speaker pro tempore: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I rise briefly to speak to second reading of Bill C-218. I thank Senator Wells for bringing this private member's bill forward and to all colleagues for their speeches to this point.

I didn't come to this as someone who has much experience or knowledge of the sports betting world. I did place a $2 bet on a horse race at the old Blue Bonnets racetrack in Montreal in the late 1960s. My very good friend owned a horse, and I bet on it to show. To my great surprise I won, so I pocketed my winnings and figured I'd quit while I was ahead. Fifty years later, I can proudly say I made money on my one and only bet.

However, I have read and I do understand the rationale for Bill C-218, currently before us after passing in the other place with overwhelming all-party support. In fact, the government had proposed Bill C-13, which sought to achieve the same objectives but for procedural reasons did not advance in the other place. The government committed to ensuring that those who engage in gambling can do so in a safe and regulated way.

The current laws on single sports event betting, as we've heard, have allowed organized crime to profit and have also created economic disparities within communities. The proposed changes to the Criminal Code in Bill C-218 will allow the provinces and territories to regulate this area and bring additional transparency to support responsible gambling. These changes would be of significant benefit to border communities with casinos that are in competition with U.S. casinos in states that have recently changed their laws to allow single-event sport betting.

Honourable senators, the gaming industry is a major employer and generator of revenue and employment across Canada. It generates over $9 billion in revenue for governments and charities every year, and it pays out more than $6.7 billion in salaries annually. However, the $14 billion single-event sport betting industry is carried out underground and often by criminal elements. This significant amount of money is not contributing to our economy and to the well-being of communities and employees. These are dollars helping to finance criminal elements in our societies, to our collective detriment.

For many years, governments both provincial and federal, as well as Indigenous groups across Canada, have been calling for the legalization of single-event betting. Currently, most provinces or territories have entered into agreements with some Indigenous communities or organizations to allow them to conduct gambling activities or to share in profits. We have a responsibility to listen to Indigenous peoples and communities on these important issues and on how this industry may impact and benefit Indigenous peoples and communities. Some form of regulation is needed and Bill C-218 offers that solution.

The Criminal Code, as you know, currently prohibits all forms of gaming and betting unless a particular form of gambling is specifically permitted. Under section 207 of the Criminal Code, provinces and territories are permitted to license a broad range of lottery schemes, including betting on the outcome of more than one sporting event — for example, betting on the outcome of multiple football games. However, some types of gambling continue to be excluded from permitted lottery schemes. One of these exclusions is that a province or territory may not conduct betting on the outcome of a single sports event, for example the Grey Cup or Stanley Cup. Bill C-218 would allow provinces and territories to regulate single-sports betting by removing that exclusion from the definition of a permitted lottery scheme.

As we've heard, single-sports betting has become legal in many individual states in the United States, and this change has led to major sports leagues changing their position to support the legalization of single-sport betting and to increase competition for existing gambling products in Canada. It has also led to Canadian leagues largely supporting single-sport betting. On June 8, 2020, a joint statement was issued by the commissioners of the National Basketball Association, the National Hockey League, Major League Baseball, Major League Soccer and the Canadian Football League supporting the necessary Criminal Code changes authorizing provinces to offer single-sport betting.

During study of Bill C-218 in the other place, we heard from representatives of the horse-racing industry who cautioned that the bill as drafted would gravely impact the pari-mutuel system of betting used by this industry and would lead to significant loss of jobs across Canada. The Canadian Pari-Mutuel Agency, CPMA, is the agency that regulates all betting on Canadian horse racing. Pari-mutuel betting is a system in which all bets of a particular type are placed together in a pool. Taxes and a percentage for the venue are deducted from the pool, and the balance of the money is shared among all winning bets. Pari-mutuel betting systems are currently regulated by the Canadian Pari-Mutuel Agency in relation to live horse racing. The CPMA is an agency under the purview of the Minister of Agriculture, and it regulates betting on horse races across Canada. Its sole source of funding is a levy on all bets placed through the pari-mutuel betting system.

An amendment to Bill C-218 was passed in the other place to ensure that the pari-mutuel system of betting would remain under the regulation of the federal Canadian Pari-Mutuel Agency. It makes the sports betting industry both competitive and safe for those who engage in it.

Honourable senators, Bill C-218 proposes a safe, legal and careful way of ensuring that supports are in place for those with problems, but that there are no negative impacts on the sports involved. It is noted the industry is a major employer for thousands of Canadians and a generator of billions of dollars for communities, the provinces and the country. I believe the bill before us reflects a balanced, prudent and safe approach to the industry. Again, I thank Senator Wells for bringing this bill forward and offer the support of the government for Bill C-218 and its timely passage through the Senate.

[*Translation*]

Hon. Julie Miville-Dechêne: Honourable senators, I will speak briefly about Bill C-218 at second reading to raise some concerns about the consequences of legalizing single sport betting.

Undoubtedly, this legalization will bring more money into provincial coffers because this is an area occupied by foreign or, quite simply, illegal sites.

I will be honest, I am suspicious of gambling and money. I have always felt that it was an underhanded form of taxation of the most disadvantaged in our society. Researcher Christian Jacques, of the Centre québécois d'excellence pour la prévention et le traitement du jeu at Laval University, confirms that proportionally there are more gamblers among the working classes than among the wealthy.

What has always worried me, and still does today, is the risk of addiction, the risk of compulsive gambling.

• (2100)

As with alcohol, restrictions prohibiting gambling were gradually lifted. Provincial governments have a monopoly on lotteries, games and online bets, but the situation varies from one province to another. There was apparently some ambiguity in the Criminal Code and each province had a different interpretation, which explains the different approaches to licensing. For example, Saskatchewan grants licences to private casinos while Quebec retains its monopoly. Ontario wants to issue licences to private foreign online gaming sites in the province so that it can get its share of the revenue.

Provincial governments, which must look after the public interest, are promoting "responsible gambling," with all of the contradictions that term implies. Loto-Québec sent me a list of at least 25 measures for gamblers who have lost control, such as self-exclusion programs or programs that allow gamblers to request a decrease to the maximum they can spend. I should point out that all Loto-Québec customers have the right to gamble up to $9,999 per week, which seems quite high for the average person.

The irony here is that Bill C-218 is making its way through Parliament in the middle of a pandemic, just as a major survey by the Institut national de santé publique du Québec revealed that the number of people who gamble online has exploded. In fact, 20% of Quebecers have tried it, and 8% of them were trying it for the first time. The use of Loto-Québec's online casino has jumped by 130%, increasing the risk of addiction.

According to Professor Jeff Derevensky, Director of McGill University's International Centre for Youth Gambling Problems and High-Risk Behaviours, it is clear that legalizing single-event sports betting could increase public health problems in Canada. Why? Because, he says, more young men will be drawn to this kind of betting if it is legal and regulated than to illegal sites, which some turn to for lack of anything else. He is not the only one. Researcher Christian Jacques of Université Laval's Centre québécois d'excellence pour la prévention et le traitement du jeu also has a lot of questions and concerns, because research suggests that legalization could have harmful effects. Consensus is lacking, however. Robert Ladouceur, a professor of clinical psychology at Université Laval, is not worried about the effects of legalization, but he sees a potential risk if provinces license private operators to run single-event sports betting. The professor suggests that Crown corporations are more accountable than private enterprises when it comes to ensuring the integrity of their activities in the risky gambling sector.

Studies show that recent legalization of this type of betting in the United States led to a jump in the number of calls to problem gambling help centres. In Quebec, "a little less than 3% [of gamblers] are moderate-risk to probable pathological gamblers." Each pathological gambler can have a negative impact on five to seven other people, which increases the number of people at risk. Professor Derevensky says that addiction to sports betting in North America affects between 4% and 25% of the adults who participate in the activity on a regular basis. Furthermore, U.S. studies show that 12% of teens experience problems related to gambling, and they are not even of legal gambling age.

Single-event sports betting is the type of betting that young men are most drawn to. The negative effects of the interaction between online betting, watching sports, live betting and mobile technology are now being documented. Researchers are finding that online gambling is a vector for problematic behaviour. Live betting from a mobile phone accelerates the process. The opportunity to gamble is available immediately, on demand, which is very appealing to those with gambling addictions.

What will be the social consequences of the passage of Bill C-218? No doubt stronger preventive measures will be needed. I will close by asking the following question. If, in the end, more young Canadians get into sports betting because of this legalization, what will we have accomplished with this bill?

I therefore hope that this bill and its potential consequences will be thoroughly examined by a committee. Thank you.

[*English*]

Hon. Vernon White: Honourable senators, my initial inclination was not to speak to this bill at this point, but having listened to the sponsor of the bill here and having read the work

done in the other place on this bill, I felt I should bring some light on the areas I felt were left out of the discussion. I will try to focus on a few areas that I think are important. I will, as well, identify a few areas that I hope will be considered by those who are working on the legislation in committee.

First, I want to mention that both the sponsor and the critic of this bill have credibility in this place. That will be key in shepherding this bill through the Senate, hopefully with the due consideration to the issues that I believe shall arise. Thank you to both of them.

As I prepared to speak today, I realized there are many things I could speak to specifically relating to what I see as the result of Bill C-218, but I decided to tell you as well what I would not spend much time on it. For example, I considered talking about the impact increased gambling through single-event betting would have on families. The reality is that Canada already has a problem with gambling, being the fourth largest gambling nation in the world. Ask social workers and addictions counsellors what level of their caseload results from gambling addiction. I spoke to two such people when a similar bill was here and, again, I reached out to them. I heard that, as previously mentioned, addictions counselling for gambling eats up a lot of the caseload and has been consistently growing.

I have personally seen the impact of gambling on communities and families. I have personally arrested those who have stolen to feed their addiction to gambling. Co-workers in policing, friends and others who I have tried to help, those who have realized how far they have fallen because of this insidious addiction. But, in reality, we let that horse out of the barn a long time ago.

My focus could be on whether or not easier access to this gambling line, as the previous senator mentioned, would change the scope of the problem. We heard about the vast revenues that will come to Canadians — or should I say governments, casinos, legal gambling venues — but what about those who are addicted? We heard from the honourable member that a tax could be used by governments to provide better health services. It may be a good idea. How about an increase in health funding allocated for addictions to the jurisdictions who choose such a scheme? It is being done in other countries that have single-event betting. If we're serious that this could help in fact, let's make sure it does help. If it does help, we would need to ensure the funding is committed to addictions counselling — not promised, but committed.

But there is a problem here. This is one reason I am disappointed that this is a private member's bill and not a government bill. It's important that the government be on the hook to not only take in the taxes, but disburse the funds needed to combat the inevitable negative impact of increased gambling. That commitment cannot be made in a private member's bill because there is a constitutional requirement that those proposing the expenditure of public funds be accompanied by a Royal Recommendation, which can only be obtained by the government and introduced by a minister.

Now I want to talk about the greatest concern of this legislation as it sits today. That is the integrity of sport in this country. With the passing of this legislation, we would put the integrity of sport in Canada in a difficult position — not because we are different from other countries but, rather, because we are often the same. You see, this is not just about betting on the National Hockey League, NBA, NFL, MLB or other major leagues. It could — and probably will — include betting on junior hockey, semi-professional soccer and other second-, third- or even fourth-tier sports, as we currently see in other countries with single-event betting schemes.

• (2110)

The reality is that this bill would open up single-event betting for whatever purposes the provinces want it. We already know how bad their addiction to taxes can be. They could open up amateur sports to this betting, and in fact that is something I would bet on. After all, why would they not? This is, in fact, about gambling tax revenue and not sport.

I have looked at 29 briefs and the testimony of 32 witnesses who gave evidence during the House committee work on this bill. Aside from the government department officials, the vast majority of the witnesses were proponents of the legislation and represented organizations that could gain financially from increased revenue. Yet I saw little or no evidence on the impact of increased gambling from an addictions or mental health perspective. No one argues that, from a tax revenue perspective, this would be good for a government's tax base. But what we do to help those who fall will be what we are judged by.

We have seen cases in some U.S. states where in amateur sports such as table tennis or electronic sports — you name it — if the government is controlling it and willing to take "book" on it, they are allowing people to bet on it. Therefore, we will leave it to the tax-addicted provinces to decide. In most cases and at most bookmaking facilities, this will include professional and college football, basketball, baseball, hockey, horse and dog racing, esports, if you can imagine, such as electronic hockey and electronic football, and I can go on. It's fine; after all, this is about providing an outlet for single-event sports betting and the ability for Canadian governments to access tax that is not now being collected. It is certainly not about whether we propagate the problem of addictions and mental illness.

The integrity in sports piece comes into play in relation to the fact that we have heard proponents of this legislation talk about match fixing. They speak to the need for transparency in sports betting if we are to combat match fixing. After all, it will be in the light of day that these athletes compete and that these teams win and lose. As a result, it is in that same light of day that we should be able to identify whether match fixing is occurring. Not that athletes would cheat, would they? The NCAA in the U.S. surveyed Division 1 football players about cheating. Of them, 1% reported having taken money to play poorly, 2% reported being contacted by an outside source to share insider information and 3% reported providing insider information about a game. Of course some players will cheat.

A players' association survey of Eastern European soccer players found that almost 12% had been approached to consider fixing a match, while 24% said they were aware of match fixing that took place in their league. Most of the countries that engaged in the survey had single-event betting. In fact, in one country

surveyed, 35% said they had been approached to fix a match, while in another country 45% of the players surveyed stated they knew of a game that was fixed.

Tim Donaghy, a former professional basketball referee, worked in the NBA for 13 seasons. He resigned from the league as a result of reports of an investigation by the FBI into allegations that he bet on games he officiated. He pleaded guilty to two federal charges and was sentenced to 15 months in jail after admitting that he made calls to affect the point spread in those games. This case is important because the player, coach or referee does not have to guarantee a win or a loss. In this case, he only had to guarantee that he would beat the spread, that he would change the course of the game and influence the number of points by which the game was won or lost.

Match fixing is a reality, and typically the fix is not found in the win-or-lose column but, rather, is found in the difference on the scoreboard between the two teams. To explain, if an Ottawa soccer team is expected to win against a Toronto team by three goals, that is what they are betting on; that is the spread. To beat the spread would mean the Toronto team would lose by fewer than three goals, instead of three. If a player, referee or coach decide to help in beating the spread, they are not actually impacting the eventual winner or loser. In fact, the impact is that while the game was fixed through the beating of the spread, it will not show in the win-loss column.

To recap, we have had betting on sporting events in Canada for quite a while, but we require in our scheme that the bettor must participate in two or more games or events, as mentioned by the sponsor and the critic of the bill, which is much more difficult to fix when compared to betting on one event or match. The odds of influencing the results of more than one event is difficult because you need multiple players, coaches or officials, on multiple teams, in multiple matches — it's almost impossible. With single-event betting, you need only influence one player, one coach or even one official, on one team — not to win or lose but to beat or meet the spread.

In countries where single-event betting is legal — whether Europe, Asia, Australia or Oceania — we have seen many dramatic and extensive instances of game fixing in cricket, soccer and other sports — too many to name and too many to ignore.

I've spoken to an expert, Declan Hill, who is a Canadian journalist, author and associate professor at the University of New Haven. He wrote in his thesis and in his book *The Fix: Soccer and Organized Crime* specifically about the problems with match fixing in Europe. In 2013, when this legislation came forward, he was one of the only witnesses we heard who could speak to match fixing. By the way, he was not called as a witness in the other place when this legislation arrived there.

Declan Hill has looked at the impact and has given evidence and speeches in multiple fora specifically on the issue of match fixing and the impact it is having on the integrity of sport. The problem with match fixing, he states, is found everywhere there is single-event betting; it is a reality of sport when combined with single-event betting.

While uncovering match fixing is extremely important, it is also important that it be illegal to do so. Declan Hill has stated categorically — recently and in relation to past iterations of this legislation — that match fixing must be a government priority and, as a result, the priority of law enforcement. Therein lies the problem, as in Canada today it is not illegal to fix a match. This must be corrected when this legislation is passed. Declan Hill wrote about this on December 11, 2020, in *The Globe and Mail*. In relation to match fixing, there is something the committee must take care of when they make the changes in the Criminal Code to allow for single-event betting.

I am not suggesting that we stop the bill. I am saying there are concerns with this legislation. I have spoken to our legal experts in the Senate, and they suggest this could be accomplished through a small amendment in Bill C-218 to create a new match-fixing offence in the Criminal Code. The new offence could be added to the current sections of the Criminal Code and could be based on the offence of cheating contained in the United Kingdom's Gambling Act 2005 or in legislation that has been adopted in the states of Australia when they added single-event betting. I had our legal experts prepare an amendment to the Criminal Code. I can share that with committee members if they wish or I can bring it to the chamber at third reading.

Regardless, it is essential that when we change the Criminal Code to allow single-event betting, we must ensure that the criminal concern of match fixing be added to those same sections of the Criminal Code.

For interest, I thought I would provide a couple of examples of match fixing in Australia.

In Melbourne, two men were charged in 2017 in relation to match fixing in a third-tier Australian football game involving under-20-year-olds.

Police laid proceeds of crime charges against an Australian table tennis player and brought down an international match-fixing syndicate in 2019 in New South Wales. This involved $500,000 that was changing hands between athletes and bettors.

Police laid charges against five people involved in match fixing in 2020 in an electronic sports event in May 2020 in New South Wales.

In essence, I believe this is an essential ingredient to a successful single-event betting bill. While I am not introducing an amendment at this time, I hope the committee will take this step as they proceed and progress, or I will do so when the bill returns from committee. While the committee is considering changing the Criminal Code to make it legal to bet on single events, I trust they will also make it illegal to fix such an event.

This would have been the end of my speech today, but something else is bothering me about this legislation. I continually hear about professional sports that are going to adopt the single-event betting scheme, but I think there needs to be consideration that the leagues have to opt in or opt out of such a scheme. They should be in control of whether their league is involved. Have them opt in if they wish their sport's or league's involvement, and not have it decided by someone else who does not have to deal with the fallout.

There are many tentacles to this legislation. Although it seems simple, I believe we are only looking at the beginning. While I have concerns about the legislation, it is our responsibility to counter those concerns when we can and to fix — pardon the pun — the problems before we pass the bill. I trust the committee will bring solutions to these problems. Again, I thank both the sponsor and critic of the bill.

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

Some Hon. Senators: Question.

• (2120)

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 second time, on division.)

REFERRED TO COMMITTEE

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

(On motion of Senator Wells, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.)

(*At 9:20 p.m., pursuant to the orders adopted by the Senate on October 27, 2020 and December 17, 2020, the Senate adjourned until tomorrow*.)

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