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OFFICIAL REPORT
(HANSARD)

Tuesday, June 15, 2021

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Tuesday, June 15, 2021

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

Prayers.

[*Translation*]

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, I wish to advise colleagues that I will be writing to the Standing Committee on Rules, Procedures and the Rights of Parliament to ask it to consider reviewing the issues that were raised last Thursday during Senator McCallum's speech.

The committee would be the best forum to consider such matters in detail, taking into account the full range of issues and perspectives involved, including parliamentary traditions, practices in other legislatures and societal changes.

The committee will be able to consider how the Senate should adapt its practices to reflect modern sensibilities and the reality of a 21st century Senate. The language of our Rules must be modernized, and our Rules must respect the significance of deep cultural and religious beliefs.

I am sure that the committee's analysis will assist the Senate going forward, and I look forward to seeing the results of its work.

THE SENATE

TRIBUTES TO DEPARTING PAGES

The Hon. the Speaker: Honourable senators, this week, we will pay tribute to the Senate pages who are leaving us this summer.

Amélie will be entering her third year of undergraduate studies in biology at the University of Ottawa in the fall. She is tremendously grateful to have represented Saskatchewan in the Senate over the past two years. She wants to extend her sincere thanks to all who have contributed in making this unforgettable experience possible.

Hon. Senators: Hear, hear!

[*English*]

The Hon. the Speaker: Faaiz Walji, after two memorable years of serving the Senate as a page, will begin to study Common Law in the fall at the University of Ottawa. He is grateful to have represented his province of British Columbia. He would like to thank his fellow pages, all senators, members of the Senate administration and Mr. Peters for their unwavering support and mentorship. Although his time as a page has come to an end, he hopes to continue serving the Senate for many years to come. Thank you, Faaiz.

Hon. Senators: Hear, hear!

The Hon. the Speaker: As Shruti Sandhu completes her final semester in the Public Affairs and Policy Management program at Carleton University, her time as a page comes to an end. She is excited to be moving to Vancouver, British Columbia, in the fall to pursue a career in education. Shruti is honoured to have had the opportunity to serve Canada in the Senate for the past two years and would like to thank everyone who has made the Page Program such a memorable experience. Thank you, Shruti.

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

THE RENAMING OF INSTITUTIONS

Hon. Wanda Elaine Thomas Bernard: Honourable senators, I rise today to share some news of exciting changes in Halifax. After years of community advocacy to remove problematic namesakes in Halifax, I introduce to you the New Horizons Baptist Church and the Peace and Friendship Park.

Formerly known as Cornwallis Street Baptist Church, New Horizons Baptist Church is referred to as the mother church in the African-Nova Scotian community. This church recognized how harmful their namesake was to Mi'kmaq people. As pastor Dr. Rhonda Britton said:

> We don't want to contribute to people's oppression. We want a new name for the church that reflects who we are and what we stand for.

They hope that the Halifax Regional Municipality follows their lead to change the name of Cornwallis Street also.

For more than 30 years, Mi'kmaq elder Dan Paul has been lobbying for the removal of the Cornwallis statue and name in Halifax in recognition of the harm caused by celebrating people who used their positions of power in racist, dishonourable ways. The Halifax Regional Council recently removed the statue of Cornwallis and initiated a process to rename the park to Peace and Friendship Park.

Removing statues of people like Egerton Ryerson and Edward Cornwallis is not about rewriting history. It is about deciding not to idolize those who have a legacy of violence. I do not condone violence of any form. I support the safe removal of the statues and namesakes of historical figures who enacted violence such as genocide, slavery and residential schools. Their legacy continues to harm Indigenous and Black communities. This is part of a collective reckoning of the harmful and shameful parts of Canada's history.

Borrowing from Sam Cooke's civil rights protest song, "It's been a long . . . time coming, but I know a change gonna come . . . ."

• (1410)

Colleagues, change is good. I congratulate the courageous change leaders in Halifax and eagerly await more changes. *Asante*. Thank you.

THE LATE CONSTABLE SHELBY PATTON

Hon. Bev Busson: Honourable senators, I rise today to pay tribute to RCMP Constable Shelby Patton.

Last Saturday, June 12, in homes across Canada, many people woke up and contemplated a day off, enjoying time with their family and friends. In other homes, hundreds of other Canadians woke up, prepared themselves for a day shift as a police officer, kissed their spouse and family goodbye and reported for duty.

All of these brave men and women came home on Saturday night except one. At approximately 8 a.m. on that beautiful spring day in Wolseley, Saskatchewan, Constable Shelby Patton was killed in the line of duty. He was a loving husband, son and brother.

For those who have not had the privilege to serve in a police force, it's difficult to understand why people would risk their lives every day to protect the lives and property of others, often perfect strangers. For Constable Shelby Patton, it had been his dream since high school.

Before Constable Patton's six and a half years of service at Indian Head detachment, he was stationed at Parliament Hill guarding members of the Parliament and Senate. He liked to help people and say "hello." Some may have seen him on patrol or spoken to him. He was keeping us and the public safe from harm.

By all accounts, early that morning a stolen vehicle was suspected of being in the Wolseley area. Working alone, Constable Patton radioed in that he was making a traffic stop. It would be his last call. The next communication received by dispatch was from a member of the public asking for help, as an RCMP officer had been the victim of a hit and run and was in cardiac arrest. Despite desperate efforts from bystanders and ambulance attendants, his young life ended soon afterward. The offenders fled the scene and were apprehended later that morning.

I can tell you, senators, that the fear of dying in the line of duty is a nightmare that every police officer wakes up to more than once in their life. That someone will die in the line of duty is inevitable, but everyone believes that it will be someone else.

A memorial of flowers and keepsakes is growing in front of the Indian Head detachment, where the constable served for almost all of his albeit short career. Among the tributes is a poster created in a childlike fashion, which I believe describes perfectly the eulogy for all who serve as police officers. This poster reads, "He is a hero and always will be. Thank you for your service. P.S. We love you." Thank you. *Meegwetch.*

[Senator Bernard]

[*Translation*]

ELIGIBILITY TO MEDICAL ASSISTANCE IN DYING

YVES MONETTE

Hon. Pierre-Hugues Boisvenu: Honourable senators, it is with great emotion that I rise today to mark the upcoming departure of a Quebecer who, over the past few months, has become a personal friend with whom I've been sharing his final moments of life.

As part of our work on medical assistance in dying, I spoke to you a few times about this new friend of mine. Yves Monette contacted me in February 2021 when his health began to rapidly decline because of Alzheimer's. I noticed this because of the difficulty Yves was having expressing himself with his telegraphic speech. He was distraught at the fact that he was not eligible for medical assistance in dying. We know what happened next. Many sick people asked to die with dignity, but they were left out of Bill C-7.

Faced with this painful realization, Yves told me that he was going to starve himself to death or hang himself. For this man, who was a martial arts expert and who held a thousand different jobs, which were as interesting as they were varied, becoming completely dependent on a health care facility to tend to his basic needs was simply out of the question. I did not abandon my friend. I spent many long evenings talking to Yves to get to know him better and to better understand the frustration felt by all those who are unable to die with dignity.

I first met Yves about two months ago in his Montreal backyard. I wrote about our meeting on my Facebook page, and that got the attention of *La Presse* reporter Véronique Lauzon, who wrote an article on Yves, his illness and his plan to die of starvation.

Yves's story also got the attention of a doctor who specializes in his disease, Daniel Geneau. Yves met several times with Dr. Geneau and his own doctor, Laurent Boisvert. The doctors concluded that Yves was eligible for medical assistance in dying.

On April 2, Yves told me his death was scheduled for July 7. He would be surrounded by a select group of friends.

On May 25, we celebrated his sixty-second birthday, his last birthday on this earth. It was an afternoon full of love, serenity and equanimity in the face of death. More than once, Yves gazed thoughtfully at his second-floor balcony. Out of the blue, he said:

> My rope was ready, you know. The knot was a bit tight. I tied it just right. That's where you would have found me if the doctors had not allowed me to die with dignity.

All of his strong will to die was in that sentence that he casually inserted into our conversation. In a great gesture of generosity, Yves decided to donate his organs. He's happy that his death can save the lives of others, giving greater meaning to his mission.

Sure, Yves would have liked to live longer, but only while being lucid. He's very conscious of the fact that he is imprisoned in his body, which to him is like a car he has lost the keys to and can no longer drive properly. He will make his final trip with dignity, surrounded by his long-time friend, André-Anne, an extraordinary woman, as well as my partner and me.

André-Anne, know that we will always be there for you. Yves, if you are listening right now, I thank you for your trust and your friendship. You will always be in my thoughts. Safe journey, my friend. I know that your wife and daughter await you up there with open arms.

Some Hon. Senators: Hear, hear.

[*English*]

NATIONAL INDIGENOUS HISTORY MONTH

Hon. Nancy J. Hartling: Honourable senators, today I am speaking to you from my home in Riverview, New Brunswick, on the unceded territory of the Mi'kmaq people.

June is National Indigenous History Month, a time for learning about, appreciating and acknowledging the contributions First Nations, Inuit and Métis people have made in shaping Canada.

When I think about this important month, I am reminded that almost 50% of our current population never learned about residential schools during their education. This important history is sadly missing from texts.

One of the greatest gifts of being in the Senate is meeting and making friends with our Indigenous colleagues. I am grateful to each of you for your engagement, your gifts and your many important teachings about your culture and history. It has added to my understanding and appreciation of your history, your strength and your struggles.

In 1996, National Aboriginal Day was announced by then Governor General of Canada Roméo LeBlanc through the proclamation declaring June 21 of each year as National Aboriginal Day. In June 2009, the House of Commons unanimously passed law designating June as National Indigenous History Month. Both are significant, but I feel it's not enough. There are many issues that our Indigenous people still face, including racism, the lack of housing and potable water.

This month, the passage of Bill C-5 will deem September 30 a National Day for Truth and Reconciliation. Each September 30 will be a day of remembrance, especially around the residential schools, where an estimated 150,000 children were taken from their homes and sent to harsh and dangerous institutions. It is believed that there are only 80,000 survivors alive today. This statutory holiday will hopefully honour all those affected by residential schools, including their families. We will continue to wear orange t-shirts for "every child matters," but we need to do more — not just on September 30, but all year long.

Several other bills have passed recently in this place, but reconciliation has not been accomplished. The Truth and Reconciliation Commission report contains 94 Calls to Action, which have not been attained. We need to make a commitment to work toward their achievement — especially with the recent discovery of the 215 children's remains in Kamloops, B.C.

It's time, dear colleagues, to wake up, take responsibility and make a greater effort to work toward reconciliation. Reconciliation must be a way of life. It will take many years to repair damaged trust and relationships. It requires not only apologies, reparations and relearning Canada's national history, but Canadians from all walks of life are responsible for taking action on reconciliation in concrete ways, working collaboratively with Aboriginal people. Reconciliation begins with each and every one of us. Thank you. *Wela'lioq.*

DEAFBLIND AWARENESS MONTH

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, I rise today in recognition of June as Deafblind Awareness Month across Canada.

• (1420)

In 2015, the Senate of Canada unanimously adopted a motion to designate June as Deafblind Awareness Month. This would not have been possible without the support of our colleague the Honourable Jim Munson and former colleagues the Honourable Joan Fraser and the Honourable Asha Seth, whose supportive roles ensured unanimous passage of this motion.

I would also like to acknowledge the steadfast leadership and dedication of another former colleague, the Honourable Vim Kochhar, who is a true champion for the Deaf-Blind community. It was his vision and decades of tireless activism that inspired the motion. Vim is also the co-founder of Rotary Cheshire Homes, which provides housing to persons who are deaf-blind. He continued to dedicate his life to helping those in need when he founded the Canadian Foundation for Physically Disabled Persons, which provides support to persons with disabilities. In 2014, Vim Kochhar was inducted into the Canadian Disability Hall of Fame — a true testament to his lifetime dedication and service.

Honourable senators, more than 65,000 Canadians are living with deafblindness and the challenges they consequently face every day. Today we honour their strength and perseverance and celebrate their achievements. We also honour their families and all individuals who work tirelessly to support them.

"The only thing worse than being blind is having sight but no vision." These are the words of Helen Keller, probably the most well-known person who lived with deafblindness. The world-renowned Helen Keller was a heroic woman, whose courage and strength have inspired so many to believe in one's fullest potential. She was a leader and true advocate for people with physical disabilities across Canada and around the world.

Let us continue building on Helen Keller's legacy of forward social progress and collaboration to ensure that Canadians living with deafblindness have equal access to the benefits and opportunities that our country affords people with sight and hearing.

Following the unanimous adoption of the motion in 2015, Senator Munson and I began the month of June by co-hosting a special Deafblind Awareness Month reception on Parliament Hill with these everyday heroes who live with deafblindness, their dedicated interveners and supporting organizations such as the Canadian Helen Keller Centre, the Canadian Deafblind Association, the CNIB, DeafBlind Ontario Services and others.

Although we cannot gather in person this year, I invite all honourable senators to join me in support of this important community on this June day during Deafblind Awareness Month. Meeting the community certainly opened my eyes in ways I had never imagined. As Helen Keller so eloquently stated:

> The best and most beautiful things in the world cannot be seen or even touched. They must be felt with the heart.

Thank you.

INSPIRING HEALTHY FUTURES

Hon. Rosemary Moodie: Honourable senators, before I begin my statement, I want to acknowledge the pain and sorrow that continues to be felt in Kamloops and throughout our country after the discovery of the unmarked graves of 215 First Nations children. I join Canadians in calling for substantive action so that we can all understand the truths of our history so there can be true reconciliation.

As a country, we have failed our children. Today, I rise to speak to an initiative that proposes a vision for our country that places our children front and centre, to recognize the important work of the Inspiring Healthy Futures coalition, who recently published their final report.

While many Canadians are beginning to see light at the end of our pandemic tunnel as we navigate our way out of the current health crisis, we have every indication that the crisis will continue for our children. Canadian children struggled even before the pandemic. UNICEF Canada's 2020 report demonstrated that, as a country, we were failing to provide too many kids with the basics of life to ensure their health and well-being.

Recognizing this, the Inspiring Healthy Futures coalition sought to address the long-standing issues facing Canadian children and aimed to provide a recovery plan for children, youth and their families that is based on strong and comprehensive research, policy and advocacy that would accelerate progress and coordinate the work on these important issues.

Over a six-month period, they heard the voices of children, youth, parents, educators, caregivers, activists and scientists, amongst others. They spoke to over 1,500 Canadians representing a broad set of voices from across the country, asking communities questions about what children need to thrive, what the urgent needs of families are and how we can work to turn knowledge into action.

In response, they heard many well-known and enduring truths, such as the need for housing and food security and the critical need for accessible child care and enhanced parental leave policies. They heard that parents expect their children will continue to face poor mental health outcomes and would like to see mental health supports closer to home, highlighting the pressing need to transform our health care system to meet today's demands. Their recommendations include the establishment of a federal accountability officer and the use of child impact assessments because we need to understand how policies impact kids.

I want to congratulate UNICEF Canada, Children's Healthcare Canada, the Pediatric Chairs of Canada and the Canadian Institutes of Health Research for this meaningful and impactful work.

Colleagues, as you have heard me say before, every child deserves to have every opportunity to live and thrive in our country. I encourage all senators to read this report and to consider how you can make a difference. Together we can make Canada the best place to be a kid. Thank you. *Meegwetch*.

[*Translation*]

ROUTINE PROCEEDINGS

STUDY ON ISSUES RELATED TO ITS MANDATE

SIXTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE TABLED

Hon. Chantal Petitclerc: Honourable senators, I have the honour to table, in both official languages, the sixth report (interim) of the Standing Senate Committee on Social Affairs, Science and Technology entitled *The implementation and success of a federal framework on post-traumatic stress disorder (PTSD) by the Government of Canada*.

CANADA LABOUR CODE

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

Hon. Chantal Petitclerc, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, June 15, 2021

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

SEVENTH REPORT

Your committee, to which was referred Bill C-220, An Act to amend the Canada Labour Code (bereavement leave), has, in obedience to the order of reference of May 27, 2021, examined the said bill and now reports the same without amendment.

Respectfully submitted,

CHANTAL PETITCLERC
Chair

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

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

INTERNATIONAL MOTHER LANGUAGE DAY BILL

EIGHTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

Hon. Chantal Petitclerc, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, June 15, 2021

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

EIGHTH REPORT

Your committee, to which was referred Bill S-211, An Act to establish International Mother Language Day, has, in obedience to the order of reference of May 6, 2021, examined the said bill and now reports the same without amendment.

Respectfully submitted,

CHANTAL PETITCLERC
Chair

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

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

• (1430)

NATIONAL FRAMEWORK FOR DIABETES BILL

NINTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

Hon. Chantal Petitclerc, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, June 15, 2021

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

NINTH REPORT

Your committee, to which was referred Bill C-237, An Act to establish a national framework for diabetes, has, in obedience to the order of reference of June 8, 2021, examined the said bill and now reports the same without amendment.

Respectfully submitted,

CHANTAL PETITCLERC
Chair

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

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

PROTECTING YOUNG PERSONS FROM EXPOSURE TO PORNOGRAPHY BILL

SEVENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. Mobina S. B. Jaffer: Honourable senators, I have the honour to present, in both official languages, the seventh report of the Standing Senate Committee on Legal and Constitutional Affairs, which deals with Bill S-203, An Act to restrict young persons' online access to sexually explicit material.

(*For text of report, see today's* Journals of the Senate*, p. 752.*)

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

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

[*English*]

REDUCTION OF RECIDIVISM FRAMEWORK BILL

SECOND REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE PRESENTED

Hon. Gwen Boniface, Chair of the Standing Senate Committee on National Security and Defence, presented the following report:

Tuesday, June 15, 2021

The Standing Senate Committee on National Security and Defence has the honour to present its

SECOND REPORT

Your committee, to which was referred Bill C-228, An Act to establish a federal framework to reduce recidivism, has, in obedience to the order of reference of Thursday, May 27, 2021, examined the said bill and now reports the same without amendment but with certain observations, which are appended to this report.

Respectfully submitted,

GWEN BONIFACE
Chair

(*For text of observations, see today's* Journals of the Senate*, p. 754.*)

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

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

[*Translation*]

INCREASING THE IDENTIFICATION OF CRIMINALS THROUGH THE USE OF DNA BILL

BILL TO AMEND—FIRST READING

Hon. Claude Carignan introduced Bill S-236, An Act to amend the Criminal Code, the Criminal Records Act, the National Defence Act and the DNA Identification Act.

(Bill read first time.)

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

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

POST-SECONDARY INSTITUTIONS BANKRUPTCY PROTECTION BILL

FIRST READING

Hon. Lucie Moncion introduced Bill S-237, An Act respecting measures in relation to the financial stability of post-secondary institutions.

(Bill read first time.)

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

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

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF GOVERNMENT'S RESPONSE TO THE COVID-19 PANDEMIC

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

That, notwithstanding the order of the Senate adopted on Thursday, June 3, 2021, the date for the final report of the Standing Senate Committee on Social Affairs, Science and Technology in relation to its study on the government's response to the COVID-19 pandemic be extended from June 18, 2021 to December 17, 2021.

[*English*]

QUESTION PERIOD

FOREIGN AFFAIRS

MANDATORY QUARANTINE

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question is for the government leader in the Senate. Leader, last week the Trudeau government announced quarantine rules that will soon be relaxed for Canadian citizens returning from abroad if they are fully vaccinated with a Health Canada-approved COVID-19 vaccine. France is now allowing tourists to enter its country without quarantine if they are fully vaccinated with one of the four vaccines approved by the European Union. According to media reports, leader, Canadian and American officials are meeting today to discuss how to lift border restrictions between our two countries.

As you said to Senator LaBoucane-Benson last week, leader, and let me quote you, "This is an easy question. A simple 'yes' or 'no' would suffice."

• (1440)

Leader, let me ask you an easy question, and a "yes" or "no" answer will suffice: Since AstraZeneca is not authorized for use in the U.S., will Canadians vaccinated with AstraZeneca be allowed to enter the U.S. without quarantine?

Hon. Marc Gold (Government Representative in the Senate): Thank you very much for your question.

Were it an easy question to answer, I could easily give you a "yes" or "no." The truth is that I don't know the answer to the question. I know discussions are under way. Canada is taking — and properly so — a prudent and cautious approach in these matters to ensure that Canadians' health is protected.

I'll make inquiries, senator, and I would be glad to report back to the chamber.

Senator Plett: Thank you for that, leader, and I trust that will happen fairly quickly.

According to the Government of Canada's information, as of June 5 over 2.1 million Canadians have received at least one dose of either AstraZeneca or the COVISHIELD version of that vaccine. Many of those 2.1 million Canadians are looking forward to travelling to the U.S. without quarantine for business purposes and to reunite with family and loved ones. They deserve clarity, leader, sooner rather than later, on how the lifting of border quarantine restrictions may or may not impact them.

Leader, when does your government expect to tell Canadians who have received AstraZeneca whether quarantine restrictions will be lifted for them upon entering the United States?

Additionally, perhaps you can tell us, leader, when you will report to this chamber regarding those two questions.

Senator Gold: Senator, it's an important question, and Canadians who have received those vaccines are obviously eager and anxious to know what different rules might apply to them.

I can report on a daily basis, but the truth — and the more helpful answer — is that as soon as I have the answer, which I have undertaken to ascertain, I will report it.

VIEWS OF LIBERAL PARTY MEMBER

Hon. Linda Frum: Senator Gold, last week MP Jenica Atwin left the Green Party and was warmly embraced into the Liberal Party fold. In justifying her floor crossing, Ms. Atwin cited her differences with the Green Party's leadership over that party's position on Israel. She called the Green Party's statement on the Israel-Palestinian conflict, which had called for a de-escalation of violence on both sides, totally inadequate. At the same time, she called Israel an apartheid state, which is, I know you agree, a slander steeped in hate.

On *CTV*'s "Question Period" on Sunday, Ms. Atwin revealed that many members of the Liberal caucus share her maligned views on Israel and that they also consider Israel an apartheid state. Then, yesterday, she reversed herself and issued a statement that was more in line with the one she had rejected from the Green Party, which had prompted her to leave in the first place.

Senator Gold, Ms. Atwin's hateful views toward our ally and the world's only Jewish state were well known by Minister LeBlanc when he began courting her to join the Liberal government. Given this, why was she welcomed into the government that you represent?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question.

I think the member of Parliament issued a statement that acknowledged that she was not an expert in the area and she expressed regret for her statements. The party welcomed her into its fold, and it welcomes a diversity of opinions.

The position of Canada is clear, senator, as is mine. As a representative of the Government of Canada, it is clear that the position of this government is that Canada supports a two-state solution and the right for Israel to live in security. It applauds efforts toward peace. Indeed, the new government in Israel is a perfect example of how diverse the democratic political culture in Israel is. In that regard, the Government of Canada — or more accurately, the Liberal Party — has a diversity of views within it and has welcomed this member into its ranks.

Senator Frum: Senator Gold, why didn't your party demand that Ms. Atwin retract her apartheid slur before she joined your party? Had she said something hateful about the gay or Muslim communities, do you believe she would have been allowed to join your party without retracting her harmful statements beforehand?

Senator Gold: At the risk of being pedantic, I represent the government in the Senate. I'm not a member of the Liberal Party.

As for the decision of the party to accept that member and under what circumstances, those questions should properly be directed to the Liberal Party.

[*Translation*]

JUSTICE
FINANCE

CANADA'S COMMITMENT TO THE FIGHT AGAINST HIV/AIDS

Hon. René Cormier: My question is for the Government Representative in the Senate.

Senator Gold, last week, the United Nations adopted the Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030.

The declaration establishes targets of 95-95-95 by 2025 and reiterates the urgency of taking action against discrimination, inequality, criminalization and exclusion faced by people living with HIV and key populations. Canada's support for this declaration demonstrates our commitment to this file.

That said, in Canada, inequality and discrimination remain pervasive among key populations, mainly because of the criminalization of HIV non-disclosure.

What steps does the government intend to take in the short term with respect to the criminalization of HIV non-disclosure?

How will the government honour its commitments relative to this declaration knowing that we did not meet our targets of 90-90-90 for 2020?

Hon. Marc Gold (Government Representative in the Senate): Thank you for raising this issue, honourable senator.

The government is committed to reducing the stigma and discrimination faced by people living with HIV or AIDS. The government knows that excessive criminalization can lead to an increase in infection rates because it deters Canadians from having an HIV test and seeking treatment.

That is why, in December 2018, the Attorney General of Canada issued a directive regarding prosecutions of HIV non-disclosure cases. According to this directive, prosecutions of HIV non-disclosure cases must be based on the most recent scientific evidence and the realistic possibility of transmission.

Senator Cormier: Senator Gold, in this political declaration, the signatory states welcome the steady increase in domestic HIV investment. Organizations here have been urging the federal government to increase its investments for years, but their requests remain unanswered, even in Budget 2021.

When will the Minister of Finance and the Minister of Health meet with these organizations to listen to their concerns and increase funding to $100 million per year specifically for HIV/AIDS, as they have been calling for?

Senator Gold: Once again, I thank the honourable senator for his question.

From the government's perspective, Canada's efforts to detect and treat HIV have made it possible for most people living with HIV in Canada to know their status and receive proper treatment.

I'm not sure which groups have asked to meet with the ministers, but I'll be sure to raise the matter with the government.

Senator Cormier: Thank you.

JUSTICE

CONSULTATIONS THAT PRECEDED AND FOLLOWED THE TABLING OF BILL C-15

Hon. Julie Miville-Dechêne: My question is for the Government Representative in the Senate.

We learned through a leak that the Government of Quebec is one of six provincial governments that called on Prime Minister Trudeau this spring to make significant changes to Bill C-15 before it is passed.

In this letter, Premier Legault and the other provincial premiers indicated that this bill encroaches on provincial jurisdictions; that the implementation of the concept of free, prior and informed consent from Indigenous peoples is potentially disruptive; and that there is ambiguity around the potential sharing of natural resource revenue.

How did the federal government respond to these concerns, which, I should point out, are not my concerns, but which do not bode well for the future?

• (1450)

Hon. Marc Gold (Government Representative in the Senate): I thank the honourable senator for her question. I can assure you, before the senators in this chamber, that the Government of Canada is committed to the provinces and territories and that it will continue to work with them to develop the action plan set out in Bill C-15 once this bill is passed, which I hope will happen soon, in the same spirit of cooperation the government has shown so far.

Senator Miville-Dechêne: My question had more to do with how you responded to the six provinces that signed this letter about the three main issues that I told you about. Did you address their concerns, and what specific place will be accorded to the provinces in the development of the action plan that, consequently, must first be developed by the federal government and Indigenous peoples? Where do the provinces fit into this?

Senator Gold: Thank you for your question. According to the information I have, the Prime Minister responded to the premiers, and I can say here in this chamber that according to the proposed action plan, which will be the result of a collaboration between the Canadian government and Indigenous peoples, there will certainly be a place for provincial and territorial government representatives.

[*English*]

PRIVY COUNCIL OFFICE

QUESTION PERIOD

Hon. Douglas Black: Honourable senators, my question is also for the Government Representative in the Senate. Senator Gold, I sent you a letter on June 1 of this year citing research that

had been done for me by the Library of Parliament and my office, which illustrated the lack of timely and, in many cases, the lack of any answers to senators' questions during Question Period. A quick point of reference: In 2020, Senator Gold, of all of the questions that you deferred, only 33% of those questions have been answered to date, with an average return time of 6.58 sitting weeks.

As I mentioned in my letter, Senator Gold, which was circulated to all senators, I do not attribute criticism to you or your office because I believe that you are doing the best that you can. However, it is up to you and your office to ensure that senators' questions are answered on a timely basis. We ask these questions because they're relevant to public policy in Canada or to the interests of our constituents. We shouldn't have to wait months for answers, if we get them at all, senator.

I asked in my letter and I'm asking you again today, Senator Gold: Is there anything we can do to assist you in underlining to the government that our questions matter? Please let us know what we can do in that regard, Senator Gold.

Hon. Marc Gold (Government Representative in the Senate): Thank you very much for your question. Everybody's questions deserve an answer. Thank you for recognizing that we are indeed doing our very best to provide that. I think the regular reminders to this chamber, and through me to the government, that you expect answers in a more timely fashion is of some help to me in doing my part to ensure that you get timely answers.

Senator D. Black: I thank Senator Gold for that response. Senator Gold, if we can assist you in putting pressure where it needs to be, please let us know because we're being a bit hamstrung here.

INTERNATIONAL TRADE

MONEY LAUNDERING AND ART THEFT

Hon. Patricia Bovey: This question is for the Government Representative in the Senate. Senator Gold, contrary to my norm, today I want to ask about the art world's dark side: art theft and illicit trade.

On June 9, the international *The Art Newspaper* posted an article noting that:

> . . . all "art market participants" must register with the UK's HMRC for anti-money laundering supervision before this Thursday, 10 June. Those who fail to do so risk civil penalties or criminal prosecution under the European Union's 5th Money Laundering Directive (5MLD), designed to combat financial crime and terrorist funding.

Canadian police departments and INTERPOL have long diligently investigated art thefts and the illicit movement of cultural property. Having sent visual arts leaders weekly information on stolen works of art for years, I learned today that INTERPOL has now launched an app to identify stolen art — a too-frequent occurrence. Many pieces from bombed and defaced international historic sites are now reaching art markets. What new steps are being taken by our government to combat illicit import and sales of cultural property, particularly with the increased role of the internet in art crimes?

Hon. Marc Gold (Government Representative in the Senate): Senator, thank you for raising this question. With regard to money laundering, the government knows that this is not a victimless crime, so the government has invested hundreds of millions of dollars for the Royal Canadian Mounted Police, or RCMP, for the Financial Transactions and Reports Analysis Centre of Canada and Canada Revenue Agency to tackle money laundering. For example, the RCMP recently launched new integrated money laundering investigative teams, which will provide additional officers in the provinces of Alberta, Ontario, B.C. and Quebec. On the specific issue of the illicit art market, thanks to your advanced notice I have made inquiries with the government. However, I have not yet received the information that you requested.

Senator Bovey: I want to thank you, Senator Gold. Just as an aside, I found it interesting that, years ago, the RCMP in B.C. had more people with art history PhDs than all universities and galleries put together.

The Canadian Cultural Property Export Review Board is doing excellent work in issuing export and import permits. Can you assure this chamber that Canada's border control agents are aware of the regulations and routinely call designated expert examiners across the country to assess questionable shipments?

Senator Gold: Thank you, senator. I did also inquire about this, as you had kindly provided me advanced notice of the question, but I have not yet received an answer.

Senator Bovey: Thank you.

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

ACCESS TO HIGH-SPEED BROADBAND NETWORKS

Hon. Dennis Glen Patterson: Senator Gold, on June 2, Senator Ataullahjan asked you a question regarding the Canadian Radio-television and Telecommunications Commission's recent stunning reversal of its 2019 decision on wholesale rates for smaller operators. I noted your answer did not seem to address the urgency being felt by Canadians who are anxious to keep their internet bills from rising again. As you know, internet has been acknowledged as a basic human right and Canada is in the top five for the highest costs in the world for internet.

Senator Gold, we're rushing bill after bill in the Senate because your government insists that bills will die on the Order Paper if they are not passed without amendment. I'm guessing that means we can expect to go to the polls soon. Will your government apply the same sense of urgency we're getting on legislation to meeting its promise in the last election to lower internet rates for Canadians by responding immediately to the petition from TekSavvy filed on May 28 to the Governor-in-Council to reverse that invidious decision?

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator. You must allow me to gently and respectfully disagree that we are rushing legislation and I don't know when, nor does anyone else, when we may go to the polls. But let me answer your question.

The COVID-19 pandemic crisis has certainly underlined to Canadians how crucial it is to have a strong, reliable network in place and how significant and important it is for Canadians' well-being. The government continues to support competition to lower prices while at the same time working to improve the equality and increase the coverage of telecom services in Canada. In that regard, the government is committed to ensuring that Canadians pay fair prices for reliable services in that regard. The government will continue to work with telecoms, service providers and industry partners to drive investment in this area and to make telecommunications services more affordable.

• (1500)

Senator Patterson: Senator Gold, reversing the requirement of granting wholesale prices to the small competitors, the small operators, by the big telcos, is certainly widely seen to be a way of supporting competition to lower prices — a goal your government stands for, apparently.

The Chairperson of the CRTC is a Governor-in-Council, or GIC, appointment. We've just read an alarming report in the *Toronto Star* that the CEO of Bell Canada met with Chairperson Scott for a beer, days after Bell appealed the 2019 decision. Two previous chairpeople explained in that same article how meeting in a bar without third parties, such as general counsel, would, quote, "fall into the category of high-risk behaviour."

Meanwhile, the Commissioner for Nunavut wouldn't even accept a phone call requesting answers to my general questions regarding current CRTC initiatives in process.

Senator Gold, seeing as Mr. Scott is a GIC appointment, does your government condone this type of behaviour and the easy access that records show he gives to big telcos, which has led to a strong perception of bias and favouritism toward the people lobbying him the most?

Senator Gold: Honourable senator, thank you for bringing this situation to our attention. I'm not aware of the details of the incident, although I'm sure the government is properly seized with it.

I would note, however, that part of the government's commitment to ensuring fair prices for reliable telecom services includes working with service providers and industry partners, as I said a moment ago, to drive investment and to make telecommunication services more affordable.

PUBLIC SAFETY

ANTI-MUSLIM EXTREMISM

Hon. Salma Ataullahjan: Honourable senators, my question is for the government leader in the Senate.

Senator Gold, last week's horrific accident shook Canadians to their cores. The streets in major cities all over Canada saw vigils and marches demanding an end to hate, racism and Islamophobia. Can you please outline for me the concrete steps your government will take to combat Islamophobia and make Muslim Canadians feel safe again?

Hon. Marc Gold (Government Representative in the Senate): The Government of Canada deplores not only the tragic incident to which you refer but the rise of hate-motivated crimes against members of the Muslim community, and other communities, who for far too long have been the victim of intolerant and hate-motivated behaviour.

The government is working with leaders in the Muslim communities to support them in their efforts. It is also working with provinces, who in turn are working with municipalities and not-for-profit organizations. This is not simply a whole-of-government challenge but a whole-of-society challenge in which the government is committed to playing its part.

Senator Ataullahjan: Senator Gold, in 2018, the Standing Committee on Canadian Heritage report on systemic racism, religious discrimination and Islamophobia contained almost no recommendations on combatting Islamophobia. Three years later, while Islamophobic sentiment has continued to increase, even those few recommendations have not been implemented. I know there is talk of holding a conference on Islamophobia, maybe in July. Some Muslims have communicated to me their fear and their frustration regarding the lack of actions taken by this government. How will this conference be any different? How are you going to commit to protecting Muslims in their communities and their places of worship?

This is what Muslims are asking me. What will the government do, since the Liberals claim to be such strong friends of Muslims? So far we have not seen them do anything for the Muslims. Can you please answer my question?

Senator Gold: I will do my best to answer your question, Senator Ataullahjan. I don't have the details of the conference. I'm hoping, as we all hope, that the conference will bear fruit and be a positive step in improving situations for the communities here in Canada.

The federal government has a role to play but so, too, do other levels of government and civil society. The legal framework in Canada, and indeed in the provinces — governing hateful behaviour, actions and words, as well as the use of prosecutorial

discretion at the provincial level, human rights tribunals at the provincial level and so on — are all parts of the solution to this important and multifaceted problem.

[*Translation*]

HEALTH

ADVERTISING DIRECTED AT CHILDREN

Hon. Chantal Petitclerc: Senator Gold, my question concerns the inadequate measures intended to protect our children against advertisements for unhealthy food products.

We are all, of course, familiar with the negative impacts of junk food marketing. We all debated it at length here in 2018, during the study of Bill S-228, which, by the way, received enormous support from your government.

I raise this subject with you today because the British government announced on May 11 that it would take advantage of its post-pandemic recovery to fight obesity. Among other things, by 2022, junk food ads will be banned online and will not be permitted to air on television before 9 p.m. It is an ambitious plan that reminded me that Canada hasn't really made progress on this important file.

Senator Gold, could you tell us whether the government still plans to adopt strict restrictions concerning the marketing of unhealthy foods and beverages to children? It's a commitment that has been part of the mandate letters of health ministers since 2015.

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. I will try to answer in two parts.

First, when it comes to marketing to children, I was told that the government has promised to ban the marketing of unhealthy food to children because it is fully aware that the food children eat will influence their diet in the future. The government also knows that banning the marketing of unhealthy food to children will help in the fight against childhood obesity, diabetes and other health problems.

I did not get any details regarding the implementation of this policy, but I will let senators know when I have any updates.

If I may, I would like to talk about another aspect. The government has promised to promote healthy eating. I learned that, as part of Health Canada's healthy eating strategy, the department proposed the introduction of front-of-package labelling regulations for pre-packaged foods that are high in sodium, sugar and saturated fats, which are associated with a higher risk of chronic disease. After extensive consultation, consumer research and a *Canada Gazette* publication process, the final regulations on front-of-package nutrition labels take into account the comments received and are ready to be published in the *Canada Gazette*, Part II.

[*English*]

ORDERS OF THE DAY

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES BILL

THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator LaBoucane-Benson, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I rise today to speak to Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples. I want to start my speech by outlining that the Truth and Reconciliation Commission in its Call to Action No. 53 asked for the creation of a national council for reconciliation.

Part of the mandate of the council would be to promote public dialogue on reconciliation. Now, I stress the word "dialogue." Throughout its report, the TRC calls for respect — respect and dialogue. I agree 100% with that. Reconciliation will be a long journey, and it may be painful at times. But it will be a lot more painful for all of us if we do not have both of those elements: dialogue and respect. Questioning the path to reconciliation as proposed by the government or other individuals and organizations should not be accompanied by accusations of racism.

• (1510)

Colleagues, I want to reflect on something: Is the cause of reconciliation better served by accusations against anyone who happens to disagree with the echo chamber, or is reconciliation actually furthered by dialogue and respect?

I believe that Senator McCallum accepts and understands that time is required to build true dialogue and respect. She did not succumb to the government's demand that this bill be passed immediately and without amendment. There has been absolutely no need to rush this bill just to end up with an imperfect result in the process.

In fact, when I listened to Senator McCallum, I believe that she understood that a rushed, bad bill is far worse than a more thoughtful bill where the implications of specific legislative provisions are clearly understood.

We may disagree on what constitutes the best bill for Canada when it comes to the implementation of the United Nations declaration. But I do believe that we agree that we should understand the full implications of what we are doing when we pass legislation.

Colleagues, two years ago, the Conservative caucus fought tooth and nail against Bill C-262, a private member's bill that was similar in nature to Bill C-15. The main reason for our opposition was that we thought such a bill should be presented by the government and that ministers and officials should have to testify in committee about the impact of such a bill. Liberal ministers and officials, colleagues, refused an invitation to testify on Bill C-262, leaving senators in the dark about the potential impact of the bill. Forcing the government to table its own bill had the advantage of at least trying to force ministers and officials to clarify their interpretation of the bill and its impacts. The government's intent is particularly important in relation to Bill C-15.

I recognize this bill has taken on symbolic importance for many people, particularly within our Indigenous communities. I believe that very sincere people see this bill as providing new hope for reconciliation with our Indigenous peoples. Their position is entirely understandable.

However, I fear that their hopes may not be realized. I know that many people want this bill to usher in a new era for Indigenous people and for reconciliation in Canada. But when we look at what witnesses who appeared before the Standing Senate Committee on Aboriginal Peoples said, I fear that this is probably unlikely to be the case. Now that the government has been forced to describe the real impact of the bill, we can see it for what it is. At best, it constitutes a list of aspirations that will create disappointment and frustration. At worst, it is a list that indicates where future areas of conflict are likely to arise.

Furthermore, when we look at what the majority of provinces have told the Prime Minister directly, expectations that the government has created with this bill seem unlikely to be realized.

The government, of course, has a different position. We have heard government ministers loudly proclaiming that this bill will usher in a new era of reconciliation and cooperation with Indigenous people. In that regard, I want to read some of the comments that Minister Lametti made on the bill at second reading in the other place. The minister described the bill as part of:

> . . . broader work to make progress together on our shared priorities for upholding human rights, affirming self-determination, closing socio-economic gaps, combatting discrimination and eliminating systemic barriers facing first nations, Inuit and Métis peoples.

Those are extremely broad objectives. But, of course, the minister went further in saying that the bill also acknowledges:

> . . . the importance of the declaration as a framework for reconciliation, healing and peace; recognizing inherent rights; acknowledging the importance of respecting treaties and agreements; and emphasizing the need to take diversity across and among indigenous peoples into account in implementing the legislation.

And that:

> By mandating a collaborative process for developing a concrete action plan on these and other human rights priorities, we should see an improvement in trust and a decrease in recourse to the courts to resolve disputes over the rights of indigenous peoples.

These are very broad and far-reaching objectives coming from a government that spent nearly $100 million fighting First Nations in court from 2015 to 2018. Just based on that reality, there is a profound disconnect with what the government is proclaiming versus what it is actually doing. Based on that, it is probably understandable that we have to question the sincerity of the minister's words.

Then there is the matter of the government's consultation record in relation to this bill and, quite frankly, other bills. The minister has claimed that the government has consulted broadly on this bill. This is pivotal since future consultation and collaboration is obviously a key pillar to Bill C-15's proposed action plan. On that basis, we should expect that adequate consultation would be a key pillar of the process leading to the bill itself.

The minister naturally claimed that consultation on the bill was extensive. He specifically said that the bill:

> . . . was the result of our collaboration and consultation over the last several months with indigenous rights holders, leaders and organizations. . . .

He said that the government, ". . . worked closely with the Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis National Council."

He also said:

> We also received valuable input from modern treaty and self-governing nations, rights holders, indigenous youth, and regional and national indigenous organizations, including organizations representing indigenous women, two-spirit and gender-diverse people.
>
> All of this feedback helped shape this proposed legislation, and we thank everyone who participated. We also held talks with the provincial and territorial governments, as well as with stakeholders from the natural resources sector.

But here is the problem, colleagues: What our Aboriginal Peoples Committee heard from witnesses in relation to consultations is inconsistent with what the government itself has claimed. For one, our committee heard that, in fact, most rights holders have not been consulted with on this bill. In Western Canada, witnesses from Treaties 6, 7 and 8 all referenced insufficient consultations on this bill, insufficient federal respect for rights holders and for bilateral treaty relationships.

The Association of Iroquois and Allied Indians argued that there was no proper consultation with rights holders in Ontario on this bill. Douglas Beaverbones, Chief of the O'Chiese First Nation, said the following:

> The symbolism of the C-15 legislation does not provide us with the assurance that the rights and entitlements inherent in the treaty relationship will be fully recognized.

• (1520)

He went on to say:

> Bill C-15 will create yet more tables, more process, and even more distance from the Crown and our people. This means it will be meaningless at the . . . grassroots level.
>
> Canada must understand that the Assembly of First Nations is not a treaty rights holder. The people in my nation are. Free, prior and informed consent from them is the UNDRIP standard, not Perry Bellegarde. No one has asked my people for their free, prior and informed consent for the proposed legislation.

The sponsor of this bill here in the Senate often, very loudly and proudly, proclaims that she comes from Treaty 6 territory. This is what the Confederacy of Treaty Six First Nations says in relation to the consultations:

> It is clear to the Confederacy of Treaty Six First Nations that Canada failed on all fronts with respect to this definition of Free, Prior, and informed Consent provisions of UNDRIP. The government of Canada did not meet any of the criteria of FPIC. Not even a minimum standard.

In her remarks on this bill at third reading, Senator LaBoucane-Benson provided a long list of Indigenous people who supported the government's bill. But what about all the rights holders who do not support the bill? What is the value of their free, prior and informed consent? Why does it seem that only the free, prior and informed consent of those who agree with the government truly matters?

The reality is that a large number of rights holders spoke to our committee about the inadequate consultations, and senators from all groups have actually acknowledged that this is a serious problem.

For instance, Senator Coyle — I want to give her full credit — told Minister Lametti and Minister Bennett this when they appeared at committee on the final day that witnesses were heard. She said:

> We have heard a lot of positive feedback over the last few intense days of testimony for Bill C-15. . . .
>
> That doesn't mean, however, that we don't need to pay a lot of attention to those who have real concerns. We have heard concerns from rights bearers about treaty rights but also about the whole consultation process. We've heard about a lot of mistrust.
>
> We have heard from the resources sector about their concerns about this bill exacerbating the already difficult environment, lack of clarity, et cetera, for the resources sector. . . .

So I think every senator who sits on our Aboriginal Peoples Committee will likely have to acknowledge that there are some grave doubts about whether Bill C-15 will actually usher in the new era of reconciliation and consultation that the government is claiming it will.

If we were to summarize, the government, in essence, claimed several things in relation to this bill. First, it has claimed that the bill will usher in a new era of reconciliation; second, it is claimed that there will be more certainty and less litigation on Indigenous issues; third, it asserts that the government consulted widely, including with rights holders, with industry and with the provinces.

What about those consultations with the provinces? What about the views of people from Canada's resource sector and First Nations working in tandem with our resource sector? What are their perspectives?

We do know that one province, British Columbia, is supportive. But Arlene Dunn, the Minister of Aboriginal Affairs from the Province of New Brunswick, appeared before our committee on this bill, and she quite clearly acknowledged:

> That Indigenous peoples have rights in Canada, both individually and collectively, is not in dispute. Section 35 of the Constitution of Canada explicitly recognizes and affirms existing Aboriginal rights as well as treaty rights. . . .

No one disagrees with that. But with specific reference to Bill C-15, the minister also said the following:

> But Bill C-15 would, in our view, create new rights not contemplated in our Constitution, which would be detrimental to the long-term growth and prosperity of Canada. Our concern is that this legislation would create an absolute veto on economic development for one group without consideration to the interest of other members of Canadian society.

That is the analysis the Government of New Brunswick provided to our committee. It may not be everybody's view, but we have a duty to not simply ignore it. It is, after all, our job, under the Constitution, to exercise sober second thought. Those are not simply nice-sounding words. I believe we have a duty to actually act on them from time to time.

The larger problem is that the views of New Brunswick are, in fact, widely shared among most provinces. In fact, six provinces — Alberta, Ontario, Quebec, Saskatchewan, Manitoba and New Brunswick — have written to the Prime Minister expressing their concerns over Bill C-15. These are provinces that the government widely consulted with. In their letter to the Prime Minister, these premiers stated:

> We feel that the federal government has not properly addressed our concerns nor adequately engaged with us —

— Interesting —

> — or Indigenous communities and organizations regarding this legislation. Each of our provinces has taken positive steps to advance reconciliation and prosperity with Indigenous peoples in our respective jurisdictions. To date, your approach on the passage of Bill C-15 is contrary to the principles of cooperative federalism, which require meaningful and substantive engagement with the provinces. Engagement on this draft legislation has been insufficient and unresponsive to provincial concerns. . . . Bill C-15, as drafted, is problematic and will have significant and far-reaching consequences for both the federal government and the provinces and, potentially, Indigenous populations.

The letter from the six premiers argued that Bill C-15 risks replacing the known framework of current jurisprudence with "decades of further legal uncertainty, threatening investments and further progress on reconciliation."

We need to take this very seriously. To repeat the phrase used in the premiers' letter, it is "decades of legal uncertainty."

Honourable senators, who will pay the price for that? Certainly not lawyers like Minister Lametti, not well-funded national Aboriginal organizations and not the academics in our universities and in the Senate of Canada who support this bill. No. Likely, the first to pay the price will be ordinary Canadians, including Indigenous Canadians, who depend on project certainty for their jobs and their livelihoods.

What premiers have warned the Prime Minister is all the more worrying because the warning was repeated at committee by witnesses representing Canada's resource sector.

Brian Schmidt is the President and Chief Executive Officer of Tamarack Valley Energy. When he appeared before committee, he stated that the resource industry and Indigenous people have the same interests when it comes to responsible development. He said development is the foundation of prosperity for Indigenous peoples.

This was confirmed by Dale Swampy, who is from the Samson Cree Nation in Alberta and President of the National Coalition of Chiefs. Mr. Swampy said:

> . . . the Indigenous community in Canada is experiencing a crisis in poverty. Poverty has destroyed most of our family structure, a structure that has made us a proud community. The loss of our family structure has made us reliant on a social welfare society. . . .
>
> The NCC believes that poverty within our community has created these social ills, and the only way to cure these ills is to defeat poverty. . . . The best way to get employment is through our largest industry in Canada, our natural resource industry. . . .

• (1530)

I know there are senators in this chamber who may be under the illusion that we can do without our resource sector. However, the reality is that this sector accounts for 10% of Canada's GDP and directly employs nearly 300,000 people. Indirectly, the sector supports more than half a million Canadian jobs. Many of these workers come from Canada's Indigenous communities.

This sector is not going anywhere. Royalties and taxes from this sector sustain our social programs. The last thing we should be doing as a country is to possibly create more uncertainty for the sector. Yet, according to witness testimony, this is precisely what Bill C-15 may do.

This is what Brian Schmidt further said:

> . . . Bill C-15 as proposed will create more uncertainty for our industry and for resource development as a whole in Canada. This will mean that we cannot attract investment from the capital markets and that good projects worth billions of dollars will not proceed. . . .
>
> When every industry association — hydro, mining, electricity, forestry, as well as petroleum — tells you that a piece of legislation is going to have negative implications for investment, at least listen to our concerns.

Mr. Schmidt echoed the call from the six provinces that reasonable amendments would clear up this uncertainty. Yet, the government refuses to accept any such amendments even though Minister Lametti has himself claimed that there is no intent on the part of the federal government to overturn existing jurisprudence around the duty to consult and accommodate.

At the Standing Senate Committee on Aboriginal Peoples, very reasonable amendments proposed by my colleague Senator Patterson were again rejected by the majority of the government-appointed committee members. This failure to provide clarity carries a serious risk. The risk is for the resource sector, for Indigenous communities who depend on the resource sector and for Canada as a whole.

Shannon Joseph, Vice President of Government Relations and Indigenous Affairs of the Canadian Association of Petroleum Producers, also appeared before our committee. She, too, was quite clear on what the consequences could be. She said:

> We support the goal of facilitating and expanding Indigenous involvement and resource development as part of economic reconciliation. But legislation that is ambiguous will make this participation more difficult, and it will lead investors to move their capital to environments that enable all parties to understand their obligations and how to fulfill them adequately and in a timely manner.

Why on earth would any of us want to risk such an outcome? I believe that if we allow this bill to go through as is, we will have failed our core responsibility as senators. As senators, we have a clear obligation to speak for minorities as well as for our regions

and our provinces, colleagues. I submit that if there was ever a time for sober second thought, instead of just blind ideological compliance, it is on this bill.

What I fear, and what I think the evidence shows, is that the government is rolling the dice with this bill.

Government officials privately told our party's critic of this bill, Senator Patterson, that the bill means nothing — that it only obligates the government to produce an action plan and this does not even require the consent of Indigenous people to finalize that plan. Perhaps those officials are correct. If those officials are correct, then the statements that the government ministers have made will simply raise expectations only to see them dashed.

Imagine the consequences that will flow from the disappointment generated when the government consults on the action plan in exactly the same way it has consulted on this bill. Imagine the reaction if it actually attempts to finalize the action plan without securing the consent of rights holders. I think we all know that such an outcome is extremely likely, given the way in which the government consulted on the bill itself.

Does anyone seriously believe that this government will now suddenly consult broadly with rights holders and will finalize an action plan in only two years — that it will meet the expectations of those rights holders?

It did not do that on this bill. It did not do that even on a very focused issue like the Missing and Murdered Indigenous Women and Girls action plan. It is, to say the least, wishful thinking that it will now suddenly occur in relation to the action plan called for in this bill.

On the other hand, what happens if the concerns raised by the rights holders before our committee, and the concerns expressed by our provinces that wrote to the Prime Minister, turn out to be right? What if prolonged uncertainty, litigation and loss of investment result from this bill? In that case, Indigenous communities who depend on development will be the first to suffer the consequences. How is such an outcome in anyone's interests, let alone in the interests of ordinary Indigenous people?

Colleagues, the consultations on this bill have clearly been inadequate. There is no question that there is considerable uncertainty around various components of this bill. A majority of the provinces are opposed to it. Many rights holders have not provided their consent to a bill that ironically emphasizes free, prior and informed consent.

Colleagues, for these reasons, I believe this bill should be rejected. Given the consequences of proceeding, I urge all other senators to reject it as well.

We need to tell the government to start over and this time to actually proceed in a collaborative, responsible and inclusive fashion. I fully recognize that renewed discussions would be far from easy, but they might at least start from a position of openness, honesty, dialogue and respect.

I think it might be appropriate, colleagues, if on this legislation I close for the first time with thank you and *meegwetch*.

Hon. Mary Coyle: Honourable senators, I rise today to speak from Mi'kma'ki, the unceded territories of the Mi'kmaq people, in enthusiastic support of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.

Two years ago, I rose to speak in support of a similar bill, Bill C-262, which had been introduced and championed by former member of Parliament Romeo Saganash. I was honoured at that time to be a member of the Standing Senate Committee on Aboriginal Peoples, then chaired by our esteemed former colleague Senator Lillian Dyck. I am now honoured to be a member of the same committee, capably chaired by my Nova Scotia colleague Senator Dan Christmas.

On that day two years ago, many of us had attended an historic smudging ceremony in the then new Senate Chamber, graciously conducted by Algonquin elder Claudette Commanda. At that smudging ceremony, elder Commanda gently, and firmly, reminded each of us to use our wisdom, courage, love and strength to work with each other, and with kindness, for the benefit of all peoples of Canada.

• (1540)

Colleagues, I am pleased to report that, two years after my deep disappointment and shame at this upper house not allowing the former UNDRIP-related bill to come to a vote after having passed in our committee, I was so pleased to see how respectfully, wisely and cohesively our Aboriginal Peoples Committee worked together to bring you Bill C-15 — unamended but well vetted and with observations.

In my speech of two years ago I said:

> We have already heard from our own in-house Indigenous rights expert, legal scholar truth teller and reconciliation seeker, Senator Sinclair, on the importance of this bill, its historical background and the strong case for getting on with righting the centuries of wrongs our country and its citizens have committed against First Nations, Metis and Inuit peoples of Canada. And, of course, the case for them moving forward with a new relationship based on mutual respect.

While we sorely miss our former colleague Senator Sinclair, we are fortunate to have our dedicated colleagues Senators LaBoucane-Benson and Patterson acting as sponsor and critic, respectively, on Bill C-15.

As we have heard, it wasn't until 1982 that the international community formally established the Working Group on Indigenous Populations to develop the minimum standards that would protect Indigenous peoples and their rights. It is estimated that there are 370 million Indigenous people, from 5,000 groups, living in 90 countries worldwide, with approximately 1.7 million of those people living here in Canada.

The UN declaration defines the minimum standards necessary for the survival, dignity and well-being of Indigenous peoples of the world. The international community saw the adoption of an Indigenous-specific human rights instrument as necessary. We know that Indigenous people still live with the consequences of colonialism and there is an ongoing struggle to have some of their most basic human rights respected — including in Canada, as we are painfully aware.

The UN declaration's preamble recognizes that Indigenous peoples are equal to all other peoples and should be free from discrimination, that they have suffered historic injustices, and that there is an urgent need to recognize their inherent rights.

The declaration's 46 articles do not create new rights. To remind us, among other things, the articles affirm that Indigenous peoples have the right to: the full enjoyment of their human rights, as individuals and collectives; self-determination, autonomy and self-government; to maintain and strengthen their distinct institutions; not to be subjected to forced assimilation or cultural destruction; to practise and revitalize their cultures, customs and spiritual traditions; to participate in decision making in matters affecting their rights, and to be consulted in good faith on legislative and administrative measures that may affect them; to own, use, develop and control their lands, territories and resources; to give their free, prior and informed consent on matters affecting them; and to maintain, control, protect and develop their intellectual property.

Article 46(1) of the declaration limits the rights embedded within UNDRIP so that they cannot infringe on the sovereignty of states.

Colleagues, Bill C-15 is a short, high-level bill intended to provide a framework to advance the Government of Canada's implementation of the United Nations Declaration on the Rights of Indigenous Peoples. The preamble sets out the context of the bill and was amended to include references to racism and systemic racism, the Doctrine of Discovery and *terra nullius*, and to indicate that section 35 rights are not frozen but are capable of evolution and growth.

To remind us: The purposes of the act are to affirm the declaration as a universal human rights instrument with application in Canadian law and to provide a framework for the Government of Canada's implementation of the declaration. The act requires measures to be taken over time to ensure that federal laws are consistent with the declaration. It does not bind provincial or territorial governments.

Further, the act requires the minister to develop and implement an action plan to achieve the objectives of the declaration, in consultation and cooperation with Indigenous peoples. It must include the following: measures to tackle violence, racism and discrimination against Indigenous peoples, including systemic racism and discrimination; measures to promote understanding through human rights education; and measures to ensure accountability with respect to implementation of the declaration. The act requires the preparation and completion of the action plan as soon as practicable, but no later than two years after the day of coming into force.

Honourable colleagues, we have already heard from Senators Christmas and LaBoucane-Benson about the work our Aboriginal Peoples Committee undertook to study this bill: the 89 witnesses we heard from, the 46 written briefs we received, and the in-depth discussions we had among ourselves, using our sober second thought, to consider possible amendments and observations. We are all aware of the scrutiny this bill has undergone among all of us in Canadian society and, of course, widely in our media.

Colleagues, I would like to quote Member of Parliament and former justice minister Jody Wilson-Raybould from her article in the April 24, 2021 edition of *The Globe and Mail*.

MP Wilson-Raybould said:

> Amazingly, the debate around Bill C-15 continues to remain somewhat incoherent, just as it has been in the past. At the same time, we hear: "the bill is too strong in upholding Indigenous rights, in particular achieving the free, prior and informed consent of Indigenous peoples" (some conservative and industry voices); "the bill is colonialist and racist and will further oppress Indigenous peoples" (some Indigenous and non-Indigenous activists, experts and community voices); and "the bill must be passed and sets a foundation for decolonization" (most Indigenous advocates, experts, leaders, and community voices as well as many allies).
>
> But is Bill C-15 any of the things these groups say it is? No. It certainly does not entrench the status quo, but neither does it shatter it. It is a small step forward that will require significantly more legislative, policy and practice changes for it to truly address our legacy of colonialism.

Closer to home, I would like to quote excerpts from Regional Chief for Newfoundland and Nova Scotia Paul Prosper's written submission to our Aboriginal Peoples Committee.

> First Nations widely supported Bill C-262, the proposed implementation legislation on which C-15 is closely based. First Nations have widely endorsed the Calls to Action of the Truth and Reconciliation Commission of Canada which called for the implementation of the *UN Declaration* as "the framework" for reconciliation. First Nations also supported the Calls for Justice of the National Inquiry on Missing and Murdered Indigenous Women and Girls which again called for the implementation of the *UN Declaration*. . . .
>
> I would like to emphasize three things about Bill C-15. The first is that the Bill provides much needed clarity that Canada is fully committing to upholding the *UN Declaration*, not just in words but in actions. The second is that the Bill will establish a legal commitment to working together with First Nations, Inuit and Métis to operationalize the *UN Declaration* in ways that will make a real difference to the health and well-being of our communities. The third is that the Bill includes an explicit commitment to working together to ending all forms of racism, discrimination and violence. In my view, this is urgent and indeed long overdue.

> Above all else, we know there is a lot of hard work ahead of all of us to build better relationships, to honour the Treaties, and to work toward reconciliation. I am anxious to see Bill C-15 passed into law as a critical tool to ensure that this work is carried out and carried out in the right way.

Also supportive of the bill in their written submission to the House committee are the Women of the Métis Nation. They said:

> Elders and representatives from across the Métis motherland have noted that this historic piece of legislation, if implemented according to its spirit and intent, could have the transformative power of an indigenous bill of rights. Bill C-15, the proposed UNDRIP act, represents a once-in-a-lifetime opportunity to reset both the scales of justice and the balance of power so that indigenous women, children and two-spirit and gender-diverse people are protected, safe and free.

• (1550)

In his third reading speech, Senator Klyne reminded us that:

> . . . Bill C-15 did not originate as a benevolent proposal of government. Rather, this legislation is the product of decades of Indigenous grassroots struggles and advocacy, political organization, litigation, demonstrations, commissions, inquiries, survivor testimonials and incremental wins.

Senator LaBoucane-Benson stated in her third reading speech:

> Passing Bill C-15 is about honouring the leaders of the 1970s who began this process of reclaiming basic human rights for Indigenous people.

Former Grand Chief of the Confederacy of Treaty Six First Nations, former member of Parliament, lawyer, residential school survivor and international Indigenous rights champion Wilton Littlechild, was one such leader.

These brave and persistent leaders were following in the earlier footsteps of Cayuga Chief Deskaheh of the Iroquois Nation who, in 1923 — yes, 1923 — was the first to come to the League of Nations to assert the rights of his peoples — an almost 100-year struggle.

Honourable senators, let's demonstrate to these leaders that their unrelenting struggle and diligent work to right the wrongs of the past, to protect future generations of Indigenous children and to forge a healthy path forward for their families and communities is something we respect and sincerely honour.

Honourable colleagues, in passing Bill C-15, my sincere hope is that we can transform our relationships with Indigenous peoples to ones based on trust and mutual respect and that we can find new and better ways to work together to lay foundations for a Canada where the original peoples of this bountiful nation not only take their chosen place at the table — a table of their creation and choice — but also that they flourish in every way: physically, spiritually, socially, culturally, economically and politically.

Colleagues, it is time for this new Canada. Let's pass Bill C-15 and get on board. *Wela'lioq*. Thank you.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Claude Carignan: Honourable senators, I rise today at third reading of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples. The Summary of the Final Report of the Truth and Reconciliation Commission of Canada states, at page 90, that "[t]he number of students who died at Canada's residential schools is not likely ever to be known in full."

Deprived of food, decent housing and adequate care, and cut off from their families and communities by the federal government, many school-age Indigenous children died in residential schools. Tuberculosis and other lung diseases claimed many lives. According to the report summary, the reason we don't know exactly how many children died is that government officials destroyed records and the authorities rarely reported deaths. That is just one example of a grave injustice perpetrated on Indigenous peoples, but this country's history is rife with such examples. The intergenerational impacts of injustices brought on by colonialism and the state's broken promises to the Indigenous peoples of Canada are still being felt in these communities. These impacts and broken promises were extensively documented in the final report of the Truth and Reconciliation Commission and in the report of the 1996 Royal Commission on Aboriginal Peoples.

The testimony of Indigenous and non-Indigenous witnesses, as well as the work of experts, resulted in three investigative reports that recommended the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. I'm specifically referring to the 2015 report of the Truth and Reconciliation Commission, the 2019 report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, and the report of the Viens Commission, which was convened in Quebec in 2019. These reports see the implementation of the declaration as one of the key means to ensure that, first, Canada continues to improve the living conditions of Indigenous peoples and their communities and to encourage their emancipation and, second, that bridges and trust are rebuilt between Indigenous peoples and the federal government.

For this reason, I support the principles of Bill C-15. However, I think a crucial, but very simple, amendment must be added to ensure that the bill respects, from a constitutional perspective, the jurisdictions of the provinces. I'll read the text of the amendment at the end of my speech.

As for the principles, I share the view that this bill is necessary because it provides, in the short term, a means to accelerate the process of reconciliation, as there is still a long way to go to get to our destination. This destination is a more just Canada where "dissimilar people can share lands, resources, power, and dreams while respecting and sustaining their differences." This quote from author Augie Fleras was also cited by Senator McCallum in her speech of May 27.

I believe that this bill has an important quality. Specifically, it calls on a federal minister to begin, as soon as the bill comes into force — so in the short term — conducting consultations to develop an action plan that the minister will have to table no more than two years later. Pursuant to clauses 4 and 6 of the bill, this plan must achieve the objectives of the declaration and provide a framework for its implementation by the Government of Canada. I completely agree that this action plan must include the following, and I am quoting paragraph 6(2)(b) of the bill:

> measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration.

However, there have been serious criticisms of this bill. Senators MacDonald, Patterson and Stewart Olsen made mention of that in the Senate committee report of June 10, 2021. I share some of their concerns, including those about the potential impact of the bill on provincial jurisdictions. For that reason, I consider it essential for the Senate to make the effort to correct this problem by proposing an amendment to the bill. This is essential because, as you know, one of the fundamental roles of the Senate is to ensure the protection of the country's regional interests by taking part in passing federal legislation that respects the jurisdiction of the provinces. This is a well-known principle set out by the Supreme Court of Canada on pages 67 and 68 of the reference issued by the court in 1980 on the Authority of the Parliament in relation to the Upper House.

The declaration contains noble and ambitious objectives, including promoting greater autonomy for Indigenous communities to ensure the vitality and sustainability of their culture and their economic development. However, the development of the action plan and its effects, once the plan is established, will have implications for provincial and territorial governments in the exercise of their constitutional jurisdictions, because several articles in the declaration pertain to provincial jurisdictions.

For example, article 14 of the declaration has to do with the administration of the education system, a provincial responsibility. This article provides that:

> Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Article 23 recognizes that indigenous peoples "have the right to be actively involved in developing and determining health [and] housing . . . programs." Article 29 recognizes their environmental rights, which is another provincial jurisdiction, as are articles 11 to 16 and 31, which set out cultural, heritage and language rights. Articles 20 and 24 to 28 have to do with fauna, forests and other natural resources, which are, once again, provincial jurisdictions.

As Senator Patterson said in his speech on June 3, 2021, six provincial premiers, specifically those from Quebec, Ontario, New Brunswick, Saskatchewan, Alberta and Manitoba, raised concerns that the scope of the bill, as drafted, could interfere with their jurisdictions.

Since my time for this speech is limited, I will share only two of the concerns these premiers raised.

The first has to do with clause 4(a) of the bill, which uses the French term "droit canadien" and the English term "Canadian law." The problem is that these terms imply that the clause applies to both federal and provincial laws. Right now, the clause in question states the following:

> **4** The purposes of this Act are to
>
> **(a)** affirm the Declaration as a universal international human rights instrument with application in Canadian law;

• (1600)

To convince you that the term "Canadian law" is ambiguous because it can include provincial laws, I would like to quote an excerpt from the response given by the Minister of Justice of Canada, Mr. David Lametti, during the study of the bill in the House of Commons committee on April 21:

> In the preamble, subclause 2(3) and paragraph 4(a), the term "Canadian law" has been used to reflect the current state of the law in Canada, specifically that international human rights instruments may be used to assist in the interpretation of any Canadian law, in other words, federal, provincial and constitutional laws.

My second concern regarding this bill has been expressed by the premiers of the six provinces I mentioned earlier. I would like to quote from a letter dated March 29, 2021, which was addressed to the Prime Minister of Canada and was published in a recent article in the electronic edition of the newspaper *La Presse*:

> Collaboration on this bill has been insufficient and ignores the concerns of the provinces. While we support many of the underlying principles of the United Nations Declaration . . . Bill C-15, as drafted, poses a problem and will have significant and far-reaching consequences, both for the federal government and for the provinces and, potentially, for aboriginal populations. This topic requires meaningful dialogue to clarify key provisions. Unfortunately, this dialogue has not yet taken place.

In other words, six provinces are concerned that they were not adequately consulted by the federal government on the text of the bill. If the bill comes into force, these provinces also request that the federal government consult with them when developing the action plan, given the potential impact on provincial jurisdictions. I therefore believe that their request to be consulted is entirely legitimate, especially in the system of cooperative federalism that this government says it is promoting.

I would note that Bill C-12, which is currently being considered in both chambers, includes a provision at subclause 10(3) and clause 13 to ensure that the federal government consults the provinces and Indigenous peoples whenever a greenhouse gas reduction plan is prepared or modified. I see nothing wrong with adding a similar provision to Bill C-15 to ensure that the provinces and Indigenous peoples are included in the process of developing the action plan.

Of course, I would also add that each level of government has a role to play in implementing the declaration, as stated in this paragraph of the bill's preamble:

> Whereas the Government of Canada acknowledges that provincial, territorial and municipal governments each have the ability to establish their own approaches to contributing to the implementation of the Declaration by taking various measures that fall within their authority;

However, I believe that we must add a passage to the preamble stating that the federal government must, in implementing the declaration, respect the provinces' jurisdiction and afford them the necessary latitude to implement the declaration in areas under their authority.

In order to fix the problems I've told you about, and to ensure that the bill does not infringe on provincial jurisdiction, I recommend that you adopt the following three-part amendment.

MOTION IN AMENDMENT NEGATIVED

Hon. Claude Carignan: Therefore, honourable senators, in amendment, I move:

> That Bill C-15 be not now read a third time, but that it be amended
>
> (a) in the preamble, on page 3, by adding the following after line 4:
>
> "Whereas implementation of the Declaration must respect the respective jurisdictions of the Government of Canada and the governments of the provinces and territories;";
>
> (b) in clause 4, on page 5, by replacing lines 3 and 4 with the following:
>
> "human rights instrument with application in the laws of Canada; and";
>
> (c) in clause 6, on page 5, by adding the following after line 14:
>
> "**(1.1)** The Minister must also, when preparing the action plan, consult with the provinces and afford them the opportunity to provide observations.".

[*English*]

The Hon. the Speaker pro tempore: Senator McCallum, do you have a question? We have two minutes left.

Hon. Mary Jane McCallum: I have a question. Senator Carignan, as you may know, Article 46 of UNDRIP is one that has caused serious concern for many First Nations people across this country. This article in effect states that nothing in this declaration may:

> . . . be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. . . .

Are you concerned about increasing provincial involvement, especially involvement of a level of government that should be considered invalid in this matter, as it falls outside of the treaty relationship that First Nations hold directly with the Crown?

I'm curious to know what you envision would be the negative impacts of your amendment with regard to further hampering Indigenous self-government, a constitutionally protected right that should transcend provincial interference. Thank you.

[*Translation*]

Senator Carignan: The idea is to consult the provinces and ensure that we are targeting federal laws, not provincial ones. I do not see anything that goes against Indigenous autonomy. This is simply a matter of respecting provincial jurisdictions and making sure that the provinces are considered as partners just like the other organizations.

Hon. Pierre J. Dalphond: Honourable senators, I want to explain why I am suggesting that we reject the three amendments proposed by Senator Carignan. I will talk about them in the same order as he did.

However, before I do that, I would like to remind you that Bill C-15 has two very different goals. The first is to add the principles set out in the UN Declaration on the Rights of Indigenous Peoples to the rules of interpretation of Canadian law. The second is to impose an action plan on the government for the review of federal laws.

[*English*]

The first proposed amendment is an addition to the preamble, which reads:

> Whereas implementation of the Declaration must respect the respective jurisdictions of the Government of Canada and the governments of the provinces and territories;

In other words, it deals with the second purpose of Bill C-15, the action plan.

• (1610)

Bill C-15 imposes an action plan only for the federal government. Of course, the bill cannot legally impose such an action plan on provinces. The situation of the territories is different because their authority is derived from federal legislation. Of course, changes to territorial legislation to better align with the declaration will trigger consultation obligations with Indigenous peoples, and logically, the territorial governments.

For the provinces, as the Constitution Act, 1867 states, Bill C-15 must respect the division of powers.

Let me refer to section 91 of the Constitution Act, 1867, which states:

> It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces . . . .

In other words, Parliament may not adopt laws that touch on subjects falling under the jurisdiction of the provinces.

In a complementary way, section 92 of the same constitutional document provides that provinces have exclusive jurisdiction in making laws relating to certain subjects:

> In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated . . . .

Then there is a famous list.

In sum, it is clear that Parliament may not make laws on behalf of provinces or on matters falling under provincial jurisdiction and vice versa. That is why section 5 of the act establishes an action plan for ensuring that federal laws, and only those federal laws, are consistent with the principles of UNDRIP. In other words, the action plan is drafted to apply only to the laws adopted by Parliament on the subjects that are assigned to that body.

The second amendment proposed by Senator Carignan is to replace "Canadian law" with "laws of Canada" in section 4(a) of Bill C-15. This amendment is designed to address the first purpose of Bill C-15, which is found at section 4(a) of the bill, which, as I said previously, is to uphold current case law and formalize the use of the United Nations declaration as an interpretive tool guiding courts in the interpretation and evolution of Canadian law.

In a letter sent earlier today by the Minister of Justice to all members of the Senate, he wrote:

> . . . the existing and well-established legal principle that international human rights instruments, like the UN Declaration, can be used to help interpret and apply Canadian laws. This principle applies to the interpretation of federal laws. It also applies to interpretation of the Constitution of Canada and provincial laws.

By replacing "Canadian law" with the words "laws of Canada" at clause 4(a), Senator Carignan's amendment would render that clause factually inaccurate and inconsistent with the current practice of using international instruments, including UNDRIP, to aid in the interpretation of all Canadian law, including the Constitution of Canada, federal laws, provincial laws and the common law, which includes, incidentally, federal common law.

As you know, a significant portion of Canadian law, even at the federal level, is not written in statutes. It is based on customary law — notably in the area of Maritime law — routinely applied by the Federal Court. Senator Carignan's amendment would change the current statement of fact found in clause 4(a) to affirm the declaration as a universal international human rights instrument with application to federal laws only, when, in fact, it is already used much more broadly to inform judgments on treaty rights protected by section 35 of the Constitution Act, 1982.

As the Supreme Court of Canada explained in *Baker v. Canada (Minister of Citizenship and Immigration)*:

> . . . the values reflected in international human rights law may help inform the contextual approach to statutory interpretation . . .
>
> The important role of international human rights law as an aid in interpreting domestic law has also been emphasized in other common law countries . . . . It is also a critical influence on the interpretation of the scope of the rights included in the Charter.

Trying to limit it to federal laws will be to limit the current applications of these principles. Specific to UNDRIP, in *Nunatukavut Community Council Inc. v. Canada (Attorney General)*, the Federal Court found that UNDRIP could be used as a tool to inform the interpretation of domestic laws:

> . . . UNDRIP may be used to inform the interpretation of domestic law. As Justice L'Heureux Dubé stated in Baker, values reflected in international instruments, while not having the force of law, may be used to inform the contextual approach to statutory interpretation and judicial review . . . .

I now turn my attention to the third change proposed by Senator Carignan. It deals with section 6, a provision defining the action plan. It would require the federal government to add provinces in the consultation process with Indigenous peoples on the design of the action plan to achieve the objectives of the UNDRIP principles in federal law. Senator Carignan is right to stress the importance of the relationship the federal government and the provinces have, which is central to our federalism, but Bill C-15's focus is on a separate relationship also of great importance, the relationship between the federal government and Indigenous peoples.

As the APPA Committee report on Bill C-15 noted, there is:

> . . . a lack of a clear, inclusive, and defined process for co-developing legislation at the national level. . . .
>
> Going forward, the committee underscores the need for consultation to be clear, substantial and understandable. All Rights Holders, including Treaty Rights Holders and interested Indigenous communities must have the opportunity to be involved from the start.

Bill C-15 aims to put in place a clear, inclusive and defined process in regard to federal law-making, and that process will involve the federal government and Indigenous peoples.

What Senator Carignan is asking is that the federal government also involve the provinces in the federal government's consultations with Indigenous peoples in connection with the action plan. By adding a third party, the provinces, it that will alter the relationship between the federal government and Indigenous peoples that Bill C-15 aims to rebuild. This will, of course, complicate the trust-building exercise that the bill seeks to implement but also raises the question of whether the provinces will be required to involve the federal government in their consultations with Indigenous peoples if and when they decide to adopt an action plan to incorporate the UNDRIP principles into provincial law.

As you know, the Province of British Columbia has already implemented UNDRIP principles in the laws of B.C., and this without any federal involvement. With great respect, I don't think that the third change proposed by Senator Carignan will be helpful but will only complicate the process we are trying to build. In addition, I think it contradicts the first change he is proposing, where he wants to reaffirm the importance of recognizing the separation of power.

The action plan contemplated in clause 6 of Bill C-15 does not necessarily exclude provinces from future consultations that precede federal legislative action, especially in areas of joint concern. Indeed, on lawmaking matters that may affect provinces, the federal government will continue to consult with provinces as it currently does in the spirit of a good cooperative federalism. That consultation process is not negated by Bill C-15, but the consultation process referred to in clause 6 will only lead to a more complex framework to guide future collaboration between the federal government and Indigenous peoples to achieve the objective of UNDRIP.

• (1620)

To sum up, I repeat that what one part of Bill C-15 aims to do is to establish an action plan regarding the federal government's duties toward and the relationship with the Indigenous peoples of Canada and not the provincial duties toward the same Indigenous peoples. Provinces may choose to establish a similar plan in connection with provincial laws, regulation and services they provide. As an aside, I am hopeful that the federal Parliament's adoption of Bill C-15 will inspire provinces to adopt similar legislation in the near future in demonstrations of our entire country's commitment to reconciliation.

[*Translation*]

In conclusion, the amendment before us doesn't seem to address any real problems and doesn't deserve to be passed. Some might wonder if this isn't another strategy to return the bill to the House of Commons and delay, or even prevent, as in 2019, the implementation of the United Nations Declaration on the Rights of Indigenous Peoples into Canadian law. For these reasons, I'll be voting against the amendment and I invite you to do the same. Thank you, *meegwetch*.

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I rise to respond to the amendment proposed by Senator Carignan and, respectfully, I urge colleagues to vote against this amendment.

My remarks may be somewhat technical, and I thank you in advance for your patience, but it's important to address these issues clearly and directly.

[*English*]

My argument is simply that at its best, the proposed amendment is in part confusing and badly drafted and in other parts completely unnecessary. At its worst, it would change well-settled law governing the role of international instruments like the declaration in the interpretation of Canadian law. This would represent a significant and regressive step backwards on the path toward reconciliation.

Let me begin by setting the table at a somewhat broader level in order to explain why I believe Senator Carignan's proposal is ill-considered, and why in the government's view, there is no ambiguity, discrepancy, conflict or lack of clarity within Bill C-15. I apologize in advance; I will probably follow the well-argued tracks that Senator Dalphond has already laid out.

Let me be very clear at the beginning: Bill C-15 does not propose to transform the declaration itself into a Canadian law with legal applications. Rather, it provides a framework for the Government of Canada's implementation of the declaration. If you will, it's a starting block, not the finish line.

As Senator Dalphond correctly points out, clause 4 of Bill C-15 establishes the two central purposes of Bill C-15. The first purpose, the one that is set out in clause 4(a) and the primary focus of Senator Carignan's amendment, reads as follows. The purpose is to "affirm the Declaration as a universal international human rights instrument with application in Canadian law."

For clarity in my remarks, let me refer to this as purpose 4(a), or the interpretive purpose of the bill. As I will explain further, and as Senator Dalphond correctly pointed out, purpose 4(a) does not relate to the implementation of UNDRIP or the process contemplated by the action plan. Rather, purpose 4(a) relates to the application of UNDRIP as a source of interpretation of Canadian law. It is essentially an affirmation of existing law. Indeed, in this respect, Bill C-15 does not create any new obligation or new state of law deriving from clause 4(a).

The second purpose of Bill C-15 is set out in clause 4(b), which is to "provide a framework for the Government of Canada's implementation of the Declaration."

For clarity in my remarks, let me refer to this as purpose 4(b), or the implementation purpose. Purpose 4(b) is at the heart of Bill C-15. It is with purpose 4(b) that new obligations and law are being created by obliging the federal government to ensure that its federal laws are consistent with the declaration, and this is to be achieved through the development and implementation of the action plan.

Colleagues, it's very important to keep the distinction between these two purposes in mind: purpose 4(a), interpretation, on the one hand; and purpose 4(b), implementation, on the other. That's the key to understand why different terms are used in different sections of Bill C-15.

Honourable senators, there are very good, sound policy reasons that explain why the phrase, or the terms rather, "Canadian law," and in French "droit Canadien," are found in purpose 4(a), while the terms "laws of Canada," and in French "lois federales," are found in the language of the main obligation created by purpose 4(b) and in clause 5 of the bill.

The former deals with the state of existing law regarding the role of international instruments in Canadian law, while the latter deals with the limitations on Parliament's legislative jurisdiction to implement international instruments such as the declaration into law.

To provide you with a full understanding of the issue, which at first blush may appear somewhat complex, let me begin by addressing more fully the language used in the clauses of Bill C-15 that implement purpose 4(b) to provide a framework for the Government of Canada's implementation of the declaration. As I already mentioned, clauses 5 to 7 create obligations upon the government that are tied to this purpose 4(b) implementation.

Indeed, in order to implement purpose 4(b), clauses 5 to 7 create specific obligations on the Government of Canada to take all measures necessary to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples and to prepare and implement an action plan to achieve the objectives of the declaration.

The scope, intent and effect of obligations created by section 4(b) are entirely limited to federal legislation and, by extension, to areas within federal jurisdiction. As all senators will appreciate, this is the clear intent of the legislation as stated by the minister, as stated by the Senate sponsor, and as I'm repeating here today and as did Senator Dalphond.

Of particular interest to the discussion around Senator Carignan's proposed changes to clause 4(a), consider the language of clause 5. It reads as follows:

> The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.

As used in Bill C-15, the Government of Canada understands that the phrases "the laws of Canada" means federal legislation passed by the Parliament of Canada. That's the clear intent of the legislation. The government gave very careful consideration on whether or not to use the phrase "laws of Canada" in clause 5. In the end, "laws of Canada" was retained because in this context, especially when it's twinned with the use of the phrase "lois fédérales" in the French, it clearly, unambiguously, without any question denotes laws within federal jurisdiction and only laws within federal jurisdiction. By the way, this was also the combination of language that best built on what was discussed with Indigenous partners during the consultation.

Indeed, this terminology is already reflected in several examples of major federal statutes that refer to "laws of Canada" as a concept distinct from laws of a province. This includes, for example, the Income Tax Act. Other examples include the Criminal Code of Canada and the Excise Tax Act, where "laws of Canada" is translated into "*lois fédérales*."

• (1630)

Colleagues, it is true that the phrase "laws of Canada" is rendered in French somewhat inconsistently across some other federal statutes. It is sometimes translated as "*lois du Canada*, " "*lois fédérales*" or "*législations fédérales*."

It's nonetheless sufficiently clear in the context of Bill C-15 that the scope of the provision covers laws within the jurisdiction of Parliament. If anything, the French version of the federal statutes that employ the term "*lois fédérales*," like the French version of Bill C-15, clause 5, make it crystal clear that the "laws of Canada" refers to laws passed by the Parliament of Canada.

Any reasonable reading of these two versions taken together necessarily leads to the conclusion that, consistent with the clear and expressed intent of Bill C-15, the legislation only applies to federal statutes and not to provincial statutes.

Ultimately, colleagues, as both the French and English versions of a statute are equally authoritative in Canadian law, and since principles of statutory interpretation provide that the common meaning should be preferred, there is no inconsistency between the English and French and, therefore, no lack of clarity as to what was intended.

Indeed, even for the sake of argument, if we were to assume that there was some ambiguity or conflict, which the government insists there is not, if you apply this well-established principle of bilingual statutory interpretation outlined by the Supreme Court of Canada, these principles would inevitably lead one to conclude that both versions of Bill C-15 refer to laws enacted by the federal Parliament and not by the provinces.

I won't go through the rules of interpretation, except to point out that they are designed to resolve inconsistencies in the language by finding the common meaning to both, which in most cases, will be the narrower of the two terms.

Now, Senator Carignan is not proposing to change the language in clause 5 or the language in "Purpose," subclause 4(b). There is no change to "laws of Canada;" there is no change to "*lois fédérales*."

So why, you might properly ask, am I spending so much time talking about this and how it is clearly limited to federal legislation? And if the language of clause 5 is so crystal clear, why is the same language not used in the words of subclause 4(a), as Senator Carignan would propose in his amendment?

Honourable senators, I took this time — and again, I thank you for your indulgence — to underscore that every word in Bill C-15 was painstakingly considered. I did so to explain that it's crucial why the language used in subclause 4(a), "Canadian law" as opposed to clause 5's reference to the "laws of Canada," must not be altered.

Now I turn — you will say "finally" — to the scope, intent and effect of subclause 4(a), the target or an aspect, so to speak, of Senator Carignan's amendment.

As you know, he would propose to replace the words "Canadian law" with "the laws of Canada." It's the same language we just considered in clause 5.

Colleagues, perhaps this was an oversight on his part, but Senator Carignan inconsistently, in my humble opinion — and respectfully — does not propose to change these terms that are used in other clauses of Bill C-15 directly tied to subclause 4(a). For example, subclause 4(a) is directly tied to the preamble that states, "Whereas the declaration is affirmed as a source for the interpretation of Canadian law . . . ."

Clause 4(a) is also tied to clause 2(3), which states, "Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law."

So although these two clauses deal with the same principle as subclause 4(a), Senator Carignan does not propose to restrain the language to "laws of Canada" and "*lois fédérales*."

This makes his proposal inherently confusing. It adds new layers of inconsistency that are patently ill-designed from a drafting perspective. Definitional confusion within any bill is something to be avoided at all cost.

But respectfully, this is not the worst part of the proposed amendment. As mentioned, subclause 4(a) and the other clauses linked to it and that use the expression "Canadian law" are and need to be distinguished entirely from the implementation purposes of clause 4(b). Subclause 4(a) does not relate to the implementation of UNDRIP.

All that subclause 4(a) proposes — as Senator Dalphond correctly pointed out — is to recognize the existing and well-established legal principle that international human rights instruments, like the declaration, can be used to help interpret and apply Canadian laws. This includes not only federal laws but also provincial laws and the Constitution. It is very important to understanding the differences in language that we see throughout Bill C-15.

So let me repeat this point: It is the existing law in Canada — well established — that international human rights instruments, like the declaration, can be used — and are used — to help interpret and apply all Canadian law, including federal law, constitutional law and provincial law.

Let me be very clear: This clause does not give the declaration direct legal effect beyond its existing role in interpreting Canadian law. In fact, as I mentioned, the declaration is already being used this way, regardless of the presence of subclause 4(a) in this bill.

A purpose clause, like subclause 4(a), is used to describe the objectives of the bill but, as here, it does not set out any specific obligation; it simply draws attention to the declaration as an interpretive source in Canadian law, confirming the existing state of the law — Senator Dalphond mentioned the *Baker* case, a leading Supreme Court case, which stated the well-established principle that ". . . the values reflected in international human rights law may help inform the contextual approach to statutory interpretation . . . ."

Similarly, in the 2007 *Hape* decision, the Supreme Court stated:

> . . . it is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law . . . .
>
> The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result. . . .

Subclause 4(a) does nothing more and nothing less than to underscore this legal reality, which is why the drafters carefully chose the words "Canadian law" or "*droit canadien*" in this part.

This was a point that was very clearly confirmed by the Minister of Justice and the Attorney General during the hearings on Bill C-15 at the Standing Senate Committee on Aboriginal Peoples and in the letter to which reference was made in my colleague's earlier intervention. But let me quote from the transcript at length to put the minister's words at the hearing on the record. Our colleague Senator Coyle asked the minister the following question:

> Bill C-15 states that the declaration is affirmed as a source for the interpretation of Canadian law, not federal law as created by the Parliament of Canada. This is one specific change that New Brunswick wants to see before Bill C-15 is given Royal Assent.
>
> Perhaps it's for Minister Lametti to talk about Canadian law versus federal law, and the implications for the provinces. . . .

Minister Lametti answered with the following:

> Thank you, Senator Coyle, for the question. It's an important one because there is a fundamental misunderstanding . . .
>
> We have acted according to the general principles of the way Canada implements treaties that are signed at international law. The implementation of this treaty — through the action plan and any changes that are made — will apply to the laws of Canada, federal law, and then provinces have to implement in areas of their jurisdiction, as British Columbia has already done.
>
> When the previous Conservative government adopted the declaration, it had interpretive force in Canadian law. That's what the minister in New Brunswick is referring to. It already has that interpretive force, because it was adopted by the government, as do any other international documents, particularly UN documents, to which Canada accedes. They have interpretive force.

So it already has interpretive force in front of Canadian tribunals at all levels of society and government in Canada. That is already the case.

This implementation act will be moving toward implementing the law with respect to federal laws, and then we would encourage provinces and territories to do likewise in areas of their jurisdiction.

• (1640)

Honourable senators, while this provision does not direct courts to consider the declaration or even require them to do so, it does reflect the Government of Canada's view that the declaration can be appropriately used as an interpretive tool. This is simply an affirmation of the existing state of the law as set out by our courts. This affirmation also serves to emphasize to the Government of Canada departments and officials that the declaration should be among the considerations that inform government approaches to issues affecting Indigenous peoples and their rights. Over time, the declaration may be used more often to help inform the interpretation and application of Canadian law, though that remains to be seen and is in the hands of the judiciary. However, Bill C-15 does not change the general rules on how international instruments may be used by domestic courts.

Honourable senators, thank you again for your indulgence. I hope I have explained adequately why the words "laws of Canada" are used in clause 5, whereas the words "Canadian law" appear in subclause 4(a), as well as clause 2(3) and the preamble of Bill-C15.

As used in Bill C-15, the expression "laws of Canada" is used specifically in the context of the requirement derived from clause 4(b) to align federal legislation passed by the Parliament of Canada with the UN declaration. The use of "laws of Canada" is deliberate and is different from the more general language of "Canadian law" used in clause 4(a), clause 2(3) and the preamble.

To give you one last example of how the declaration has been used to help interpret and apply Canadian law since Canada became a signatory in 2016. Let me cite one case. Just last year, the Court of Queen's Bench of Alberta in *TA v. Alberta (Children's Services), 2020* confirmed the declaration's interpretative value in a case involving Alberta's Child, Youth and Family Enhancement Act. Reaffirming the principle stated by the Supreme Court of Canada in *Baker*, which I noted above, the Court of Queen's Bench of Alberta said, "Documents such as UNDRIP may be used to interpret statutory and common law obligations that exist independently . . . ."

Honourable senators, the government is concerned about the unintended consequences of this amendment in confusing matters when it comes to the application of UNDRIP as an interpretive tool. However, the problem of the proposed amendment runs much deeper than the confusion it would introduce. If accepted, this amendment would affect a material change in the state of Canadian law and pose a real risk of limiting the status of UNDRIP relative to the situation pre-Bill C-15.

Taken at face value, the proposed change in clause 4(a) would narrow the established legal principle that an international instrument like UNDRIP is relevant to the interpretation of Canadian laws generally. Whether or not this is Senator Carignan's intent, his amendment could very well cause a regression, a step backward, for the status of UNDRIP as an interpretive tool in Canadian law. This, in turn, colleagues, is a step backward in our painful but necessary path to reconciliation.

Finally, let me add for the record that the term "Canadian law" in clause 4(a) was also used for the same purpose in Bill C-262. I say this because, over time, these words have been approved four times by parliamentary committees, twice in the House and twice in the Senate. At the eleventh hour, so close to taking this historic step in the process of reconciliation, now is not the time to second-guess four committee processes and the clear intent of the legislation.

Senator Carignan also proposes to include new language in the preamble to Bill C-15, specifically prescribing that implementation of the declaration ". . . must respect the respective jurisdictions of the Government of Canada and the governments of the provinces and territories."

Thank you, Senator Dalphond for referring to sections 91 and 92 of the Constitution Act, 1867. We both show our age in terms of how we would describe the Constitution.

Colleagues, this amendment simply states the obvious. Like all legislation, Bill C-15 is subject to the Canadian Constitution, and in particular, the distribution and division of powers. This bill does not — indeed, it could not — authorize the federal government to impede areas of provincial jurisdiction. As a result, this wording is entirely unnecessary, and an unnecessary amendment should not stand in the way of this legislation from passing.

Provincial, territorial and municipal governments each have the ability to establish their own approaches contributing to the implementation of the declaration by taking various measures that fall within their areas of authority. The Government of Canada welcomes opportunities to work cooperatively with these governments, Indigenous peoples and other sectors of society toward achieving the objectives of the declaration.

Senator Carignan also proposes to incorporate a new clause whereby, in preparing the action plan, the minister would consult with the provinces and afford them the opportunity to provide observations. Honourable senators, the bill already references cooperation with provinces, territories and other sectors of society as part of implementing the declaration. The preamble explicitly notes that the federal government ". . . welcomes opportunities to work cooperatively with those governments."

While this acknowledgment is not specific to the development of the action plan, nothing in the bill precludes such a dialogue, and witnesses indicated that discussions between federal, provincial and territorial governments would be part of the ongoing work associated with implementing the declaration and pursuing reconciliation.

We also know, as described in the *What We Learned* report, over the course of engagement leading up to the induction of the bill, a number of meetings between federal, provincial and territorial officials and ministers took place. Several of these included Indigenous leaders and participants.

In keeping with the bill and federal practice, more generally, in the area of shared federal, provincial and territorial interest, this type of dialogue and outreach would be expected to continue moving forward. In that spirit, I can formally indicate today, in this chamber, that the Government of Canada is committed to working with provinces and territories on the development of the action plan following the passage of Bill C-15.

Furthermore, colleagues, and with respect, the language of the proposed amendment is fundamentally flawed because it refers only to provinces with no references to territories or other potentially interested sectors of society, such as those identified in the preamble, like municipal governments.

Honourable senators, let me reiterate what was said by the minister and Senator LaBoucane-Benson. Bill C-15 is focused on federal laws and actions, and it does not impose obligations on provincial or territorial governments. Clauses 3, 5, 6 and 7, as well as clause 4(b), speak specifically to the roles and responsibilities of the federal government and/or those of federal ministers. The preamble of Bill C-15 already recognizes explicitly that provincial, territorial, municipal and Indigenous governments would continue to take action that can contribute to the implementation of the declaration within their own areas of authority.

The goal is not to get in the way of good ideas and effective local action but to look for opportunities to work collaboratively on shared priorities in ways that are complementary. Over time, any changes required to federal laws to better align with the declaration will be pursued collaboratively and through existing policy, legal and parliamentary processes.

[*Translation*]

That means that we must continue to work together in areas of common interest and concern — both with our Indigenous partners and the provincial and territorial governments, as well as with other relevant stakeholders. This approach would apply to all federal legislation developed in collaboration with the provinces and territories.

In short, this means that we will all come back to this chamber to debate the details of implementing the declaration throughout the legislative process.

[*English*]

Colleagues, Bill C-15 itself will not change any federal laws overnight nor does it purport to displace existing processes and mechanisms for cooperation. What it will do is encourage the use of the declaration to inform how the Government of Canada approaches such existing processes and help build on them to further reconciliation. It bears repeating that the bill does not impose legal obligations on provincial governments.

Honourable senators, finally, there have been questions raised — Senator Carignan alluded to it in his remarks — about correspondence between some premiers and the federal government regarding Bill C-15 in the normal course, as it was, of the respectful and collaborative federal and provincial relationship. I will briefly respond. I'll share some of the basic points that have been made to address these concerns to reassure counterparts and which you will find reflective of the position that the government has taken throughout this legislative process.

First, the government has reiterated that Bill C-15 takes into account discussions held with premiers during federal, provincial and territorial meetings, including, as reflected in the addition of new preambular paragraphs, recognizing that the provincial, territorial and municipal governments each have the possibility to establish their own approaches to contribute to the implementation of the declaration and to welcome opportunities to work cooperatively going forward.

• (1650)

Second, on the issue of scope, the government made it clear to the premiers that the Government of Canada has repeatedly stated that the obligations in the legislation relate specifically to aligning federal laws and actions with the declaration. The government will continue to use future opportunities, such as I'm using here today, to underline this message.

Third, the government made it clear to the premiers that the Government of Canada has continued to clarify messaging relating to the interaction of the declaration with the law and the Constitution of Canada, and that the government has noted, as I did here today, that Bill C-15 does not transform the declaration into a federal law or override existing law. It is rather intended to recognize the role of the declaration in interpreting Canadian law as courts and tribunals have already done and to help provide the supporting structure for federal efforts to implement the declaration going forward.

Fourth, as it pertains to free, prior and informed consent, the government has clearly reiterated to the premiers that decision making with respect to infrastructure or resource projects continues and will continue to be governed by the relevant legal and policy regimes, and that the proposed legislation and any implementation measures identified as part of the development of the action plan would apply only to federal areas of jurisdiction.

To conclude — a pause for the sigh of relief — the proposed amendment is, at one and the same time, poorly drafted, unnecessary, redundant and very much ill-advised at its core. At best, it would introduce unnecessary and dangerous confusion into the law, but at worst, by changing the existing law surrounding the role of international instruments and the interpretation of Canadian law, it would represent a regressive step backwards on the path to reconciliation.

Honourable senators, for all of the reasons I have outlined, I urge you to oppose this amendment so we can finally get Bill C-15 to the finish line. Thank you very much for your indulgence.

Hon. Scott Tannas: Thank you for that, leader. I don't think I heard this in your presentation, but my question is about 4(a) that you mentioned was in both Bill C-262 and Bill C-15. I don't think you mentioned that the government actually moved the placement of that sentence in Bill C-15 into the purpose of the bill and out of the operational section of the bill, which is where it was in Bill C-262. Do you view that as another purposeful move to make sure that there is no confusion about what was intended by those words?

Senator Gold: Thank you for your question. You're right, I didn't refer to that specifically in my remarks. When the government took responsibility for this as a government bill, it listened to the concerns that people were raising about the bill from all sectors and quarters of this country and did its very best. I believe the government succeeded in making it very clear that there was a real difference between its function as an interpretive tool and the process of implementation, which is restricted to areas of federal jurisdiction.

Senator Tannas: Thank you for that. I wonder if you would agree — at the risk of being a bit thin-skinned — with the legal experts, two of the highest legal scholars in the country and a retired Supreme Court justice, who provided testimony to the committee that the placement of the words in 4(a) in Bill C-262 had a high probability of causing legal chaos. It was for that reason that a number of us did what we felt we needed to do, using the tools that are available in this chamber, in order for us all not to make a big mistake. I wonder if you would agree that maybe it's time to stop talking about the shame of Bill C-262, which we heard today and we've heard multiple times from people in this chamber, and we focus on this particular bill.

Senator Gold: I totally agree, senator, that our focus should be on this bill as it is. I think that the hearings that the committee held were extensive, balanced and fruitful. I'm delighted that we've reached this place where we can focus on the bill as it is written, as it is before us and as it was passed in the other place, and that we can at least approach our final debate and vote on this bill.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Would Senator Gold agree to take a question? Senator Gold, in your long speech you talked about consultations with the provinces. Three days ago, on June 12, *La Presse* reported that six provinces, Quebec, Ontario, Alberta, Saskatchewan, Manitoba and New Brunswick, were calling for major changes to be made to this bill.

They wrote to the Prime Minister, and I will quote from that letter, as follows:

> To date, your approach to passing Bill C-15 is contrary to the principles of cooperative federalism, which require meaningful and substantial cooperation with the provinces.

If there were indeed consultations, are you able to tell me whether the majority of the provinces are in favour of Bill C-15?

Senator Gold: Thank you for the question. The letter you're referring to was sent to the Prime Minister. It was apparently leaked and published in *La Presse*. The government's position is very clear. First, the bill will only have legal implications in areas of federal jurisdiction.

Second, as I said at the end of my speech about the government's response to the six premiers' concerns, there were consultations, discussion and a commitment to the federal and provincial ministers and officials. There is no consensus or unanimity for such a bill, which is normal in Canada. However, the Government of Canada believes that the consultations and discussions with the premiers helped them understand the scope, objective and importance of this bill.

Senator Boisvenu: Senator gold, all senators speak on behalf of their provinces. If this bill applies only to federal institutions, you will support the amendment proposed by Senator Carignan.

Senator Gold: On the contrary, and with all due respect, we are here to represent the interests of our regions and our provinces within a federal institution, that is to say, to ensure that the bills we are seized with and any public policies not only fairly consider the interests of a province, region or stakeholder, but also reflect the diversity and the interests of all Canadians.

As I mentioned in my speech — which might have been too long, but I was trying to be very clear — I cannot support this amendment. It goes against the very objective of the bill. It would represent a step backwards for principles that are well established in Canadian law. Ultimately, this amendment goes against the interests of all Canadians, both Indigenous and non-Indigenous. We are finally moving forward on the path to reconciliation, and this represents an important step not only for the well-being of all of us in this chamber, but also for the well-being of our children and grandchildren.

Senator Boisvenu: I will repeat my question: If you are saying that this bill applies only to federal institutions, but six provinces, so the majority of provinces, are asking that this be included in the bill, would you vote in favour of Senator Carignan's amendment?

Senator Gold: No.

• (1700)

Senator Carignan: You are saying that this only affects federal laws. The United Nations Declaration on the Rights of Indigenous Peoples affects culture, education and natural resources. How can you say that it only affects federal laws when it also affects areas under provincial jurisdiction and the provinces have not been consulted? Unless they were lying, six premiers wrote a letter saying that they had not been consulted. Since they were not consulted on Bill C-15, don't you think they are now worried that they will not be consulted when we address issues that are related to their jurisdictions?

Senator Gold: Thank you for the question, for presenting the amendment and for raising this issue because it is an important one. It gives me an opportunity to say that, with regard to the implementation of this bill, meaning the federal government's obligations to ensure that there is a process for determining whether federal laws are consistent with UNDRIP, we are talking about an obligation that applies solely and exclusively to an area of federal jurisdiction.

Honourable senator, your amendment addresses the matter of interpreting an international instrument, such as UNDRIP, but Canada has signed a lot of treaties and instruments. As you know since you are a jurist, in every case, it has been well established in the case law that, when interpreting and applying provincial, municipal, federal or constitutional legislation in the case of an international instrument that has been accepted and that Canada has ratified or adopted, we need to consider how the legal experts who examine these laws interpret them. We are not obligated to change provincial, federal or constitutional laws. We simply need to take into consideration the other international obligations in order to determine whether we are acting in a way that is consistent with them and whether we are abiding by them. That is all. I gave an example from the case law on that, which was very clear.

Also, as British Columbia has reminded us — and the federal government wishes the other provinces would respond to the invitation — it is up to the provinces to determine whether they want to put such a process in place, in Quebec or elsewhere, to review their legislation in order to check if these laws could be improved to be more consistent with the declaration.

The provinces can say yes, no or maybe; it's up to them to decide. There are premiers who have their reasons for refusing. I don't understand their reasons, but I am not part of the discussions with the Prime Minister — excuse me, I would just like to finish — but some of them do not agree. Welcome to Canadian federalism, that is exactly it.

Senator Carignan: Precisely, welcome to Canadian federalism Trudeau-government style.

When the federal government develops an action plan to integrate elements of the declaration into Canadian law —

Senator Gold: Federal laws.

Senator Carignan: Federal laws that affect culture, education and natural resources. Why not consult the provinces? Why are you afraid to include that in a bill, to consult the provinces and give them the opportunity to express their opinions and comments? Why would you oppose that?

Senator Gold: With all due respect, esteemed colleague, I stressed that the government is open to and is in fact already engaging in consultation and discussion with the provinces and territories as part of the action plan development process.

As to your amendment, senator, it's neither necessary nor desirable to make amendments to this bill in this chamber. It's really not necessary, and, more importantly, it could delay the bill. That would be bad for Canadians. That's why I most respectfully oppose the amendment.

Senator Carignan: I doubt the premiers would agree with your assertion that it's not necessary, because they wrote a letter before Bill C-15 was introduced stating that they had not been consulted. Do you suppose they take comfort in your statement that an amendment is not necessary? It was not necessary, so they were not consulted on Bill C-15. Now you are saying that an amendment is not necessary and that they need not worry because they will be consulted about the action plan. That's not reassuring.

Senator Gold: Thank you for the question. I don't think my role is to reassure the premiers or to be their psychologist. I am here, we are here, to legislate in the interests of Canadians.

With respect to Bill C-15, the government is confident that this bill is a good bill and that it represents an important and long overdue response to the Truth and Reconciliation Commission's call to action. Now is the time to vote on this bill, not amend it.

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

Senator Boisvenu: Yes. Senator Gold, you said something that I think is critical. You said we don't know the motives of the provinces that are opposing this bill without amendment.

If you don't know the constraints or criticisms of the provinces, is that because you haven't consulted them?

Senator Gold: What I meant to say, but did not make clear, is that I personally don't know their motives. Their letter to the Prime Minister was leaked to *La Presse*, and that's how we found out about it. The premiers' message was loud and clear. As I tried to say at the end of my speech, I outlined the government's position regarding the premiers' objections.

In my view, the government's responses show that it is open to working together and that it has a clear position on the impact and repercussions of this bill on provincial jurisdictions. It's up to this chamber to decide whether the government is right or wrong.

Hon. Jean-Guy Dagenais: I rise today to speak in support of Senator Carignan's proposed amendment to Bill C-15.

Firstly, I would hope that partisanship and the rush to blindly accept legislation from the other place will not be impediments to improving this bill, in the spirit that should always guide a responsible federal government.

I would even add that in order for the provisions of Bill C-15 to produce results quickly in Canada, it is essential that we do everything we can to prevent the endless legal proceedings and political wars that the future provisions of this bill could cause. On the face of it, Bill C-15 represents major progress when it comes to reviewing our federal laws and ensuring that they are consistent with the United Nations Declaration on the Rights of Indigenous Peoples. I support the legislator's intent to correct "historic injustices." Yes, I did say "support the intent," because I do not believe that the wishes expressed in New York can interfere with provincial and territorial rights in Canada.

• (1710)

I remind the Government Representative in the Senate that we live in a federation. In Canada, the provinces and territories have some exclusive jurisdictions. Any responsible federal government has a duty to respect these jurisdictions. It would therefore make sense for Ottawa to consult not only with Indigenous peoples, but also with all of the premiers before going ahead with legislative amendments. This is what Senator Carignan's amendment calls for. I do not see why the current government would act differently with this bill compared to other bills.

Bill C-15 is the result of a three-year process, so the work should be done in the spirit of cooperation in order to move forward in Canada's reconciliation with Indigenous peoples.

Senators have a duty to approve an amendment that will ensure the work can proceed smoothly in the future.

I will therefore not be able to vote in favour of Bill C-15 if it does not explicitly include the need to respect provincial and territorial jurisdictions.

[*English*]

Hon. Dennis Glen Patterson: Honourable senators, I rise to speak in support of Senator Carignan's amendment, but I just want to mention that I have been carefully listening to the informative speeches on this amendment. I would like to respectfully and gently inform Senator Dalphond that in saying that this amendment may be motivated to delay the passage of Bill C-15, he is acting outside the rules of debate. Namely, debate must address issues, not personalities, and no one is permitted to make personal attacks nor, most importantly, to question the motives of the other speakers. That is the well-known rule against impugning motives. Yet that is what Senator Dalphond has done in suggesting that this amendment is a delaying tactic. I suggest that is not appropriate in debate and therefore is probably out of order.

I refrain from raising a point of order, Your Honour, so as not to delay the important debate we are having on this amendment. But I do want to mention that, in my respectful opinion, this is never an appropriate comment to make during a parliamentary debate.

Now, I turn to the issue and the amendment. When I look at Bill C-15 within the context of Nunavut, I note that Nunavut has a constitutionally protected comprehensive land claim agreement. Article 4 of that agreement contains a commitment from the Government of Canada to establish a "public government" serving all residents of Nunavut, whether the Inuit majority or the roughly 15% non-Inuit minority.

Now, since Canada's adoption of the UN Declaration on the Rights of Indigenous Peoples — which will no doubt be exacerbated by the passage of this bill, without clarity on the issue of federal encroachment into provincial and territorial jurisdictions — even before the passage of Bill C-15, there is already significant confusion and debate on whether the federal government is contravening that commitment in federal legislation to public government.

Perhaps I can give one clear example. The government provided significant monies to fight TB — aimed at eradicating the tuberculosis epidemic in Nunavut — directly to a southern-based advocacy organization, despite the programs and the delivery capacity falling under the territorial responsibility for health as set out in the Nunavut Act.

These kinds of deals, encroaching on the clear jurisdiction of the territorial government as set out in the federal Nunavut Act and the federally legislated Nunavut Land Claims Agreement Act, are being made in closed-door meetings at the Inuit-Crown Partnership Committee table, in the spirit of the UN declaration, without any involvement of the Government of Nunavut, whatsoever.

Now, Senator Dalphond expressed concerns that this amendment might inject a provincial or a territorial government into consultations or negotiations between Indigenous peoples and the federal government, but colleagues, the omission of clarification on this issue could also create confusion and duplication and waste of public money.

As I have just said, while this may complicate negotiations by injecting a third party into the Crown-Indigenous negotiations, leaving out the provinces and territories also creates confusion. Recent examples abound. I would just like to cite them in showing the importance of this issue; to have clarity on this issue of federal encroachment.

The federal government, in other closed-door negotiations which took place at the Crown partnership tables, has in the first round committed to providing capital monies for women's shelters in the territories. Of course, this is a worthwhile initiative. Please don't mistake me as not approving of such a much-needed service. The negotiations proceeded behind closed doors with the apparent expectation that operations and maintenance funding — crucial for the operation of those 24-7 facilities — would be provided by a party that would need to plan this important consideration in its fiscal framework. But that party was not part of the negotiations; namely the territorial government with jurisdiction in that area.

I'll just recite one other example. We have been talking about policies and principles, but I want to give real examples of how confusion is increasing in the interface between federal jurisdiction and territorial jurisdiction in my territory of Nunavut.

Another example about the need to clarify the potential of federal intrusion complicating and interfering with territorial responsibilities came about in negotiations on the Inuit Impact and Benefit Agreement on the federal commitments made in the establishment of a new National Marine Conservation Area in the High Arctic known as Tallarutiup Imanga. The federal government and the Regional Inuit Association developed plans

to provide capital costs to build multi-use community facilities connected to the new conservation area. But again, since the territories were left out — but clearly these community facilities are within their jurisdiction under the Nunavut Act and their responsibility for local governments, communities, community facilities — there was no provision made for the operations and maintenance costs of these new multi-use community complexes.

• (1720)

So this was dumped on the Government of Nunavut after the fact, but of course, the Government of Nunavut Department of Community and Government Services has long-range capital budgets developed in careful consultation with communities for community infrastructure: fire halls, hamlet garages, hamlet council chambers, et cetera. Suddenly, this new issue was injected. In keeping with the new Inuit-Crown Partnership tables that have been established in the spirit of putting flesh on the UN declaration, the government with responsibilities in these areas was left out.

I cite these examples to show the importance of clarifying the need for the federal government acting exclusively within its jurisdiction, or involving provinces and territories in commitments that will impact their jurisdictional responsibilities in areas of shared jurisdiction, or in areas that impact the territorial jurisdiction, such as managing community multi-use facilities or shelters.

When I was speaking in my second reading speech about the example of Indigenous child welfare legislation, which clearly impacted territorial and provincial jurisdiction for child welfare, but again, left the territories out of consultations on the legislation, Senator LaBoucane-Benson protested that I had not used a good example — I'm paraphrasing her question to me — because it's a good thing that the federal government gets involved in Indigenous child welfare legislation to help out with a problem everyone is very concerned about; respecting Indigenous children and child welfare.

However, that was not what I was concerned about, whether this was a good initiative or not, because presumably, it would also be appropriate not to leave out the territorial government in these new initiatives, which in Nunavut's case is a government run by Inuit, the entire cabinet is Inuit, and Nunavut's Department of Family Services deals almost exclusively with Inuit children in any event.

The same thing happened with the Indigenous languages legislation. Again, invoking UNDRIP as a motivation and a guiding interpretive source for an area of high importance in the territories and of high importance in UNDRIP, namely promoting Indigenous languages, preservation and enhancement. We have disconnects which develop so clearly between the federal government's desire to act, and may I say encroach, in areas of provincial and territorial jurisdiction, and in this case establishing a Commissioner of Indigenous Languages for Canada, but in the process not making any acknowledgment or reach out to Nunavut and the Northwest Territories, which both already have Indigenous Language Commissioners under their language protection legislation and within their authority.

We found out in studying that bill that there was no thought as to how the two offices — the national Commissioner of Indigenous Languages and the two territorial Language Commissioners — would work together, cooperate, interface, avoid duplication and confusion.

It's fine to talk about legal theories and the like, but this amendment seeks to clarify a problem that I see emerging and causing a waste of money, confusion, duplication, poor coordination and planning. It is in that spirit that I support an amendment that I believe is attempting to clarify that issue about confusion with respect to the extent of the federal jurisdiction.

In this connection, I believe it will be helpful to clarify through this amendment that Bill C-15 not only clearly applies to federal law but also, as we have been assured by the government, does not change federal laws immediately.

This is crucial to clarify the federal government's clear commitment in the federal Nunavut Land Claims Agreement and the Nunavut Act, developed over decades of negotiations among Inuit and Canada, to commit to a public government — I'm just talking about Nunavut here, honourable senators — will prevail as a legal commitment that will continue to be respected by Canada, even though expectations have already risen and actions have been taken eroding this principle, based on an opposing concept of Indigenous rights to ethnic-based self-government as envisioned in UNDRIP Article 3, which declares the Indigenous peoples' right to self-determination, including the right to autonomy or self-government in their internal and local affairs as well as ways and means for financing their autonomous functions.

Hon. Brent Cotter: Honourable senators, I have some brief remarks to make.

I want to acknowledge the point that Senator Patterson made. Though I'm not a member of the committee, I sat in on nearly all the deliberations and considerations of witnesses at the Aboriginal Affairs Committee. I thought the witnesses and all of the senators participated in the exercise in good faith, and that is certainly my view here today in the chamber.

I apologize if this feels like piling on in opposition to Senator Carignan's amendment, which I won't support. I don't intend to speak to that aspect of the amendment that addresses the interpretive dimensions of the UN declaration to which Senator Gold spoke at length and with which I agree.

I support the spirit of Senator Carignan's proposed amendments related to jurisdiction and his reminder to us that one of our duties is to ensure respect for provincial jurisdiction, but I oppose the adoption of the amendments he proposes on the basis that they are simply unnecessary.

I agree with the sentiment calling for meaningful consultation and engagement with the provinces. I would go even further and urge constructive and collaborative approaches with the provinces and territories, and Indigenous peoples and their governments, as Senator Gold acknowledged in his own remarks.

This will be critical to achieving the objectives of Bill C-15, but this can be done, this expectation through observations on the bill, followed by constructive action through the action plan collaboratively on the part of our respective governments.

In my consideration, and with respect to Senator Carignan, his jurisdictional amendments are not necessary for basic reasons associated with Canadian constitutional law. This has been spoken to by Senator Dalphond and Senator Gold. I will be brief in reiterating some aspects of this point.

It is a truism of Canada's federation that one order of government cannot impose its will upon another order of government in that government's exclusive spirit of jurisdiction, as established by the Constitution and its interpretation by the courts, notably the Supreme Court of Canada.

Indeed, the choice of words on the jurisdiction point on this bill matter not. Ottawa simply cannot impose its jurisdictional authority in areas of provincial jurisdiction, even if it wanted to.

• (1730)

Let me go even further. If Ottawa wrote explicitly in this bill that it applied to areas of provincial jurisdiction, it would be of no force and effect. Any other interpretation would render the constitutional division of powers between federal and provincial governments meaningless — a principle upon which this country was founded.

The law is equally clear when Canada is adopting an international treaty or convention or, in this case, a UN declaration in one form or other. Simply put, where the adoption of a treaty or convention could have application to an area of provincial jurisdiction, somewhat like the imposition of federal jurisdiction by a side door, by adopting the treaty or convention our federal government cannot impose its terms on the provinces. This has been clear in Canadian constitutional law since 1951, in a decision of the Privy Council in the so-called "Labour Conventions" case, and in the 70 years since then, our federal government has never challenged this important aspect of our constitutional structure.

All this to say that provincial jurisdiction is immune from these forms of intervention and, as a consequence, the amendment is not needed. Thank you.

Some Hon. Senators: Hear, hear.

Senator Patterson: I have a question for Senator Cotter.

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

Senator Cotter: Yes, of course.

Senator Patterson: Senator Cotter, I'm grateful that we have such an experienced senior official from a provincial government participating in this debate at the Attorney General level and elsewhere.

You've made it clear that you think the amendment is not necessary because Canadian constitutional law is clear since the "Labour Conventions" case. First, where jurisdictional authority is clear this may well apply, but what about areas of shared jurisdiction? I mentioned some in my comments: Indigenous child welfare and health. Would you agree that maybe that's an area rife for confusion and a need for clarity?

Second, do you think these discussions we're having here may be helpful to judges who may want to take judicial notice of the intention of legislators in the inevitable challenges that may, sadly, arise in moving forward on this bill?

Senator Cotter: To respond to your last point first, Senator Patterson, I agree. I believe this dialogue is helpful for a wide range of people considering this important bill. This is a fundamentally important adjustment in the fabric of Canada in a constructive way, and this will guide legislators, it will guide policy developers and it will guide judges.

On the question of areas of shared jurisdiction, I think you make a fair point, but the fact is there is an existing constitutional framework that addresses that question, and that constitutional framework is not changed by Ottawa writing a piece of legislation. In that respect, while I'm highly supportive of what I will call the constructive entanglement of jurisdictions, in order for us to do better in this country, particularly in our relationships with Indigenous peoples and governments, that isn't affected one iota by the actual language of the government but by the constitutional fabric of the country. It means governments need to work together on that. Legislating that they work together seems a peculiar way of building the country. It is surely an expectation of our leaders — and I would put ourselves in that category in a modest way — to do that for the benefit of Canadians and, with respect to this legislation, Indigenous Canadians.

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

[*Translation*]

Senator Carignan: Would Senator Cotter take a question?

Senator Cotter: Of course.

Senator Carignan: Naturally, I understand the argument relative to constitutional jurisdictions; it is a subject that I am also very familiar with. If the federal government acts within its constitutional jurisdiction, it does not have an obligation to consult the provinces. Why would it be difficult to add to the bill the obligation to consult the provinces when a provision could have an impact on them, and to allow them to provide their comments?

As you said so well, the federal government would be acting within its constitutional jurisdiction and would have no obligation to consult the provinces. What is the problem with including this obligation in the bill?

[*English*]

Senator Cotter: I believe the argument then would be that, in every piece of legislation that the Government of Canada introduces, it promises to consult with the provinces. It seems to me that's a given in the fabric of our federation. To write it into

legislation as opposed to building it into what I would call action plan commitments of respective orders of government makes more sense.

One could say, for example, in the parliament of Quebec or in the legislature of Saskatchewan every bill should more or less say the same thing: That is, if it might come in contact with federal jurisdiction, the province would promise to consult with the federal government. That strikes me as an unnecessary statement in the fabric of the country.

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

Some Hon. Senators: Question.

The Hon. the Speaker: If you are opposed to the motion, please say "no."

Some Hon. Senators: No.

The Hon. the Speaker: I hear a "no."

Those in favour of the motion who are in the Senate Chamber please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion who are in the Senate Chamber please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: I see two senators rising. Do we have an agreement on a bell? Senator LaBoucane-Benson, 15 minutes?

Senator LaBoucane-Benson: Yes, Your Honour, 15 minutes.

The Hon. the Speaker: I hear a "yes" from Senator LaBoucane-Benson, but we need the consent of the chamber. Do I hear a "no" in the chamber?

Some Hon. Senators: No.

The Hon. the Speaker: I hear a "no." The bells will ring for one hour. The vote will take place at 6:37.

Call in the senators.

• (1830)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Martin
Batters	Mockler
Boisvenu	Ngo
Carignan	Oh
Dagenais	Patterson
Frum	Plett
Greene	Richards
Housakos	Seidman
MacDonald	Smith
Manning	Stewart Olsen
Marshall	Wells—22

NAYS
THE HONOURABLE SENATORS

Anderson	Harder
Bellemare	Hartling
Bernard	Jaffer
Black (*Ontario*)	Klyne
Boehm	Kutcher
Boniface	LaBoucane-Benson
Bovey	Loffreda
Brazeau	Lovelace Nicholas
Busson	Marwah
Christmas	Massicotte
Cordy	McCallum
Cormier	McPhedran
Cotter	Mégie
Coyle	Mercer
Dalphond	Miville-Dechêne
Dasko	Moncion
Dawson	Moodie
Deacon (*Nova Scotia*)	Munson
Deacon (*Ontario*)	Omidvar
Dean	Pate
Downe	Petitclerc
Duncan	Ravalia
Dupuis	Ringuette
Forest	Saint-Germain
Forest-Niesing	Simons

Francis	Tannas
Gagné	Wetston
Galvez	White
Gold	Woo—59
Griffin	

ABSTENTION
THE HONOURABLE SENATOR

Wallin—1

• (1850)

The Hon. the Speaker: Honourable senators, before we resume, it is not yet 7 p.m., and according to a previous order I am required to leave the chamber and suspend for about five minutes unless there is agreement that we proceed.

Hon. Senators: Agreed.

The Hon. the Speaker: Senator Forest-Niesing on debate.

Hon. Josée Forest-Niesing: Thank you, honourable senators. I'll take that as a compliment.

[*Translation*]

THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator LaBoucane-Benson, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.

I wish I had the storytelling talent of our colleague, Senator Simons, who can make a story sound so interesting, because I have one to tell today.

Let me tell you the story of my grandmother, Marie-Anne Corriveau-Forest, born in Saint-Félix-de-Valois, Quebec, in 1898, the daughter of Régis Corriveau and Agnès Lafond.

My grandmother was a strong, proud and very intelligent woman. We often sat at her feet, my sisters and I, to listen raptly to her stories about moving to the United States and about her trips to Boston and New York. She would describe for us the business attire of the era, a wide dress, a matching hat and lace-up leather boots. It was like an excerpt from an old movie. However, her stories took on a different tone when she recalled her return to Ontario with her family to clear a plot of land in the small farming village of Verner. Her elegant dresses in the latest style were put away forever, in exchange for rubber boots and cotton dresses.

After her marriage, she settled in the small Franco-Ontarian village of Verner. In fact, she became the village midwife, as well as giving birth to several children of her own, my father among them.

I remember I would ask her tons of questions, but, since I was a child, I now know that I didn't ask her all the questions I should have. If only I had known.

What I did not know, and what every member of our family did not know either, is that my grandmother was Métis. It was not until after her passing at the age of nearly 100 that we discovered our heritage. On reading a marriage certificate that we found, we learned that my great-grandmother, Agnès Lafond, was a member of the Abénakis de Wôlinak First Nation, a nation whose members live in Bécancour, Quebec. The name "Lafond" is the one the Catholic clergy gave as a replacement for our original family name, Mékésénak. I was shocked to read next to the names on the marriage certificate, the descriptor "savage."

I was older when I learned for the first time that I am part Indigenous. Before that discovery, I lived my life as a proud Franco-Ontarian, defending my rights to my language and my culture. Suddenly I felt like an imposter. Yes, I am Franco-Ontarian, but I am also Métis.

I questioned everything. I no longer knew my place or my identity. I became a stranger to myself. What was my real membership in a people I barely knew? I immediately wanted to start on my journey to cultural, spiritual and personal growth. I also wanted to know whether my grandmother knew about her Métis heritage. If so, why keep it a secret? If she did not know, why did her mother before her not disclose it?

Unfortunately, the answer is not hard to guess: colonialism. To a much lesser extent, I admit, I too am a victim of colonialism, a victim of my grandmother's shame or that of her mother before her at being labelled a "savage," of wanting to avoid discrimination and ensure her family's access to privileges reserved for Whites.

• (1900)

That's why whiteness and all its attendant privileges was the only reality I knew when I could instead have been experiencing a whole spectrum of colour. I have no idea what I could have been. I feel guilty because I don't know how my life would have been different had we known, had I been able to live my true life, my absolute and genuine truth.

I was never directly subjected to colonialism, and it is with shame and sadness that I acknowledge that, like so many Canadians, I don't know the truth. I don't know our country's true history. It wasn't taught to me in school. I don't know all the harm that governments and churches inflicted on Indigenous peoples to annihilate their values, their traditions, their beliefs and their languages.

As I learn about the traditions and culture of Indigenous peoples, I develop a deeper appreciation of that richness, that sense of respect and that spirituality. I am so grateful that life has given me an opportunity to embrace my dual identity.

I will now turn to Bill C-15. I sincerely believe that everything I have done in my life has led me to this very moment where, here, in the Senate of Canada, I can share my story with you, a story that is probably reminiscent of that of many other Canadians whose Indigenous heritage was also hidden from them. I find myself here, in the Senate, at a historic moment for our country, still privileged, but this time I am exercising my privilege as a Franco-Ontarian and Métis senator to support this long-awaited and much-desired bill.

As a Franco-Ontarian living in a minority community, I greatly admire Indigenous peoples. Thanks to the resilience and patience they have constantly shown in order to preserve their rich culture and their own identity, and despite all the obstacles they have faced and continue to face today, they are an example for all groups who have never acquired their rights, even though they are founded in law.

The discovery in Kamloops of the remains of 215 little children reminds us, in case we have forgotten, how painful and difficult the history of the relationship between the state and the various Indigenous peoples has been, and that the resulting conflicts sadly have not yet been resolved.

From the many testimonies and submissions on the content and impact of Bill C-15, a variety of perspectives have emerged. Some are against it, of course, but most are clearly in favour. The parties involved do not speak the same language, literally or figuratively.

The dynamic between the parties is fuelled by fear and mistrust because of promises that have not been kept. Despite our country's wealth and prosperity, the statistics and quality of life indicators illustrate the disadvantaged state of Indigenous peoples, some of whom, even today, would consider running water a luxury. The statistics we have all heard over and over again about life expectancy, the high incarceration rate of Indigenous people, the suicide rate, the gaps in the health care system and the failings of police services all point to the horrific reality facing Indigenous peoples and the effects of systemic racism and discrimination against them.

It is completely unacceptable that such inequalities exist in Canada. A country is only as strong and as good as its weakest link. Canada has nothing to boast about in this regard, and we have work to do.

In my opinion, Bill C-15 constitutes a very important first step in this work. It is a first step that scares the other parties involved for various reasons. On one side, there is a completely understandable lack of confidence and, on the other, the self-determination of Indigenous peoples may seem to threaten economic development and the retention of assets.

However, we absolutely need to take that step, despite the bill's flaws, despite the flawed process from which it arose and despite the act of faith it requires of some. This step is essential for managing natural resources and major projects in the future. It is essential to reducing inequality and giving everyone the opportunity to live a safe, dignified life in which the human rights set out in the Charter apply to all Canadians with no exceptions. It is essential to the social fabric of our country so that it can incorporate all of our arts and culture.

We heard from some Indigenous groups and rights holders that they were not consulted, while ministers in the other place and their senior officials said that they had held extensive consultations over many years and that the process would not be over any time soon. All of this shows that the various parties involved have a different definition of what constitutes consultations and different criteria for them. The action plan should therefore be quickly updated to include the definition of consultation or to propose a road map that will make it possible to achieve that goal to the satisfaction of all the parties involved.

We also heard that some communities did not feel represented by the groups that were consulted. There is a lot of diversity amongst Indigenous peoples. We cannot make the mistake of thinking that all Indigenous communities share the same vision. Since Bill C-15 must be implemented in close cooperation with Indigenous peoples, anyone who would represent them must be chosen by and for them. They should not have to wait for the government to consult or involve them. They should decide among themselves who should act as their representatives to negotiate for them and to provide consent on their behalf. The objective is to have a broad, ongoing consultation that will involve all the right stakeholders, thereby ensuring that all the various Indigenous communities are fully represented.

Self-determination is something that must be recognized from the outset. Otherwise, it will be a never-ending process, since there will always be individuals or communities who say they were not consulted and who therefore will not support the implementation.

The fact that the Government of Canada alone decides who the Indigenous stakeholders will be flies in the face of the spirit of self-determination that is integral to the purpose of Bill C-15 and its implementation.

My second point has to do with the magnitude of the task that needs to be completed over the relatively short period of two years. In light of everything that has happened since the United Nations adopted UNDRIP, there is clear pressure to get results quickly, since patience is running thin.

• (1910)

In fact, the action plan and the implementation of Bill C-15 affect Canadian laws governing all aspects of society because this is about human rights. That makes this is a colossal undertaking.

My recommendation is to take it one step at a time. Under no circumstances should there be an attempt to implement the whole package when the deadline rolls around two years from now. The action plan should set out manageable implementation phases.

This approach would enable the government to meet expectations one phase at a time. All of the stakeholders involved would have a chance to observe how the implementation is playing out on the ground. That would give them invaluable information about what measures are working and what mistakes to avoid.

The Hon. the Speaker pro tempore: I'm sorry, Senator Forest-Niesing, but your time is up.

Senator Forest-Niesing: May I have more time to finish my speech?

The Hon. the Speaker pro tempore: Senator Forest-Niesing is asking for five more minutes to finish her speech. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Forest-Niesing: Thank you.

I think this approach would be beneficial in many ways and deserves serious consideration.

In conclusion, I very much want to see the implementation of the United Nations Declaration on the Rights of Indigenous Peoples succeed in Canada because I want my White Franco-Ontarian heritage and my heritage as a member of the Abenaki First Nation to co-exist within me on equal footing.

That is also my heartfelt wish for Indigenous peoples and the people of Canada.

Thank you, *marsee*.

Hon. Senators: Hear, hear!

[*English*]

Hon. Peter M. Boehm: Honourable senators, I rise to speak to Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, commonly known as UNDRIP. Thank you to Senator LaBoucane-Benson for ably sponsoring the bill and to members of the Standing Senate Committee on Aboriginal Peoples for their diligent work.

I strongly support this measure, both the legislation itself and the spirit of it. I felt the same way in 2018 when I spoke on the last — but far from the first — UNDRIP attempt, then Bill C-262, as part of my inaugural speech in this chamber. Actually, it wasn't this chamber; it was the old chamber, but it was the chamber. It is my hope and the hope of many others that this will be the final round of speeches on implementing UNDRIP.

Bringing Canada's domestic laws in line with the declaration is long overdue, colleagues. UNDRIP was adopted by the United Nations in 2007 by 144 member states. Canada voted against it at the time but finally adopted the declaration after endorsing, but not signing, in 2010.

Only now, after introduction in the House of Commons in December 2020 following years of promises by the government and years of private members' bills, is Parliament dealing with implementation as a matter of government business. Getting this done is a vital step in the ever-evolving journey of reconciliation. After a year marked not just by a once-in-a-century global health crisis but also by a generational reckoning with systemic racism and discrimination, it is a step we must take now.

To anyone questioning why this is so important, I wish to offer just a few reasons.

In 2021, we are still debating constitutionally enshrined, Supreme Court-affirmed treaty rights that the Mi'kmaq and Maliseet peoples have held for 260 years to fish, hunt and gather to provide for their families. I refer, of course, to the now-adopted motion of Senator Francis and Senator Christmas on the dispute in Nova Scotia between Indigenous and non-Indigenous commercial lobster fishers.

While 107 long-term drinking water advisories have been lifted since November 2015, as of May 21 there are 52 still in effect in 33 First Nations communities across Canada.

There is the huge overrepresentation of Indigenous peoples in Canada's criminal justice system compared to non-Indigenous peoples. In fact, while the proportion of non-Indigenous peoples in Canada's jails has been decreasing over the past decade, the rate of incarcerated Indigenous peoples has been increasing for much longer. Indigenous peoples compose only 5% of Canada's population but represent more than 30% of inmates in federal prisons. Among incarcerated women, 42% are Indigenous.

Reaching this 30% threshold led the Correctional Investigator of Canada, in a statement in January 2020, to refer to the ". . . deepening '*Indigenization*' of Canada's correctional system." Indigenous women and girls have been so disproportionately victimized by violence that we needed a National Inquiry into Missing and Murdered Indigenous Women and Girls, the final report of which called for full implementation of and compliance with UNDRIP.

Call to Action 43 of the Truth and Reconciliation Commission, or TRC, chaired by our former colleague Murray Sinclair, also urged all levels of government in Canada to fully adopt and implement the declaration.

Finally, the remains of 215 innocent children were recently found in unmarked graves on the site of what was once the Kamloops Indian Residential School in British Columbia. The institution closed in 1978. That's far from ancient history, colleagues. We know there are more such graves across Canada, and the government must do much more to fund and support searches of former school sites, as the TRC called for. Knowing there are more grim discoveries to come makes it even harder to fathom how many families suffered not just the theft of their children but also their chance to bury them and say goodbye in a dignified way, following their own traditions and customs.

It goes without saying that the tragic legacy of generational pain and trauma caused by colonialism and especially the residential school system continues to cast a long shadow. Reconciliation, required because of historical mistreatment and abuse, has shaped public policy discourse in Canada in recent years. There has been progress, there has been regression and there has been maintenance of the status quo.

Bill C-15 provides a golden shot at progress: the legislative framework to implement UNDRIP in Canada and to advance reconciliation. We cannot change the wrongs of the past, but we

can fix today's injustices and work toward a better future built on a strong nation-to-nation relationship. That is the opportunity offered by Bill C-15, colleagues.

The articles contained in the declaration affirm a principled framework for justice, reconciliation, healing and peace. There is little, if any, disagreement on that.

[*Translation*]

The main objection to UNDRIP legislation, past and present, has revolved around the issue of "free, prior, and informed consent."

Specifically, this term has led to concerns that it amounts to Indigenous peoples having the power to veto actions and projects that would impact their communities, lands, and/or treaty rights.

How this consent requirement would work when it comes to resource development and economic projects is a point of contention for opponents because the term is not defined in C-15.

C-15, and consent specifically, has been charged with being anti-development because of the perception that free, prior, and informed consent provides Indigenous peoples with veto power to stop and/or block projects with which they do not agree.

If that's the case, critics say, and especially without a clear definition, Canada will lose economic opportunities because resource and energy companies will not want to risk their projects being delayed by required consultations or even blocked down the line, especially if the project is controversial.

[*English*]

As many experts have said, though, concerns about consent being a veto are unfounded.

• (1920)

On May 7, in his appearance before the Standing Senate Committee on Aboriginal Peoples, the sponsor of Bill C-15, Minister of Justice David Lametti, was clear. He said:

> Free, prior and informed consent . . . is not a veto over government decision-making. FPIC does not remove or replace government decision-making authority but it sets into place a process which will ensure meaningful participation.

The point of free, prior and informed consent, far from being anti-development, is meant to ensure that the long-held rights of Indigenous peoples are respected.

Testifying before the House of Commons Committee on Indigenous and Northern Affairs on April 13, Assembly of First Nations Chief Perry Bellegarde summed up, not just the need for, but indeed the benefit of free, prior and informed consent. He said:

> To me, that's what this bill speaks to — joint decision-making, getting involved sooner rather than later so you avoid blockades and you avoid legal battles.

Meaningful engagement with Indigenous communities early on is hugely important because it provides stability, in that all sides know what to expect and know they will be included right from the start. Further, it avoids, as Chief Bellegarde and others have pointed out, long and costly court battles and blockades — all of which are damaging on multiple levels. Nothing — no power, no authority — is being taken away from the government, nor from anyone else. Free, prior and informed consent is about empowering Indigenous peoples to be able to meaningfully exercise their treaty rights and those enshrined in the Constitution.

It is about dismantling the long-standing colonial approach to Canada's dealings with Indigenous communities whereby decisions that impact them are made without them. This is fundamental, colleagues. We cannot continue the journey of reconciliation, nor can Canada speak credibly about the importance it places on the nation-to-nation relationship, if we keep getting hung up on this misguided fear that the right to free, prior and informed consent equates to veto power.

But it is not enough to simply accept what it is not. We must also fully accept and recognize that Indigenous peoples have long-held and hard-won rights to have a meaningful say over what happens on their land and in their communities. This brings me back to my earlier point about what we are still discussing in 2021 and how far we have left to go.

[*Translation*]

The last point I wish to make is about two of the major strengths of Bill C-15.

Along with requiring that Canada's domestic laws be brought into line with the declaration, Bill C-15 also states that:

> **6(1)** The Minister must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the Declaration.

This action plan must be completed no later than two years after Royal Assent and must include measures to address and combat a wide range of issues that negatively impact Indigenous peoples. It must include ways to monitor the plan's implementation, must be tabled in Parliament, and must be made public.

Further, the minister will be required, after consultation and cooperation with Indigenous peoples, to report annually to Parliament on the progress of implementing the declaration and the action plan.

Colleagues, this is how real change happens: with monitoring and measuring progress and with, above all, accountability.

[*English*]

In 2010, the government of the day referred to the declaration as an "aspirational document." Many of the concerns from back then are ones we have heard throughout the various iterations of UNDRIP's rocky road in our Parliament. It is no longer good enough to simply aspire to implement the declaration in Canada. We cannot keep coming up with excuses. Not in 2021 and not after the many lessons learned over the past year and even more recently. Canada will never live up to its promise and potential without taking significant strides on that ever-evolving journey of reconciliation. We will not get there if we do not get this done. I urge all honourable senators to vote in favour of Bill C-15. Thank you.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Marilou McPhedran: As a senator from Manitoba, I recognize that I live on Treaty 1 territory, the traditional territory of the Anishinabe, Cree, Oji-Cree, Dakota and Dene, and the Métis Nation homeland.

[*English*]

I also wish to acknowledge that the Parliament of Canada is situated on unceded, unsurrendered Algonquin Anishinabe territory and that we have many people joining us today from across Turtle Island who are located on both treaty and unsurrendered lands.

I speak today in favour of Bill C-15 to incorporate in Canadian laws the United Nations Declaration on the Rights of Indigenous Peoples, or the declaration, as adopted by the UN General Assembly on September 13, 2007, by a majority vote that did not include Canada.

My support for this bill is both technical in law and emotional. My esteemed colleague, Cree lawyer Romeo Saganash, introduced his first bill on this topic, Bill C-469, back in 2013 when he was an NDP member of Parliament. The title set out the bill's intent: An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples. This bill did not make it to second reading.

The next year, Mr. Saganash tried again with the introduction of Bill C-641, An Act to ensure that the laws of Canada are in harmony with the declaration, which was defeated at second reading in May 2015.

But 12 months later, in May 2016, at the fifteenth session of the UN Permanent Forum on Indigenous Issues at the UN headquarters in New York City, Minister Carolyn Bennett spoke for the Government of Canada and said, I'm here to announce, on behalf of Canada, that:

> We are now a full supporter of the declaration, without qualification.
>
> We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution.

Dr. Bennett noted:

> Canada is one of the only countries in the world that has already incorporated Indigenous rights in its Constitution.
>
> By adopting and implementing the Declaration, we are excited that we are breathing life into Section 35 and recognizing it now as a full box of rights for Indigenous peoples in Canada.

That same year, 2016, MP Saganash introduced the private member's Bill C-262 entitled: An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples, sponsored in this place by now-retired senator Murray Sinclair and killed in the Senate in 2019.

Bill C-15, now before us, was introduced in December 2020 by the Minister of Justice and Attorney General, more than five years after Dr. Bennett committed the Government of Canada to the implementation of the UN declaration in Canadian law.

As Canadians, we have all been called to action. We have heard Canada's Truth and Reconciliation Commission explicitly call upon every level of government to adopt and fully implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation. Just two weeks ago, the *National Action Plan on Missing and Murdered Indigenous Women and Girls* was released, calling again to adopt and implement this declaration. Of the many tragic, horrific outcomes of Canada's colonialist violence against Indigenous peoples in this country, the voices of Indigenous residential school students call from their unmarked graves, demanding better now and for future generations.

Today's Indigenous children continue to be overrepresented in provincial and federal foster system. Indigenous peoples of all genders continue to be hugely overrepresented in Canadian prisons. There are Indigenous youth and children losing hope in communities across this country. There have been too many tragedies to list here, undoubtedly with more to be revealed, but we must not turn from these truths or from this evidence of genocide perpetrated through forced assimilation structures constructed through the Indian Act, such as the residential school system and the adopting out of Indigenous children by the Sixties Scoop.

• (1930)

Of the violence spoken of in testimonies by survivors and family members, the National Inquiry into Missing and Murdered Indigenous Women and Girls said:

> The violence the National Inquiry heard amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQQIA people.

Adoption of Bill C-15 will not magically heal or provide full remedies for these human rights violations, but, honourable senators, it will enhance the substance and potential of the

foundation needed to make deep systemic changes in Canada to follow the path to reconciliation. The inquiry called for a national action plan to address violence against Indigenous women, girls and 2SLGBTQQIA people.

In Bill C-15, subclause 6(1) sets out specific steps for the government as to what that action plan should address and the measures that are to be included. This is significant in that the specificity is a useful means to holding the government accountable for implementation.

Honourable senators, there have been many concerns expressed about the implications of this bill on rights to land and resources. I do not disregard these concerns, having respectfully abstained on the amendment proposed by Senator McCallum.

I also think it is important to acknowledge, respectfully but briefly, some of the other concerns raised about the process and what this bill does or does not do. The Association of Iroquois and Allied Indians stated that the government's process was inadequate:

> Meetings were capped, time was restricted, and engagement periods were not extended to make proper use of time and information.

Several Indigenous activist networks analyzed the bill, concluding that clause 2 of the bill would maintain the common law interpretation of subsection 35(1) and (2) of the Constitution Act, 1982. They argued it's based on the colonial Doctrine of Discovery stripping Indigenous people of their land ownership and land rights.

Nevertheless, I support this bill because we will always have a multitude of opinions, and I choose to rely upon the analysis of Indigenous legal experts whom I know and trust, and also informed by my experience working in the multilateral UN system and seeing how international human rights instruments can be highly useful in claiming and securing positive substantive changes to reset and balance the scales of justice.

An expert from my home province of Manitoba, Métis law professor Brenda Gunn, summarized her support for Bill C-15 to the members of the Senate Standing Committee on Aboriginal Peoples — five years to the day from when Minister Bennett first spoke at the UN — with these words that I cite with agreement:

> The bill provides greater certainty for the application of the UN declaration in Canadian law and addresses some of the hesitancy that judges have in regard to not understanding how international law applies. The action plan provides space for negotiations and discussions on how to implement rights, which allows for us to address the specific differences among Indigenous peoples. The UN declaration and Bill C-15 build up from existing rights, and the annual reporting provides a level of accountability and transparency for implementing the UN declaration. Finally, it is an important step toward reconciliation and toward a fairer and more just Canada for all.

I would like to turn briefly to analysis of the bill's FPIC, or free, prior and informed consent, as discussed by the UN Expert Mechanism on the Rights of Indigenous Peoples, or EMRIP, that identifies three functions of FPIC that are relevant: one, to restore Indigenous peoples' control over their land and resources; two, to restore Indigenous peoples' cultural integrity, pride and self-esteem; and three, to redress the power imbalance between Indigenous peoples and states, with a view to forging new partnerships based on rights and mutual respect.

The EMRIP notes that free, prior and informed consent operates fundamentally as a safeguard for the collective rights of Indigenous peoples. According to the EMRIP interpretation, Canada is obliged to consult with Indigenous peoples using a qualitative process of dialogue and negotiation in each step of planning through implementation, with consent as the objective. Honourable senators, we can see this potential in this bill and adoption will have a facilitating effect.

I now turn to how the bill could support what Indigenous peoples are already doing in the substantive re-articulation of Indigenous law and legal processes. I'm honoured to quote an esteemed former colleague, Dr. Val Napoleon, in describing Bill C-15 as:

> . . . an opportunity for Canada to be actively and truly multijuridical so that legal principles can guide how Indigenous peoples then interact with Canada, but in a supported way because there has been an undermining of those systems.

Professor Napoleon also sheds light on fears that the declaration and this bill somehow create a veto power that would have negative consequences for Canada. She told the Aboriginal Peoples Committee that this notion of a veto:

> . . . derives from a very impoverished view of the law. It derives from the worst possible perception of how law operates. If we think about what the standards are by which our law operates in Canada and the legalities that make it legal, those standards will continue through all of its interpretations through the work on matters that we take to the law. So the idea of a veto, that's not how the application of law works. That is not how the courts work.
>
> There are balancing principled legal processes through which legitimacy of a decision is reached on a particular matter. Then the next case will require another principled process on that matter that is before it. So flattening that process and to say that it will create a veto is problematic.

Honourable senators, the context for our current robust debate is much larger and longer than the bill before us now. We have been engaged since Canada refused to sign on to the UN

declaration in 2007, then shifted and adopted it in 2010 through a succession of bills, beginning with the first introduced by Romeo Saganash in 2013.

Canada has come a long way from 14 years ago when it refused to accept the declaration to where we are today with this bill's commitment to incorporate the declaration in Canadian law. But, not to be mistaken, while passage of Bill C-15 is an incremental and small step, it is an essential step on the path to reconciliation, and a lot of work is still ahead for our generation and many more to follow.

I look forward to voting in favour of this bill. Thank you, *meegwetch*.

Hon. Brian Francis: Honourable senators, I join you today from Epekwitk, the ancestral and unceded territory of my people, the Mi'kmaq, to speak in unequivocal support of Bill C-15.

The UN declaration is the result of decades of work by Indigenous leaders. It does not create new rights. Instead, it sets out existing international human rights standards that are specific to the circumstances of Indigenous people. It is also a valuable tool for promoting the compliance of state parties to their obligations.

Before the declaration was adopted by the UN General Assembly in 2007, many states did not recognize the status of Indigenous people as rights holders under international law. While 144 states later voted in favour, Canada was one of the four to reject it. Even when Canada reversed its position in 2010 and endorsed the declaration, it did so with qualifications, emphasizing that it was only aspirational and not legally binding. In 2016, Canada went on to endorse the declaration without qualification and committed to its full and effective implementation.

• (1940)

The context that may be unfamiliar to some is that it was only because of mounting pressure that in November 2017 the federal government went on to support Bill C-262 in the House of Commons. That bill was adopted in the other place in May 2018, with 206 votes in favour and 79 against, but after months of unnecessary delays and obstructions, it died on the Order Paper of the Senate on National Indigenous Peoples Day in 2019. That outcome fuelled widespread disappointment and frustration across the country. In response to calls from Indigenous people urging Canada to immediately implement the UN declaration, this federal government introduced Bill C-15 last December.

The progress made in past decades is not due to the genuine willingness of federal governments, both Conservatives and Liberal, to heal the broken relationship with First Nations, Métis and Inuit. It is due to the long and hard-fought struggle, both domestically and internationally, to ensure recognition, protection and fulfillment of our inherent rights.

Honourable senators, Bill C-15 sets out a legislative framework to advance the implementation of UNDRIP in Canada, and its passage is critical to advancing national reconciliation. The bill explicitly affirms that UNDRIP, as a universal, international human rights instrument, is applicable in Canadian law. Although provincial and federal courts already use it as a source of interpretation, Professor Naiomi Metallic and others have spoken about the importance of this affirmation, given that most lawyers, judges and the broader public remain woefully ignorant and resistant to its application and interpretation.

Once ratified through Bill C-15, UNDRIP will no longer be a mere political aspiration, but rather an international instrument that is legally binding on the state. In this regard, the bill has the potential to contribute to the advancement of the rights of Indigenous people, including through the evolution of jurisprudence on section 35 rights.

The bill also requires that current and future federal governments work in consultation and cooperation with Indigenous people to bring federal laws and policies into alignment with the declaration, as well as to develop an action plan to achieve its objectives. Using a distinctions-based approach, the action plan must be tabled in both Houses of Parliament and be made public within the two-year timeline. If, for instance, deadlines are not met or issues arise that cannot be resolved, committees in both places will be able to conduct hearings and make recommendations. Indigenous people will be able to voice their views and concerns at this stage. These legal requirements add an important layer of transparency, oversight and accountability. It is not lost on me that the transformative change some of us envision following the adoption of the bill will not happen overnight. We know that it is going to take a long time and hard work, and we will not always get it right. However, this process cannot be delayed any longer.

Honourable senators, Bill C-15 has generated some concern, and even fear, because of misunderstandings. To assist in your deliberations, I will do my best to provide some clarity now. Despite some suggestions, Bill C-15 does not impose new obligations on provincial, territorial or municipal governments. The bill only imposes obligations on the federal government. The preamble specifically recognizes that it is up to each of these jurisdictions to establish their own approaches. That is exactly what British Columbia did in 2019, and what the Northwest Territories is working toward. We cannot forget that the declaration is an international human rights instrument that is presently binding on Canada through the presumption of conformity and customary law. As a result, all levels of government — federal, provincial, territorial and municipal — must respect minimum human rights standards of Indigenous people. In other words, our different jurisdictions cannot just pick and choose which rights are convenient to uphold.

There has been much fear mongering that the right to free, prior and informed consent will, through the adoption of Bill C-15, provide Indigenous people with a veto over resource development and thus threaten economic opportunities. That is false. The right to free, prior and informed consent, or FPIC, does not amount to a veto. In fact, this word is not used in the declaration or the bill. FPIC goes beyond saying "yes" or "no." It is concerned with the effective and meaningful participation of

Indigenous people in decision-making processes that affect us before actions are taken. Although governments have an obligation to consult and cooperate in good faith with Indigenous people on proposed projects involving our lands, territories and resources, as well as in a wide range of other contexts, industry and other actors are also required to uphold minimum human rights standards.

Dr. Wilton Littlechild, for example, said that FPIC is key to upholding our right to self-determination and self-governance; protecting our lands, territories and resources; reducing or eliminating costly delays because of conflict and litigation; and facilitating equitable partnerships. Grand Chief Abel Bosum spoke about the gradual but significant advancements made by the Cree Nation in northern Quebec over the past four decades with regard to involvement in economic development projects. We also heard from the National Indigenous Economic Development Board, the National Aboriginal Capital Corporations Association, the Canadian Council for Aboriginal Business, the Reconciliation and Responsible Investment Initiative and others about the importance of Indigenous rights recognition through the passage of Bill C-15 to build a more prosperous and equitable future for Indigenous peoples and Canada.

Before concluding, I want to address the argument that Bill C-15 has been rushed through Parliament without enough consultation. It is true that some rights holders have indicated that they were not properly consulted. Some critics of the bill have pointed to this issue as a reason for the bill not to pass. However, the fact remains that there is overwhelming support for Bill C-15 by Indigenous peoples across Canada. Yes, there is some opposition, but that is to be expected given the distrust of governments at all levels due to past and present actions. The Committee on Aboriginal Peoples heard that the federal government undertook 33 bilateral sessions with the Assembly of First Nations, ITK and the Métis National Council. In addition, it held over 70 virtual sessions. Some recommendations made during this process became parts of Bill C-15.

We cannot forget that both the TRC and the MMIWG called on Canada to pass legislation to implement UNDRIP. Dr. Littlechild told our committee:

> We as the Truth and Reconciliation Commission held the longest and most extensive consultation of Indigenous peoples. Over 7,000 witnesses came in front of us and talked about the UN declaration.
>
> In terms of the time frame, how much time do we need?

Professor Metallic also reminded us that Canada has been discussing the contents of this bill for over years. Romeo Saganash, the former NDP MP who is a Cree from northern Quebec, introduced private member's bills in 2014 and 2016 to implement the declaration that were defeated. He additionally conducted extensive cross-country meetings.

The relevant committees in the House and Senate examined Bill C-262 in 2018 for over 15 days, and Bill C-15, which builds upon it, has received even more parliamentary scrutiny. The House committee heard from over 40 witnesses and received 48 written submissions. The Senate committee heard from 89 witnesses in total and received 52 written briefs. Based on this context, Professor Metallic went on to state the following:

> There is no substantive change in the law here, simply a clarification of the state of existing law and a commitment to a process to make future substantive changes, which explicitly requires Indigenous participation. There are therefore no adverse impacts of the law; the effects of the law are positive at best, or neutral at worst. Given that any future changes in the law will require consultation with Indigenous people, plus the five plus years of discussion over the contents of the bill, I think it is time for us to move forward and get to the real work of implementing the Declaration.

• (1950)

I completely agree with the views of these two renowned Indigenous experts. We cannot let this historical opportunity pass us by again. Colleagues, the critics of the bill have argued that the consultations conducted during both Bill C-262 and Bill C-15 are different matters. I strongly disagree.

The initial draft of Bill C-15 that was provided to Indigenous people during early consultations was Bill C-262. We need to consider both bills together to fully understand the extensive consultation that has occurred in the last five years and the significant contributions that Indigenous people have made since. The critics have also argued that the federal government did not fulfill its duty to consult Indigenous people when it came to the development of Bill C-15. However, in accordance with *Mikisew Cree First Nation v. Canada* from 2018, this assertion is contrary to the law as it stands today. If we look at the consultation that has been undertaken on Bill C-15, some could argue that the federal government likely exceeded what it was legally required to do.

Arguments have also been raised by critics as to whether there should be consensus by Indigenous people on Bill C-15. Yet it is unreasonable to expect 654 First Nations in Canada, without including Métis and Inuit, to reach such a threshold. And why should we if we do not expect the same of the non-Indigenous population? We cannot even agree amongst ourselves here.

Colleagues, since coming into existence in 1867, the Senate has played a key role in the genocide of Indigenous people through the imposition of laws and policies, such as the residential schools, which were designed to exploit, subjugate and erase us and which have contributed to the staggering rates of violence, death and suicide that we experience in our communities today.

That is the hard truth that this chamber of sober second thought must atone for. Indigenous people not only deserve better, but demand better from each of us. Words and promises are not relevant to real reconciliation. What matters are tangible actions and outcomes. I therefore implore you to vote in favour of Bill C-15 without delay. *Wela'lioq*. Thank you.

Hon. Scott Tannas: Honourable senators, it's an honour to follow after the great Deputy Chair of the Aboriginal Peoples Committee, Senator Francis.

I rise today to speak to Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples. I want to start by thanking Senator Dan Christmas, Chair of the Aboriginal Peoples committee, for his incredible example of servant leadership. He put his own questions, opinions and interests aside to organize and operate a series of meetings that could not have been more comprehensive or complete.

Thank you, Senator Christmas. And thank you to our very capable staff who provided their usual high standard of expertise and service in support of our work.

The committee heard from a wide range of witnesses including legal and constitutional experts, government officials, Indigenous leaders from national and regional organizations, as well as rights and title holders from across the country. Our hearings totalled 24 hours spread out over six days.

From my perspective, there was no clear consensus amongst stakeholders regarding Bill C-15. It is not a perfect bill. But there was near-unanimous support for the principles of the United Nations Declaration on the Rights of Indigenous Peoples. In fact, in my eight years as a member of the committee, I have rarely seen an issue where the heart of the matter was so strongly supported. We heard from multiple witnesses words to the effect of "I support UNDRIP, but" and then they went on to discuss their concerns with respect to Bill C-15. These stakeholders were from across the spectrum, from scholars, rights and title holders to resource industry people and groups and particularly provincial governments.

Honourable senators, I have deep concerns about the bill. Here are my top concerns: The bill has some wording issues that we should have fixed with amendments, the French and English versions may have differing meanings in one spot and this language issue is compounded by the curious use of the words "Canadian law" in place of the usual phrase "laws of Canada." This has caused some heartburn for provinces looking to protect their jurisdiction.

On this issue, the committee did its best to clarify through questions on the record with government officials and the sponsor of the bill and the Government Representative in the Senate, all who spoke clearly that the intention is that this bill's language refers to the laws emanating from the Parliament of Canada. We further noted this in our observations. Today, Minister Lametti and, again, Leader of the Government Gold brought further clarification and confirmation of this fact — all of this in place of an amendment that, but for the pressures of time, would have been an easy fix.

My second concern arises from the testimony of a senior legal and constitutional scholar that the placement of certain phrases in the bill raises a concern where some rights holders have publicly stated their belief that the bill has immediate and wide-ranging effect on the laws of Canada. This has been called in some quarters "divergent expectations."

There was a fear stated that we may see lawyers rushing to court with an argument that this wording in the bill provides them with the tools to relitigate issues through the lens of UNDRIP. This is the so-called "legal chaos concern." Again, the committee was careful to get statements on the record from ministers and government officials and also former MP Romeo Saganash whose prior bill, Bill C-262, forms the foundation for this bill. Their comments made clear to me and others that this bill does not confer UNDRIP any more effect on the laws of Canada than it did before.

This is an important fact and is a major difference between Bill C-262 and Bill C-15. This bill is a plan to make a plan and implement UNDRIP in the future.

Jody Wilson-Raybould, former justice minister and Member of Parliament and a person whom many of us in this chamber admire greatly, did not testify at committee but made the following statement about this very question:

> There should be no confusion: Implementation has not happened. Bill C-15 (UNDRIP), if it is passed by Parliament in the coming weeks, does not implement the human rights of Indigenous peoples. The bill says the government will take action to develop a plan to implement them.
>
> On the day the bill passes no aspect of the life of any Indigenous person in this country will change. And the laws and policies that are on the books and the practices of government will not somehow miraculously be transformed.
>
> Anyone in government who tells you differently does not understand their own legislation. At best, it will push future governments to do new things, and make it harder for them to do so little — unlike this federal government and the ones before.

I love the way she speaks. In a few sentences, this luminous leader has provided us with her usual clarity.

• (2000)

I would say that we can all agree, notwithstanding some of the criticisms that are in former Minister Raybould's comments, that this is a small step, and an important step forward.

A big issue for me and for many is around the definition of the term "free, prior and informed consent," which features prominently in the UN declaration. The only clarity that we got

from the government and proponents of the bill is that it's not a veto. Okay, we understand that; it's not a veto.

Any work on helping to define FPIC was left to future discussions. There was a vague assertion that some work would be done during the two-year action plan development phase of the bill and possibly some guiding principles will emerge. We'll see.

But make no mistake, colleagues, this issue is critical to the success of UNDRIP in Canada, where we have roughly 700 distinct Indigenous communities, including First Nations, Métis and Inuit — 700 distinct Indigenous communities that might quite legitimately insist on their right to free, prior and informed consent.

However, there is nothing here yet to provide any guidance and financial resources — no financial resources — to allow these 700 communities to build their processes and capacity in this area, and no thought appears to have been given to anyone who may wish to eventually seek consent.

So, on the biggest issue of concern for concerned Canadians, it's all a bit fuzzy as to how this is going to work out.

That brings me to my greatest fear, which is that the government will not do the hard work to develop a meaningful action plan in the next two years.

Colleagues, this fear is not unwarranted. We have seen this with other bills in this government and with time-sensitive initiatives before — many times — especially on bills and initiatives involving Indigenous people. This is not a government that has covered itself in glory for its ability to convert high-minded words into action on the ground.

In addition, and most worryingly, the government quickly accepted an amendment in the other place to reduce the timeline for the action plan development from their proposed three years to two years, without any discussion as to how they would make up for the shortfall in time. This makes me wonder and worry how serious they are about doing the hard work that needs to be done in order for this to be a success for Canada and for Indigenous people.

We have unclear wording in the bill. We have an unclear definition of FPIC. We have a legitimate worry that the government is not up to doing the hard work to get the next crucial step right.

This could be the depressing end to my comments. Instead, let me tell you why I support this bill. First, it is clear that we in Canada have come to the end of the road, and it is a dead end, for the way resource development has been conducted in the past. Over the past number of years, we have constructed our own Gordian Knot of suffocating bureaucratic regulation, clever environmental activism, Indigenous rights awakening, technocratic and uninspired industry leadership, conflicting socio-economic ideologies and political agendas.

Investment in Canada has dried up. Most of us haven't noticed it yet, because it takes awhile to show up. The first people who will notice it will be working people, but we'll eventually notice it, too. It will cause great pain across this country when it shows up.

The United Nations Declaration on the Rights of Indigenous Peoples, in my mind, offers everyone the high road — the hard road, but the high road — to do what is right for Canada and for all Canadians. If we can untie this knot in a way that allows Canada and all its people to succeed in the responsible and fair development of resources, jobs and wealth, then we will truly deserve the respect and admiration of people around the world.

Canadians have been consistently clear in polling that they want resource development, protection for the environment, and Indigenous people to achieve prosperity and full control of their futures. There is a road to this, and we must find it together through hard work, through honesty and through good faith.

My second and more personal reason for supporting this bill is because I believe we must put our faith in Indigenous people and their leaders. Having met hundreds of Indigenous leaders over the course of my life, and particularly in my time in the Senate, I have absolutely no hesitation in doing so.

I will be forever grateful to former senator Murray Sinclair, who, a few years ago, insisted that the Aboriginal Committee undertake a mini-study of the history of the relationship between Canada and its Indigenous people. We issued a report in the Forty-second Parliament — report number 15 — entitled *How Did We Get Here? A Concise, Unvarnished Account of the History of the Relationship between Indigenous Peoples and Canada*. You should read it. The study was one of the most humbling experiences of my life. What struck me most was how often, over the course of 400 years, Indigenous peoples put their faith in Canada. Time and again, Indigenous peoples acted in good faith. They acted in good faith consistently.

Free, prior and informed consent requires good faith on both sides — and trust. There is a lot of hard work to be done here, but it needs to be done if we are ever going to be the country that we can be and that we should be.

So I will stand for this bill. I do so convinced that this modest, hopeful step forward is the right thing, but not the easy thing, for my province, my country and for all Canadians — every last one of us. Thank you.

Some Hon. Senators: Hear, hear.

Hon. Marty Klyne: Would Senator Tannas take a question?

Senator Tannas: You bet.

Senator Klyne: Thank you. I have a few questions to ask in order to make a question, if you will.

• (2010)

I don't think there is anyone in the room who would deny a person self-determination in a situation where each person has the ability to make choices and manage their own life. Similarly, I don't think there is anyone who would deny participation in education, ceremonies, culture and language. I think we all respect people's rights to ceremonies, culture and language; as well, on the side of participating, there is the right to participate and compete for jobs or the right to participate and compete for contracts.

Should Indigenous peoples' consent not be sought to effectively determine the outcome of decision making that affects their world and not merely be involved? In that regard, NIMBY extends beyond non-Indigenous. NIMBY also applies to Indigenous peoples. In recognizing the right to self-determination, recognizing the right to participate, and the Indigenous peoples being able to seek consent and vice versa, the developers, to use your concerns about investment not being made, and those wanting to make the investment or development, should be able to seek out the consent of Indigenous peoples about things that will affect their world, in their backyard.

An earlier speaker — I can't remember if it was Senator Boehm — had mentioned Perry Bellegarde's reference to the idea that this will help lead to trying to find that common ground to build on to move forward. There are a number of groups out there that want to see active investment in development and they want to participate in that. They want to compete for the jobs. They want to compete for the contracts. While there might be one Indigenous group that doesn't want to follow the process, I hazard a guess the ratio is probably extremely high in that one group who wants to proceed, who want to get to, as you call it, the plan to make a plan. It will be a hard row to hoe, but hard or easy has nothing to do with this. We need to start making progress and this is a good platform to lift off from.

In terms of FPIC, to me it means nothing more than the right to participate, the right to self-determination and the right to involve oneself in something that will go on in your own backyard. I would like to know if you have some alignment with that in terms of those rights and the ability to seek consent.

Senator Tannas: It's interesting, as you were talking I was reminded of a few different folks who testified at the committee. We did have some Indigenous business people. By and large, they were not in favour of Bill C-15 and cited this issue of FPIC as being a big concern for them. What does it mean?

At the end of the day, the hard work is going to be getting something that will allow every community, as you've said, and particularly in linear projects, where you have to get 30, 40 or 50 communities on side, to all be given the resources and the time to come to their own decisions around an FPIC process and how they will access expertise, because they will not take the proponent's word for it. And it will be the same, whether it's an Indigenous business trying to do something or a non-indigenous business trying to do something. That was the concern we heard on both sides.

Let me tell you another thing that was interesting. Senator Plett talked about Brian Schmidt, CEO of Tamarack Valley Energy, a very successful mid-sized oil and gas producer in the West. Brian is an honorary chief. He grew up on a ranch beside the Piikani Nation. He expressed the FPIC concerns. We got into a dialogue and one of the things he said I found interesting. He believes that over a short period of time things will pivot so that large projects will be led by Indigenous communities and Indigenous enterprises, and it will be the responsibility of industry to support them. I thought that was a sage observation and goes to what you're talking about. Thank you, senator.

Senator Klyne: Thank you.

(On motion of Senator Duncan, debate adjourned.)

[*Translation*]

JUDGES ACT

BILL TO AMEND—SECOND READING—DEBATE

Hon. Pierre J. Dalphond moved second reading of Bill S-5, An Act to amend the Judges Act.

He said: Honourable senators, I hope that, thanks to this tablet, I will do as well as Senator Tannas, who gave an excellent speech, and I thank him.

[*English*]

Honourable senators, it's my pleasure to rise today to initiate second reading of Bill S-5, An Act to amend the Judges Act. We are going to speak about the constitutional separation of power once more, but maybe in a less exciting setting than Bill C-15. I know you've been waiting anxiously to hear my speech since last week, so I will not keep you waiting any longer. Nevertheless, it might look technical, but it goes to important principles about separation of powers and judicial independence. I hope I'll get your attention and, even more, your support for this bill.

Essentially, Bill S-5 proposes to modernize the legislative framework on the complaint process applicable to federally appointed judges. The bill will also ensure that the new process, prior to the request to Parliament to remove a superior court judge, is one that is fair, effective and worthy of Canadians' confidence and trust.

Allow me to begin by sharing the context for this legislation with you. Drafters of the Constitution, mindful of the importance of the independence of the judiciary, a principle first recognized in the Magna Carta, made sure that once judges are appointed, they could not easily be removed by the government or by Parliament. In the U.S., they call it the impeachment of a judge.

This principle can be seen at section 99 of the Constitution Act, 1867, which states:

> . . .the judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons.

In 1971, Parliament amended the Judges Act to provide for the creation of the Canadian Judicial Council, a body chaired by the Chief Justice of Canada and comprising every chief justice and associate chief justice of the country's superior courts. Currently, the council has 41 members.

The council, also called the CJC, is mandated to promote efficiency and uniformity and to improve the quality of judicial service in Canada's superior courts. As a critical part of this mandate, the council has been given the exclusive authority to investigate allegations of misconduct against a superior court judge. When such allegations are proven, and determined by the council to be so serious that removal from office may be warranted, the act directs the council to submit a report to the Minister of Justice with the recommendation that the judge should be removed from office.

• (2020)

The minister must then decide whether to put the matter to Parliament, inviting both chambers to exercise their power under section 99 of the Constitution Act of 1867, to request that the Governor General remove the judge.

[*Translation*]

By imposing a process that makes it the responsibility of judges, first and foremost, to deal with allegations of misconduct against a judge, the Judges Act protects judges from acts of intimidation or retaliation by the executive power or litigants. In addition, since the act provides for parliamentarians to exercise their constitutional power to remove a judge only after having received the report and recommendation of the council in this regard, Canadians can rest assured that this measure, intended to be exceptional, will only be taken when it is truly justified. Since 1867, four judges have gotten very close to having a motion in the House of Commons and the Senate seek to strip them of their duties. Therefore, it is not an often-used process.

The process put in place in 1971 remains one of the best in the world, but its main elements have aged to the point where today's structures and procedures need to be reviewed and simplified to ensure that they will not lead to situations that undermine public confidence.

[*English*]

Several issues have emerged as cause for concern. One of these is the length of the process. Another one is the cost of judicial conduct proceedings. The various internal committees created by the council to deal with complaints are, under the current law, considered to be federal administrative tribunals, and their decisions are thus reviewable, first in the Federal Court, then by the Federal Court of Appeal and finally, on leave by the Supreme Court of Canada.

This gives the judge subject to the process and the council an opportunity to initiate as many as three stages of a judicial review on interim decisions, as well as on final decisions. As a result, judicial conduct inquiries can be delayed for years.

In a recent case, a complaint process initiated in 2012 resulted in the recommendation of the council that a judge be removed from office. This became final only in February 2021.

Colleagues, you may not know, but during that entire period — until the day the Governor General dismisses the judge, or voluntary retirement before Parliament is called to vote on a motion — a judge's salary continues to be paid and their pension benefits keep accruing. In addition, the legal fees and costs accrued by the council and the judge before the council's panels and the courts are assumed by the taxpayers.

Bill S-5 contains provisions that will freeze a judge's pension entitlements as soon as a council hearing panel decides that the judge's removal from office is justified. Unless a decision is overturned on appeal, or rejected by the Minister of Justice or by either chamber, the judge will only be entitled to the pension they would have received up to the date of the hearing panel's decision that the removal is justified. That will shorten the process by years.

As you may know, in the budget implementation bill, there is a small provision that will apply as soon as the budget is implemented, which will stop entitlement to pension benefits the minute the council has recommended that the judge be removed from office. However, this bill will integrate that in the whole new process.

Commenting on the case that took roughly nine years, after the Federal Court of Appeal's decision was rendered in the summer of 2020, in an open letter to Canadians, the Canadian Judicial Council wrote:

> Specifically, over the past decade, we have all witnessed public inquiries that have taken far too long and have been far too expensive. We have witnessed countless applications for judicial review, covering every imaginable aspect of the process. These have been enormously time-consuming, expensive and taxing on our federal courts. Furthermore, all costs, including those incurred by the judge who is at the centre of the inquiry, are fully funded by the taxpayer. The judge at issue continues to receive full salary and pension benefits as time passes. This leaves the perception that the judge benefits from these delays. Highlighting this problem, we refer to a painfully obvious pattern, as opposed to any individual case: a pattern that is contrary to the public interest and access to justice.

This was a press release issued by the Canadian Judicial Council, chaired by the Chief Justice of Canada.

At the close of the entire process, on February 25, 2021, eight years after the first complaint in connection with the same judge, the Chief Justice of Canada, the Right Honourable Richard Wagner said:

> As Chairperson of the Canadian Judicial Council, I reiterate the need to adopt legislative reforms that Council has long called for in order to improve the judicial conduct review process, and thereby maintain public confidence in the administration of justice. On behalf of the judiciary and the public it serves, I therefore welcome the commitment of the Minister of Justice and the Prime Minister to proceed with those reforms as soon as possible in order to avoid any such saga in the future. As the Minister of Justice said today, "Canadians deserve better".

Another shortcoming of the current process is that the Judges Act empowers the council to recommend only for or against the removal of a judge. It cannot impose lesser sanctions for misconduct that falls below the necessarily high bar governing judicial removal. As a result, instances of misconduct may fail to be sanctioned because they clearly do not approach this high bar.

There is also a risk that judges may be exposed to full-scale public inquiry proceedings, and to the stigma that can be associated with this, for conduct that could be more sensibly addressed through alternative procedures and lesser sanctions.

Amendments to correct these defects will not only render conduct proceedings more flexible and proportionate to the allegations that provoke them, they will provide greater opportunity for early resolution and reserve the costliest and most complex hearings for the most severe cases.

[*Translation*]

Finally, the Judges Act requires that a recommendation for the removal of a judge be made to the Minister of Justice by the council itself rather than the inquiry committee established to review the conduct of a particular judge. Thus, once the inquiry committee has reached its conclusions, the council must deliberate, with at least 17 members present, and prepare a report and a recommendation to the minister. This approach goes beyond what procedural fairness requires and places a significant burden in terms of time and energy on at least 17 Chief Justices and Associate Chief Justices, not to mention the translation of evidence, which can include thousands of pages of the committee's report that were presented to the inquiry committee. As the council itself recognizes, this approach is inefficient and contrary to the public interest in the optimal use of judicial resources, including courts and judges in authority.

• (2030)

This bill was prepared after public consultation on the disciplinary process reform conducted by the government in 2016, which revealed strong support for developing a more transparent disciplinary process that is easier for the public to access, especially because of the increased opportunities for members of the public with no legal training to take part in the process.

The government then benefited from ongoing discussions with representatives of the Judicial Council and the Canadian Superior Court Judges Association, an association that represents more than 1,000 superior court judges, about their concerns and respective visions for the disciplinary process reform. I will come back to the importance of these consultations at the end of my speech.

For now, suffice it to say that nearly everyone involved supports the proposed changes in Bill S-5, which will improve the effectiveness, flexibility and transparency of the disciplinary process for judges, while respecting the principles of fairness and judicial independence. Those are the objectives of the bill. I will now describe some of these key aspects.

[*English*]

The legislation before you will introduce a more versatile process. After initial screening by the council's officials, any complaint that cannot be dismissed as completely without merit will be referred to a review panel composed of representatives of the judiciary and one member of the public. After reviewing the matter on the basis of written submissions only, the review panel will be empowered to impose remedies short of removal from office — for example, a requirement that the judge take a course of professional development or issue an apology. This would enable the effective, fair and early resolution of cases of misconduct that do not require a full-scale public hearing.

Should a review panel decide that an allegation against a judge could indeed warrant their removal from office, the proposed legislation requires that the matter be referred to a full public hearing. These hearings will function differently from the council's current inquiry committees. First, the hearing panel itself will include representation by a lay member of the public and a representative of the legal profession in addition to judicial members. A lawyer will be appointed to present the case against the judge, much as a public prosecutor will do. The judge will continue to have the opportunity to introduce evidence and examine witnesses, all with the aid of his or her own counsel. In sum, the process will be structured as an adjudicative and adversarial hearing — a format that benefits the gravity of the issues involved, both for the judge and for public confidence in the integrity of justice.

At the conclusion of these public hearings, a hearing panel will determine whether or not a judge should be removed from office. Its report will no longer need to be confirmed by the council to become effective. This will remove a step that is ill-defined and often results in significant delays and costs.

At the conclusion of the hearings process, and before a report on removal is issued to the minister, both the judge whose conduct is being examined and the lawyer responsible for presenting the case against the judge will be entitled to appeal the outcome to an appeal panel. This appeal mechanism will replace the current recourse to judicial review through the federal courts. In other words, rather than making the council's report subject to external review by multiple levels of court, with the resulting costs and delays, the new process will include a specialized appeal mechanism internal to the process itself.

A five-judge appeal panel made of judges in authority and puisne judges would hold public hearings akin to those of an appellate court and have all the powers it needs to effectively address any shortcomings in the hearing panel's process. Once it has reached its decision, the only remaining recourse available to the judge or to the presenting counsel will be to seek leave to the Supreme Court of Canada. Entrusting process oversight to the Supreme Court will reinforce public confidence and avoid years of judicial review proceedings through the Federal Court and the Federal Court of Appeal.

The new appeal process will be governed by strict deadlines, and any outcomes reached will form part of the report and recommendations ultimately made to the Minister of Justice.

The proposed new complaint process is expected to reduce the length of proceedings by a matter of years by reducing considerably the total number of potential stages and, of course, associated costs.

[*Translation*]

To maintain public confidence, the disciplinary process for judges must produce results not only in a timely fashion, but at a reasonable cost to the public purse. The costs should be as transparent as possible and subject to sound financial controls. The bill includes provisions to ensure that the costs related to the process are subject to government regulations and the guidelines of the Commissioner for Federal Judicial Affairs.

Currently, the number of disciplinary investigations applicable to judges varies from year to year. This makes it impossible to set a specific budget for costs in any given year, requiring managers to use cumbersome mechanisms to get the necessary ad hoc funding at different stages of the process.

[*English*]

To remedy this problem, the proposed legislation would effectively divide the process costs into two streams. Funding for constant and predictable costs — those associated with the day-to-day review and investigation of complaints — will continue to be sought through the regular budget cycle of the council.

The second stream, however, consisting of highly variable and unpredictable costs associated with cases that proceed to public hearings, including the fees of the lawyer acting as prosecutor and the judge's counsel, will be funded through a targeted statutory appropriation established in this bill. In other words, costs associated with the public hearing process would be paid directly from the Consolidated Revenue Fund.

It should be recalled that these public hearings are a constitutional requirement. A judge cannot be removed from office absent a judge-led hearing into their conduct. It is thus appropriate that a non-discretionary expense incurred in the public interest and in the fulfilment of the constitutional obligation be supported by stable and effective access to the Consolidated Revenue Fund.

Parliament must, nonetheless, be assured that the scope of this statutory appropriation is clearly defined. The type of process expenses, as well as guidelines for their quantum, must be clearly spelled out. There must be accountability and transparency to reassure Parliament and Canadians that public funds are being prudently managed.

As a result, the provisions establishing the appropriation clearly limit the categories of expenses it captures to those required to hold public hearings. Moreover, these expenses will be subject to regulations made by the Governor-in-Council. Planned regulations include limits on how much lawyers involved in the process can bill and limiting judges who are subject to proceedings to one principal lawyer and not two or three.

• (2040)

The bill also requires that the Commissioner for Federal Judicial Affairs adopt guidelines fixing or providing for the determination of any fees, allowances and expenses that may be reimbursed and that are not specifically addressed by the government regulations. These guidelines must be consistent with any Treasury Board directives pertaining to similar costs, and any difference must be publicly justified.

I note that the Commissioner for Federal Judicial Affairs, who will be responsible for administering these costs, is a deputy head and accounting officer, and is, therefore, accountable before parliamentary committees.

Finally, the bill requires that a mandatory independent review be completed every five years into all costs paid through the statutory appropriation. The independent reviewer will report to the Minister of Justice, the commissioner and the Chair of the Canadian Judicial Council. Their report will assess the efficacy of all applicable policies establishing financial controls and will be made public.

Taken together, these measures will bring a new level of fiscal accountability to judicial conduct costs while replacing the cumbersome and ad hoc funding approach currently in place. This is a necessary complement to procedural reforms. Both procedural efficiency and accountability for the expenditure of public funds are necessary to ensure public confidence.

[*Translation*]

During the reform process, the government paid close attention to the public feedback that was collected through an online survey and to some key representatives from the legal community, such as the Canadian Bar Association, the Federation of Law Societies of Canada, and the provinces and territories.

As I have already mentioned, the Canadian Judicial Council and the Canadian Superior Courts Judges Association were consulted. The association represents nearly 95% of Canadian Superior Court judges. The participation of representatives from the council and the association were not only relevant but also necessary, because the Constitution dictates that this process must be managed and administered in large part by the judges. By consulting the council, the government was able to get feedback from the people directly responsible for administering

the judicial discipline process. Furthermore, by consulting the association, the government was able to hear directly from the representatives of the judges subject to this process.

As a former president of the Canadian Superior Court Judges Association and a former member of several Canadian Judicial Council committees, I am following this file very closely. I am pleased that this bill has the support of both the council and the association. In a news release from May 27, 2021, the council stated the following:

> The Canadian Judicial Council welcomes the government's new bill to reform the judicial discipline process, which was tabled in Parliament this past Tuesday.

In the same press release, the Right Honourable Richard Wagner, Chief Justice of Canada, stated, and I quote:

> Over the past few years, the Council has consistently called for new legislation to be tabled in order to improve the process by which concerns about judicial conduct are reviewed. The efforts of members of Council to develop proposals in this regard have been fruitful, and we appreciate the openness with which the Minister of Justice has engaged the Council in his consultations . . . . While the Council will take some time to carefully review the proposed amendments, we are confident that these reforms will bring about much needed efficiency and transparency to the judicial conduct review process.

I would like to point out that the Canadian Judicial Council released a new version of *Ethical Principles for Judges* on June 9. This publication guides judges every day as they carry out their duties both inside and outside the courtroom. This important update of the suggested standards of conduct for federally appointed judges is part of the modernization of the disciplinary framework for judges and their conduct.

[*English*]

I began this speech by noting our responsibility as parliamentarians to serve as good custodians of our foundational institutions, including an independent judiciary. More than 50 years ago, Parliament had the foresight to craft a judicial conduct process that removed any prospect of political interference by giving the judiciary effective control over the investigation of its members.

Please note that in the U.S. the impeachment process, which is well known when used as against the President, is the same process which is used against a federally appointed judge to remove that judge from office. Every four years or so one or two judges go through that process and are removed from office. We, fortunately, do not have such a political process in Canada thanks to the legislation adopted by Parliament in 1970.

Today, respect for this form of judicial leadership is firmly entrenched. It is a gesture of respect for judicial independence under the Constitution itself, and a source of public confidence in the institutions of justice that exist to serve them.

It falls to us today to renew this commitment by modernizing the judicial conduct process, providing its judicial custodians with a modernized legislative framework that contains all the tools needed to maintain, even increase, public trust. These include tools to enhance efficiency, bring transparency, ensure accountability, provide versatility and maintain the highest standards of procedural fairness. I wholeheartedly recommend the bill before you in this spirit. Thank you, *meegwetch*.

[*Translation*]

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

[*English*]

Senator Dalphond: Yes. I would be pleased to accept a question.

Hon. Denise Batters: Thank you, Senator Dalphond. I took part in the Bill S-5 technical briefing that the government held last week, and there were a few questions I asked at that technical briefing that were not answered there by the government, so I'll pose these questions to you.

First of all, why is the government introducing Bill S-5 in the Senate?

Senator Dalphond: I understand this is the first in a line of questions. Thank you. Quite frankly, I think that out of respect for the process, which is designed to be apolitical, I think the government decided to have the bill introduced in the Senate where the process is less political than the House of Commons and also subject to people who have more time to look at the important foundational principles that are at stake here.

Senator Batters: Thank you. Is it problematic, with that in mind, that a Senate-initiated bill purports to spend public money by providing in this bill for publicly funded lawyers for judges who are facing disciplinary and removal proceedings?

Senator Dalphond: If I understand properly, is it a problem that a budgetary expense is introduced in the Senate? It's a good question. This is a government bill, so it comes with the Governor General's warrant. It's not coming as a private bill but a Senate public bill initiated by a senator, which does not, of course, benefit from the Royal Recommendation. So this is coming from the government and being introduced with the proper allocation of money, and that will be followed by an appropriation in the next budget.

• (2050)

Senator Batters: Thank you. Just on that point, that was the same sort of thing with Bill S-4, which we recently had. Bill S-4 was also a government bill, and there was a special appropriations part dealing with that in the bill, I believe.

Also, Senator Dalphond, that government technical briefing last week was for a government bill, conducted on a government telephone conference call line. There was no translation available on that lengthy technical briefing, and I'm sure you would agree this is unacceptable for a government bill's technical briefing for parliamentarians. I attended a government technical briefing

about five years ago where there was a significant translation problem, and the entire briefing was put on hold until it could be fixed.

Senator Dalphond, why wasn't translation available at that government technical briefing last week?

Senator Dalphond: That's another good question, but unfortunately, I was not part of the planning. It was not expected. The translation was to be provided. It was only a few minutes, and as you remember, we started that meeting 10 minutes late — maybe 12 minutes — so there was a problem there; I acknowledge it.

It was a bit laborious to a certain extent so you would have all the presentations. I did my small bit at the beginning in French and then in English, and all the Justice officials did their presentations using the PowerPoint in French and then repeating it in English. So that was translation, but not simultaneous translation. It was consecutive translation. If we were in a criminal trial, that could be a problem; there are judgments about that. It should be simultaneous translation not consecutive translation. But we did as much as we could do to make sure that both presentations were made in both official languages using both PowerPoints.

Senator Batters: Certainly valiant efforts were made by the officials who were there. I just bring that to your attention and to Senator Gold's attention that that is not acceptable and hopefully never happens again.

For my last question, clause 140 of this act provides that the Minister of Justice must respond publicly to a report of the full hearing panel dealing with a judge's removal. Why didn't the government include a deadline for the minister to publicly respond? The aim of the act is to provide greater transparency, and, as we've often seen, the federal government has frequently been tardy where timeliness and transparency can be a very important matter. Why is there no deadline for the minister to respond?

Senator Dalphond: Thank you for the question. First, to complete the previous question, I will add something. I very politely make a number of suggestions to the Government Representative, but maybe we should also try to have virtual presentations for these technical briefings instead of a phone call. I think it would be good to see the people. We have all these committee meetings being held virtually. I don't understand why the briefings are not virtual. But I know there must be technical reasons for it.

To come back to your question, once the public hearing is completed, if it is a recommendation to remove, then the process can go to the minister, and the minister will still have decisions to make. Does he follow that report? Yes, if he agrees with the report, he will have to go to cabinet first and then to both houses.

In the meantime, once the report is public and it has been suggested that the judge be removed, the lawyer acting as prosecutor will have completed the mandate. But the judge might decide that it's worth going to appeal. The appeal process, which I described within the whole structure, will be there. The report will be sent to the minister, but the minister cannot act until he receives the report and the decision from the internal appeal process. It's difficult to know in advance how many weeks or days or months it will take for the new appeal process built into the structure to be exhausted.

Senator Batters: Except a part of that is the deadline starts when the minister receives it and everything is complete for the minister to be able to respond. What I was asking is: Why isn't there a deadline for the minister to respond once all of that process is complete?

Senator Dalphond: There's a specific delay for the judge to appeal the decision of the hearing panel to propose that he be removed from office, and so we have to wait until that period is exhausted to find out if the judge decided to avail himself or herself of the appeal process, and then the minister will not commence until the appeal process is exhausted.

I understand your question, and I see you read the bill very well. I'm happy to see that you are the critic because you know the matter very well, and you already have done a lot of work. I think it's been designed to have flexibility because they couldn't figure out how much time it will take to complete that process, but certainly it's going to take years less than the current process.

[*Translation*]

The Hon. the Speaker: Senator Dalphond, Senator Dupuis would like to ask you a question. Will you take another question?

[*English*]

Senator Dalphond: With pleasure.

[*Translation*]

Hon. Renée Dupuis: Senator Dalphond, in cases where a review panel wants to impose sanctions, there will be four options: a reprimand; an order to apologize; equivalent actions; and another option, which is any other action with the consent of the judge. I have a hard time seeing how the review panel would negotiate with a judge about the penalty to be imposed should the removal not be referred. Doesn't that tie the review panel's hands when it should have the power to decide the appropriate punishment? Why should it need the consent of the offending judge to take action?

Senator Dalphond: I said somewhat jokingly that I knew that everyone was interested in the bill, but I am pleased to see that it is true. Senator Dupuis has asked an excellent question. In reality, the interim process for less serious cases does not allow the panel to suspend the payment of salary. No financial sanctions can be imposed. However, a course of action can be agreed upon with the judge. I do not want to name names, but in the past, I have seen a judge who was suspected of having an alcohol or drug addiction and, as a result, had a complaint filed against him for the way he behaved in court. As part of the process, it could be proposed that the judge get treatment for their addiction, for example. Those are the types of measures that are being considered. There is a case that is public of a judge who is known for having a hard time rendering his decisions and who often takes longer to render his decision than the six-month period allocated for that purpose. In that case, it was thought that

the chief justice could help the judge or that a judge from another province could be assigned as a companion to help the judge in question to develop more effective writing and note taking techniques so that he could render his decisions more quickly. You would be surprised at how creative people can be. The reason why we planned for the judge to be involved was that, in situations like these, where we are talking about personal problems, we do not want to prevent the judge from proposing a solution to the panel themselves. I do not know whether that answers your question.

Senator Dupuis: That doesn't answer my question about the judge's consent. The committee may come to the conclusion that specific measures must be imposed. I don't understand why the committee is being subjected to that. In the examples you've given, it's quite conceivable that a judge would not consent to such measures, which means the committee's hands would be tied, so to speak.

Senator Dalphond: That is an excellent point. The reality is that the judge would suggest something to avoid getting a reprimand letter in their file or something similar. It might be an apology letter to a witness or a party about whom the judge made inappropriate comments, for example. In that case, you might try to get them to take a course on sensitivity towards a specific demographic, for example, although it can be difficult to force someone to take a course. Someone can speak with them, and if they consent, obviously that would be part of the process, but their consent would not be needed to impose other measures.

(Debate.)

(*At 9 p.m., pursuant to the orders adopted by the Senate on October 27, 2020 and December 17, 2020, the Senate adjourned until 2 p.m., tomorrow*.)

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