SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

2nd SESSION • 43rd PARLIAMENT • VOLUME 152 • NUMBER 51

OFFICIAL REPORT
(HANSARD)

Thursday, June 17, 2021

The Honourable GEORGE J. FUREY,
Speaker

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Published by the Senate
Available on the Internet: http://www.parl.gc.ca

THE SENATE

Thursday, June 17, 2021

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

Prayers.

THE SENATE

TRIBUTES TO DEPARTING PAGES

The Hon. the Speaker: Honourable senators, this week, as you know, we are paying tribute to the Senate pages who will be leaving this summer.

Karim Winski, who unfortunately could not be here today, will be leaving us. Having now finished his two years as a Page, Karim will be continuing his studies in commerce at the University of Ottawa with the intent of beginning law school the next fall. Karim is grateful for the unforgettable experience in the Senate and is incredibly thankful for the opportunity. He wishes to thank the Usher of the Black Rod, the members of his office and his fellow pages who have made this wonderful experience possible.

Hon. Senators: Hear, hear!

[*Translation*]

The Hon. the Speaker: Jérémy Soucy will be entering his fourth year of study in political science at the University of Ottawa in the fall. It was a privilege for Jérémy to represent the Acadian community of New Brunswick as a page in the Senate over the past two years. Jérémy wishes to thank everyone who has contributed to this unique and memorable experience.

Thank you.

Hon. Senators: Hear, hear!

[*English*]

The Hon. the Speaker: Claire Ogaranko is honoured to have had the opportunity to represent the Province of Manitoba within the Senate Page Program for the past two years. Though she is very much looking forward to commencing her studies at McGill University's Faculty of Law in the fall, she will forever cherish her time in the Senate and is grateful to all those who contributed to making it such an unforgettable experience.

Thank you, Claire.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Lest we forget our chief page, Chasse Helbin. My apologies, Chasse.

Chasse recently completed his degree in English literature and management at the University of Ottawa. He hopes to eventually continue his studies in literature at the graduate level. Chasse is honoured to have served as chief page over the past year, and he is thankful to his friends and his family for their support. Thank you, Chasse.

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

WORLD REFUGEE DAY

Hon. Mobina S. B. Jaffer: Honourable senators, this Sunday, we will mark the twentieth anniversary of World Refugee Day. Almost 50 years ago, I became a refugee, and almost every day, I say a prayer of gratitude that Canadians gave me and my family a place to call home and amazing opportunities. I know how lucky I am to live in Canada and to be a Canadian.

During COVID, we have all gone through some of the most difficult times in our lives. However, those difficult times are not all the same. Every day, I think of the people who are literally fleeing to save their families and their lives. While the world has been in lockdown, refugees have nowhere to flee.

Muna Luqman, chairman of Food4Humanity shared Mariam's story with me. Mariam had to flee her home in Saada, northwestern Yemen, with 13 children after the conflict erupted. She is a widow with six children of her own, and she looks after seven of her nieces and nephews since her brother and his wife were killed in the bombing that forced her to leave home.

Mariam said:

> We live in dire conditions which can't combat the spread of COVID-19. We barely get drinking water and can't worry about hygiene and proper hand washing. All around us, people are dying from contaminated water.
>
> At night it gets very cold, but we don't have a blanket for everyone, so one blanket is shared by three.

Today, and on the twentieth anniversary, I respectfully ask you all to think of the realities of these people. As legislators, we have passed legislation that has allowed our borders to stay closed.

Honourable senators, I know that it is the right thing for us Canadians. However, that action has shut down the most vulnerable. I humbly ask that we legislators seek ways to assist refugees.

Honourable senators, I shiver when I think about what could have happened to me and my family if, when we sought to come to Canada, the doors were locked. My dad definitely would have not survived. He would have been killed.

• (1410)

This World Refugee Day, this refugee week, we need to think about what lockdown means and has meant for people around the world who are not safe in the countries where they were born. We have to think of the refugees.

Some Hon. Senators: Hear, hear.

FILIPINO HERITAGE MONTH

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, June 2021 marks the third annual Filipino Heritage Month, a time when all Canadians can celebrate Filipino culture and heritage, and recognize the contributions of Filipino Canadians throughout our history. This year also marks the historic five-hundredth anniversary of Christianity in the Philippines.

With a population of nearly 1 million in Canada, and nearly 160,000 in my home province of British Columbia, Filipino Canadians make up the third-largest group of Asian immigrants to Canada. Filipino Canadians have a rich history, a vibrant culture and strong work ethics that make every facet of Canada better and stronger.

This has been all the more evident throughout the COVID-19 pandemic that has gripped our nation. Deeply rooted in the virtues of Christian love and the sanctity of life, Filipino Canadians are truly appreciated for their commitment to caring for others, their contributions in the care of the elderly and the vulnerable and their families in hospital, care homes and homes. Their essential roles throughout the health sector and in communities are immeasurable.

The motion that was adopted in 2018 to designate the month of June as Filipino Heritage Month was chosen as it coincides with Philippine Independence Day on June 12. On June 12, 2013, this important day was marked by the inaugural flag-raising ceremony and celebration on Parliament Hill, organized by the late senator and good friend Tobias Enverga Jr. In celebration of this year's one-hundred-twenty-third anniversary of Philippine independence, the Philippine Canadian Charitable Foundation has a virtual Pinoy fiesta and trade show in Toronto. The PCCF was founded 10 years ago by the late Senator Tobias Enverga Jr. with the help of his wife Rosemer, and friends Jaime and Thelma Marasigan, Romeo and Rebecca Rafael, Danio Penuliar and Sena Flores. PCCF was established to support various charitable needs and has organized annual activities with the goal of bringing together the Filipino-Canadian community and promoting the spirit of charity.

Honourable senators, please join me in thanking the selflessness and dedication of the many Filipino Canadians on the front lines of health care and senior care, and in recognizing the important contributions and efforts of Filipino organizations and members, past and present, to the well-being and betterment of our nation. *Mabuhay* Canada and the Philippines. *Salamat po*. Thank you.

Some Hon. Senators: Hear, hear.

ARTWORK AND HERITAGE ADVISORY WORKING GROUP

Hon. Patricia Bovey: Honourable Senators, I rise today to thank Canadian curators who have contributed to the Senate's Advisory Working Group on Artwork and Heritage's projects.

Cultivating Perspectives brings Canadian voices into the Senate. One curator from each province and territory representing cultural diversities of Canada was invited to write about an artwork or heritage piece currently installed in the Senate of Canada Building. Providing a national context for the works, these essays extend the knowledge of the Senate's collection to wider Canadian audiences from the perspectives of professionals in the arts and museums field. Together, the visual voices of the artists and the thoughts and contexts of the curators underline the importance and insights of creative expression in Canada and the many linkages to lives and lifestyles across our country. I thank them all.

Eight participating curators were women, one Inuit and one Mi'kmaq, some were emerging and some experienced. Two participants chose objects, the Black Rod and the bench, and one chose the metal photo murals. Six participants selected works by Indigenous artists, one being Inuit. Two participants chose speakers' portraits and one a sculpture. The balance of works that authors selected and the substance and perspectives of the essays are to be commended. On June 14, the essays and images went online bilingually, with one also in Inuktitut and one in Mi'kmaq. I thank the artists and artists' estates for their copyright permission. This fall, 13 more curators of various diversities and disciplines will be invited to contribute to this project.

I also thank Greg Hill, the National Gallery of Canada's Audain Senior Curator of Indigenous Art. His gap analysis of Indigenous art in the Senate made 19 forward-looking recommendations to improve both representation and presentation. His lead recommendation, already endorsed by the Internal Economy Committee, is to change the name of the Aboriginal Peoples Committee Room to the "Indigenous Peoples Committee Room," making it inclusive of First Nations, Métis and Inuit peoples. Other aspects of Mr. Hill's report will come forward in coming months.

The *Museums in the Senate* program is to be launched this fall. The first annual installation in committee room B30 will be art from Nunavut's collection, stewarded by the Winnipeg Art Gallery. This installation aims to build bridges between north and south. In the future, museums and art galleries from across the country will participate, each celebrating their public trust.

The *Honouring Canada's Black Artists* project will present its second installation in September.

I sincerely thank all who have made, and are making, these initiatives a reality. Thank you.

[*Translation*]

MUNICIPAL ELECTIONS

Hon. Éric Forest: Honourable senators, this fall, municipalities in Quebec, Alberta, Newfoundland and Labrador, Yukon and most regions of the Northwest Territories will be holding elections.

I would like to take advantage of this pre-election period to invite Canadians to give municipal politics a try and run for mayor or municipal councillor.

I think we need to launch a special appeal to young people and women, who are under-represented in these positions. To give an example that I am familiar with, right now, in Quebec, young people between the ages of 18 and 35 represent only 8.3% of elected municipal officials, and women represent only 32%.

Yet local governments have a fundamental role to play in issues that are critical to youth and women, such as decisions that affect the environment, social inclusion, culture, sports, recreation, transportation, and access to housing.

Getting involved in municipal politics gives people the opportunity to have a direct impact on their fellow citizens' daily lives and on issues they care about. I know that I don't have to convince you. We all want municipal councils that are more diverse and more balanced. What we need to ask ourselves is, what can we, as senators, do to achieve that objective?

The Union des municipalités du Québec, the UMQ, surveyed young people who are involved in their communities and found that they don't feel they have good contacts in municipal politics and that they still suffer from impostor syndrome. The same probably goes for other under-represented groups. That's why I'm actively involved as a mentor in "Ose le municipal," a campaign to promote participation in local government that was initiated by the UMQ and Quebec's youth secretariat.

The idea is to mentor young people who aren't quite ready to make the leap by offering the support they need to give it a try. I invite you to do likewise for young people, women and members of cultural communities in your area. Encourage them to get into municipal politics, and help them do it. Our communities will be better off, and I'm sure that those who agree to participate in our municipalities' democratic life will be in for some amazing personal growth opportunities.

Thank you. *Meegwetch*.

[*English*]

NATIONAL DUTY COUNSEL DAY

Hon. Patti LaBoucane-Benson: Honourable senators, every day across Canada hundreds of duty counsel lawyers provide free legal services to disadvantaged people, providing access to justice and fair treatment. This service is essential, and access to justice and legal representation is as important as our right to health care.

Duty counsel lawyers are the emergency room physicians of the justice system. They are the first point of contact for people facing legal challenges. They triage their clients in the same way ER physicians assess their patients. Duty counsel lawyers listen and work to understand an individual's history, circumstances and goals. They consider the law, the allegations being made and weigh mitigating and aggravating factors. They come up with a plan that works in the client's best interests. More than that, they refer clients to economic and social supports that help clients manage other social, cultural or economic challenges they may also be facing.

• (1420)

Duty counsel lawyers who deal with adult criminal cases in our large cities hustle hard. In docket court, they can represent dozens of people in a single day, working in courthouses into the evening. Colleagues, this hasn't been easy to accomplish during the pandemic.

In many cases, the stakes are high. Without duty counsel acting on their behalf, what does a person stand to lose? They stand to lose freedom, a paycheque, a job, housing, their children, their standing in the community, education, friendships, and ties to spiritual and religious supports.

Clearly, the representation that duty counsel lawyers provide every day affects our well-being and the well-being of our nation. They work on behalf of Canadians of all ages, races, genders, sexual orientations, political ideologies, religious beliefs, physical and mental abilities and in any language. They give voice to those unable to speak for themselves and bring guidance when hope is faint.

These duty counsel lawyers work for and through Canada's 13 legal aid organizations, which together form the Association of Legal Aid Plans. These organizations want to pay homage and give overdue recognition to duty counsel lawyers — the invisible, essential, unsung heroes of our justice system.

Together, they are declaring October 27, 2021, as national duty counsel day. Please join me today, and this coming October, in thanking our duty counsel lawyers for their passion, expertise, compassion and dedication to access to justice and fairness in our justice system. Thank you.

Some Hon. Senators: Hear, hear.

STEPHEN H. LEWIS

Hon. Marilou McPhedran: Honourable senators, I rise today to pay tribute to my friend and a truly great Canadian, Stephen H. Lewis. Stephen Lewis is the co-founder and board co-chair of the Stephen Lewis Foundation. This is a brilliant, groundbreaking model of charitable work and truly a family vision forged with Stephen's life partner and mother of their three remarkable children, Ilana, Avi and Jenny, my dear friend Michele Landsberg.

Stephen and their first-born, Ilana Landsberg-Lewis, followed a unique anti-colonial vision of working as supportive partners with African activists, understanding that it was the front-line advocates who must lead the way. Thousands of Canadians across this country, for more than a decade now, have participated in the Grandmothers to Grandmothers Campaign that has saved lives.

Unlike many other charities at the time, Ilana and Stephen had deep roots with grassroots organizations in Africa and knew how to build respectful relationships that led to innovative programs on the ground.

This community-led work has been so effective that the foundation fund is now well over $10 million a year. Stephen is also the co-director of AIDS-Free World, an international advocacy organization that alerts the world on a whole range of UN-related issues but, in particular, sexual abuse and exploitation in the UN system under the banner Code Blue.

Stephen is a past member of the board of directors of the Clinton Health Access Initiative and emeritus board member of the International AIDS Vaccine Initiative. He served as a commissioner on the Global Commission on HIV and the Law. Stephen Lewis's work with the United Nations spans more than two decades. He was the UN Secretary-General's special envoy for HIV/AIDS in Africa from June 2001 until the end of 2006. From 1995 to 1999, he was deputy executive director of UNICEF at the global headquarters in New York, and from 1984 through 1988 — appointed by then-Prime Minister Mulroney — he was Canada's Ambassador to the United Nations. It was my good fortune to be living in New York during this time, so I got to see Stephen up close in the complex UN system.

Stephen Lewis was leader of the Ontario New Democratic Party, during which time he became leader of the official opposition and mesmerized the country over and over again with his orator skills. He is the author of the best-selling book *Race Against Time*. He holds more than 40 honorary doctorates from Canadian and American universities.

In 2003, Stephen was appointed a Companion of the Order of Canada, Canada's highest honour for lifetime achievement.

In the brief time left to me, I simply want to share with you that Stephen Lewis is fighting for his life with abdominal cancer. Steve Paikin and others in media have printed various tributes. I want to share the widespread sense that he is the greatest orator of our contemporary time. He is also a spectacular human being. I am so honoured to call him a friend and a mentor. I want to express heartfelt thanks for the number of times that, even though Stephen and Michele do not approve of this Senate —

The Hon. the Speaker: Senator McPhedran, your time has expired.

Some Hon. Senators: Hear, hear.

ROUTINE PROCEEDINGS

THE ESTIMATES, 2021-22

SUPPLEMENTARY ESTIMATES (A)—SIXTH REPORT OF NATIONAL FINANCE COMMITTEE TABLED

Hon. Percy Mockler: Honourable senators, I have the honour to table, in both official languages, the sixth report of the Standing Senate Committee on National Finance entitled *The expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2022*.

[*Translation*]

CITIZENSHIP ACT

BILL TO AMEND—TENTH 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:

Thursday, June 17, 2021

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

TENTH REPORT

Your committee, to which was referred Bill S-230, An Act to amend the Citizenship Act (granting citizenship to certain Canadians), has, in obedience to the order of reference of June 1, 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 Martin, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

ADJOURNMENT

MOTION ADOPTED

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, June 21, 2021, at 2:00 p.m.; and

That, notwithstanding any previous order, there be an evening suspension that day, for one hour, to start at 6 p.m.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

COMMITTEE AUTHORIZED TO MEET DURING ADJOURNMENT OF THE SENATE AND HOLD HYBRID OR ENTIRELY VIRTUAL MEETINGS

Hon. Sabi Marwah: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That, notwithstanding rule 12-18(2), the Standing Committee on Internal Economy, Budgets and Administration be authorized to meet during an adjournment of the Senate; and

That, taking into account the exceptional circumstances of the current pandemic of COVID-19, the committee be authorized until the end of the day on September 20, 2021, to hold hybrid meetings or to meet entirely by videoconference, with the provisions of recommendations 3 to 6 of the sixth report of the Committee of Selection, adopted by the Senate on March 30, 2021, applying in relation to any hybrid meetings and to meetings held entirely by videoconference.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1430)

QUESTION PERIOD

PUBLIC HEALTH AGENCY

NATIONAL MICROBIOLOGY LABORATORY

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question is for the government leader in the Senate.

Leader, last Wednesday when Senator Ngo and I asked you questions about the firing of two scientists at the National Microbiology Laboratory in Winnipeg, you said twice that you could not answer, referring to privacy concerns. Yesterday in response to Senator Ngo, your position had changed somewhat, and you referred to national security concerns as the basis for hiding the documents requested through an order at the other place. Last week, leader, you also referred to MPs making excessive demands for documents.

The Speaker of the House of Commons clearly disagrees; he ruled yesterday that the Trudeau government has breached parliamentary privilege.

Will the Trudeau government do what it should have done from the beginning and provide the uncensored documents, or will you and your government continue to hide the truth, leader?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I'm pleased to answer it, although I cannot accept the premise that the government is hiding documents. The government provided the requested documents to the Special Committee on Canada-China Relations in the other place, with protections in place for privacy and national security.

The government then went further and provided unredacted documents to the National Security and Intelligence Committee of Parliamentarians, which, as I mentioned in this chamber, has security clearance and adequate safety protocols. The government has faith in the hard-working members of NSICOP, which has a number of senators and two Conservative members.

I am confident that the government will respect the will of the other place once they vote on the relevant motion.

Senator Plett: Leader, this is the Liberal government that said:

> For Parliament to work best, its members must be free to do what they have been elected to do — represent their communities in Parliament and hold the government to account.

This is the Liberal government that said information should be open by default, that sunshine is the best disinfectant and that better is always possible.

Leader, the Trudeau government has given lip service to these principles but only until it's inconvenient for them to do so. They are just words on paper, leader. How much further will your government go to keep these documents hidden? Will you defy yet another order from the House?

Senator Gold: Thank you. I appreciate that there was a question at the end of your comments, so I will simply repeat that I am confident and assured that the government will respect the will of the other place when they vote on the relevant motion.

EMPLOYMENT AND SOCIAL DEVELOPMENT

FUNDING FOR EQUITABLE LIBRARY ACCESS

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, as we continue to mark Deafblind Awareness Month throughout June, my question for the government leader concerns accessible reading materials for persons with print disabilities.

The leader may remember questions from Senator Seidman earlier this year about the Trudeau government's decision to phase out funding for the Centre for Equitable Library Access, the National Network for Equitable Library Service and their work to provide accessible reading materials. Thankfully, in March, the government reversed course and gave those organizations a one-year reprieve by restoring their funding. However, as those two organizations noted back in March, that was only an interim one-year solution.

Leader, what is your government's plan for long-term funding for the production and distribution of accessible reading materials, and does that plan include the two organizations mentioned?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. I'm pleased the chamber has been made aware, thanks to your question, that the funding was reintroduced or carried forward.

I do not have information with regard to the long-term plans and what they might or might not include. I will certainly inquire and get back to the chamber.

Senator Martin: Both organizations explained that the government's initial decision to cut their funding was taken without consultation or any advance warning, so I'm glad the government has reversed its decision.

However, has your government worked with those groups over the last few months to develop a comprehensive long-term strategy, and if not, why not? Would you please inquire about the consultation process as well?

Senator Gold: I certainly will. Thank you.

[*Translation*]

JUSTICE

BILL C-22—POTENTIAL AMENDMENTS

Hon. Marie-Françoise Mégie: My question is for the representative of the government in the Senate. Bill C-22 includes amendments that focus on discretionary powers for police officers and prosecutors to allow them to refer people to health resources instead of arresting them or charging them with drug-related crimes.

We know that Indigenous, black and racialized people are overrepresented in our penal institutions. For those cases that are not diverted, section 720 of the Criminal Code allows the courts to delay sentencing to enable the person to attend a treatment program. Unfortunately, these treatment options are only accessible if people can afford to pay for private services. In addition, many Indigenous programs aren't recognized by the provinces and are therefore not accessible.

Will the government agree to include measures in Bill C-22 that make these treatments accessible to all?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question and for your advance notice. I can't comment on the specific measures you mentioned, but the government is committed to taking progressive action on criminal law reform. The government views substance abuse as a health issue, not a criminal justice issue. The government supports diversion measures, the default way for police and prosecutors to deal with drug possession. The government is committed to taking progressive action on criminal law reform while keeping our communities safe.

Senator Mégie: Senator Gold, in the event of the prorogation or dissolution of Parliament, would the government commit to introducing a new and improved version of Bill C-22?

Senator Gold: I'm not in a position to comment or speculate on the parliamentary agenda. However, the government continues to view Bill C-22 as an important legislative priority. It will certainly listen to the views and perspectives of those involved, including senators, as this issue moves forward.

[*English*]

ENVIRONMENT AND CLIMATE CHANGE

DEVELOPMENT OF NATURAL RESOURCES

Hon. Paula Simons: Honourable senators, my question is for the Government Representative in the Senate.

I noticed with great interest that, last week, the Minister of the Environment declared that there would be no more thermal coal development in this country. This week, he subsequently announced that all coal mines that have the potential to create selenium pollution would be subject to federal environmental review, even if they were smaller than the usual threshold.

• (1440)

Now, as an Albertan, I applaud and agree with the motivation for these decisions, but I am also keenly aware that natural resources fall under provincial jurisdiction. I am a little concerned to read a statement from Alberta's Minister of Energy saying that there was no prior consultation with the provincial government about either of these two decisions.

I'm wondering if you can tell me what consultation may have taken place with coal-producing provinces. What consultations are planned as we move forward to transitioning away from coal in a way that is inclusive and respectful of provincial jurisdiction?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. It's an important question.

I don't have the information but will certainly seek it with regard to what consultations may have taken place with regard to this particular announcement to which you refer. Ownership of natural resources and extensive jurisdiction around them are provincial, according to our Constitution. Jurisdiction over the environment is a shared jurisdiction, with a major role for the federal government, as recognized by the courts. So it is perfectly fitting and proper that the Government of Canada and, through its laws, the Parliament of Canada, play a role with regard to the transition from an economy based largely on fossil fuels to one that is greener and more sustainable.

I can assure this chamber that, going forward with regard to environmental policy, this government is committed to working not only with provinces and territories, but with industry, other stakeholders, Indigenous communities and the like to make sure that the transition that we will need to go through will be done in the most equitable way, taking into account the interests and rights of all concerned.

[*Translation*]

NATIONAL DEFENCE

ALLEGATIONS AGAINST GENERAL VANCE

Hon. Jean-Guy Dagenais: My question is for the Leader of the Government in the Senate. Troubling revelations about sexual misconduct in the Armed Forces continue to mount. More troubling still is that despite the reports, the accusations and what we might describe as an attempt to cover up information, Prime Minister Trudeau is keeping the current Minister of National Defence on.

In a last-ditch effort to save face and avoid having to intervene, the Prime Minister ordered a new investigation, in addition to the one that was already conducted by former Justice Marie Deschamps. Anyone who knows anything about how politics works can already predict the findings of this redundant and pointless investigation.

The members of Justin Trudeau's government are also acting as his accomplices and obstructing every process that might shed light on General Vance's case.

Leader, can you explain how your Prime Minister can be sensitive to victims of sexual misconduct in the Armed Forces when he is doing everything he can to delay bringing in solutions and prevent Canadians from finding out the truth?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your questions. You've raised a number of issues.

First of all, the Minister of National Defence always followed all the rules and appropriate processes when allegations of sexual misconduct were brought to his attention. As I have said many times in this chamber, the government is committed to fundamentally transforming the institutional culture of the Canadian Armed Forces.

As for committees, the government respects the work being done in parliamentary committee, including the committee that is studying General Vance's case. The Minister of National Defence has appeared three times before the committee from the other place, testifying for more than six hours.

Furthermore, it is false to say that the government has not done anything. On the contrary, the government is stepping up to address this issue that is, unfortunately, a difficult one to address. The government is committed to doing whatever it takes to address it.

Senator Dagenais: Government Representative in the Senate, I'm trying to understand your answer. Don't you think everything we're learning now is shameful?

Senator Gold: I'm not ashamed, if I understood the question. On the contrary, the government is doing a lot to address an issue that has been going on for far too long, but it's a difficult one to

address. The entire institutional culture of the Canadian Armed Forces needs to change, and we will do whatever it takes to change it.

[*English*]

INVESTIGATION INTO MISCONDUCT

Hon. Jane Cordy: Senator Gold, my question is also to you.

We learned, and you heard yesterday, that the person directly responsible for overseeing the Canadian Forces National Investigation Service, Lieutenant-General Mike Rouleau, played golf with retired General Jonathan Vance. Retired soldier Paula MacDonald, who has been trying to pursue a complaint of sexual misconduct, said to CBC News about the golf game:

> It's very upsetting. . . .
>
> It shows that their priorities are with supporting people who have been accused of sexual misconduct as opposed to the victims of sexual misconduct.

My question is not to criticize the outstanding members of our Armed Forces. I am critical, however, of a system that seems to stifle the voices of members of the military who have been sexually harassed, and I can certainly understand their fear of reporting if they feel that their complaint will go nowhere.

Senator Gold, how can we be reassured that harassment complaints in the military will be dealt with fairly? How can complainants have confidence in the system that is currently in place if those under investigation are socializing with those who are in positions of authority?

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

With regard to the incident of the golf game to which you refer, though I don't have the quotation in front of me, I can only refer you to the statements of Deputy Prime Minister Freeland and others in the government who deemed it totally unacceptable that this took place. It is the position of the government that it was unacceptable, and one understands very well how that was received.

With regard to your broader question, the government takes allegations of sexual harassment and misconduct very seriously. As I just stated in my response to our colleague Senator Dagenais, the government is committed to doing what it can to effect cultural change within the forces to eliminate the problems of intolerance, harassment and abuse. It is committed to ensuring that both uniformed and civilian personnel can feel safe reporting sexual misconduct, and that includes ensuring that the mechanisms for addressing reported misconduct are fair and perceived to be fair.

Senator Cordy: Senator Gold, it is my understanding that changes made to the National Defence Act in 2013 provide that:

> The Vice Chief of the Defence Staff may issue instructions or guidelines in writing in respect of a particular investigation.

Senator Gold, in my mind, that certainly leaves the perception that an investigation isn't truly independent if a superior officer can directly influence how an investigation is handled by the Provost Marshal.

Will the government consider amending this change that was made in 2013 by the previous government so that a superior officer cannot interfere in an investigation? Perhaps it's time that the government look at the possibility of establishing a third party outside of the military to investigate allegations of sexual harassment.

• (1450)

Senator Gold: Thank you very much for the question, and it's an important question. First of all, with regard to external oversight — and I'll get to your question in a second — you will recall, senators, that Budget 2021 provides $236.2 million to eliminate sexual misconduct and gender-based violence in the Forces. These funds will cover a number of measures but include the implementation of a new external oversight mechanism to provide greater independence to the processes of reporting and addressing sexual misconduct within the military. And the government in that regard hopes that Bill C-30 will pass soon so that these measures can move forward.

With regard to the question of how complaints and allegations are treated within the military, senators will be aware that the question of whether or not this should continue to be done within the chain of command or, as has been recommended in the past, by an external process independent of the chain of command is something that has been actively considered by the government and is part of the mandate of Justice Arbour, as I've reported in this chamber previously.

TRANSPORT
FISHERIES AND OCEANS

NUNAVUT MARINE COUNCIL FUNDING

Hon. Dennis Glen Patterson: My question for the Leader of the Government in the Senate, Senator Gold, is about protecting and managing the marine environment, which is culturally important to Nunavummiut, particularly Inuit who have had a marine traditional economy for millennia. The Nunavut Marine Council, the NMC, was established when a long-awaited provision of the 1993 Nunavut Land Claims Agreement was finally enacted three years ago. The NMC coordinates and collaborates with Nunavut's other institutions of public governance, namely the Nunavut Impact Review Board, the Nunavut Planning Commission, the Nunavut Wildlife Management Board and the Nunavut Water Board to address marine issues.

Senator Gold, the existing funding of the single staff person and any assorted associated core activities comes from time-limited programs from Transport Canada, while project-specific funding comes from Fisheries and Oceans Canada, as well as CIRNAC. All funding is set to expire at the end of March 2022.

When will your government secure and announce new funding for April 1, 2022, and beyond for the Nunavut Marine Council?

Hon. Marc Gold (Government Representative in the Senate): Well, thank you, senator, for your question, and thank you for providing me with advance notice of it.

I'm advised as follows: First, the Department of Crown-Indigenous Relations and Northern Affairs is very much aware of the concerns around remuneration and is working on solutions with its partners including how to move forward with remuneration. And the government understands further that this is a pressing matter, especially for some of the Nunavut boards, and that work is moving forward using an approach, I'm advised, that is equitable and consistent with all stakeholders. I have also been advised that Transport Canada provides core funding for the Nunavut Marine Council, so I will have to inquire with that department on that matter as well and shall do so.

Senator Patterson: In a related matter, Senator Gold, the Nunavut Impact Review Board, or NIRB, as you know, does the important work of reviewing, assessing and monitoring the socio-economic and environmental impacts of all projects in Nunavut. Its core funding, as well as questions regarding updated remuneration figures for its hard-working board, is currently overdue. Typically, budgets are negotiated two years in advance, but the NIRB's funding agreement is now expired. While they can carry over funding until the end of fiscal 2023, they are worried about losing money for priorities and strategic planning.

Senator Gold, will you also look into when your government will settle the core funding agreement and issue of remuneration with the Nunavut Impact Review Board?

Senator Gold: I certainly will, senator, but let me share the information that I have in that regard. I have been advised that under section 3(c) of the Nunavut settlement agreement, the parties are under no obligation to commence negotiations with respect to the renewal of the implementation contract until April 1, 2022, and, from the government's perspective, I'm advised that the parties intend to formally commence negotiations at that time. I will make inquiries, nonetheless, to see whether there are preliminary discussions in anticipation of the formal commencement and will report back.

FOREIGN AFFAIRS

CANADA-CHINA RELATIONS

Hon. Leo Housakos: My question is for the government leader in the Senate. One year ago today, the Trudeau government lost its bid for Canada to win a seat at the United Nations Security Council, garnering less support than the previous Conservative government had received in 2010. One would hope that the past year would lead the Trudeau government to embrace a principled foreign policy. Instead, we have seen this government choose to be absent from a house vote to recognize the genocide being carried out by the Chinese government against Uighur Muslims. Canada still has not taken a stance on the presence of Huawei in our 5G network, and the Trudeau government's response to China's crackdown in Hong Kong remains inadequate, to say the least. The list goes on and on, government leader. Will Canadians ever see a foreign policy with respect for human rights and the rule of law and democracy at its core coming from the Trudeau government? Yes or no?

Hon. Marc Gold (Government Representative in the Senate): The foreign policy of the Government of Canada has the best interests of Canada and its values at its core. This includes human rights. This includes the security and safety of those who are detained illegally and arbitrarily in China and in many other countries. It includes the best interests of many tens of thousands, if not more, of Canadians who depend directly or indirectly on trade and commerce with countries, even though those countries may not be our democratic allies. I understand the political and partisan dimensions of discussions about this, but there has been a consistent thread in Canada's foreign policy in this government and, indeed, building on traditions of past governments to put Canadian interests first with human rights at its core.

Senator Housakos: Government leader, let's not forget your government's actions in the run-up to the vote and the various ways the Trudeau government abandoned Canada's principles in pursuit of a Security Council seat. The Prime Minister warmly embraced and bowed before the Iranian foreign minister, that regime's chief apologist, one month after the downing of Flight PS752. The Iranian Islamic Revolutionary Guard Corps, the IRGC, has still not been listed as a terrorist entity. Government leader, it's been a while now that the Parliament of Canada has requested the government to list the IRGC. And the Trudeau government voted against our friend and ally Israel at the UN General Assembly and committed new funding for UNRWA, despite clear evidence of anti-Semitism.

Government leader, one year ago, the Trudeau government sold out Canada's principles and still lost. My question is simple: Was it worth it?

Senator Gold: My answer is simple, too, honourable colleague, with the greatest respect. It is simply misleading and unhelpful both to the interests of Canada and to our foreign policy to treat these important issues, in the complicated world that we live in, in such a partisan and one-sided way.

TREASURY BOARD

FEDERAL REAL PROPERTY

Hon. Tony Loffreda: Honourable senators, my question is for the Government Representative in the Senate, and it's on affordable housing, which is a major concern in Canada.

Senator Gold, there is an interesting passage on page 22 of Budget 2021 that recently caught my attention. The government says it will support the conversion to affordable housing of the empty office space that has appeared in our downtowns by reallocation of $300 million. In light of this announcement and considering the fact that workplace environments are changing, is the government considering converting some of its own real estate into affordable housing or perhaps not renewing leases to allow for those spaces to be converted? I appreciate this is a huge

undertaking, but I feel there might be an opportunity here to reduce government operating expenses while addressing affordable housing at the same time.

And let me conclude that the government manages one the largest and most diverse real estate portfolios in Canada. The total property asset value is $7.5 billion, with approximately 88% of the properties used for office accommodations. Minister Duclos did tell our committee last fall that even before the pandemic, the government was already re-evaluating its real estate portfolio.

• (1500)

Are you aware of such a re-evaluation? Is it a consideration for the government? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you for raising this issue. I will certainly make some inquiries and see what I can find out and report back when I can.

Senator Loffreda: I want to follow up on that, Senator Gold. I think it's extremely important. We are looking at more virtual work, and I would like you to undertake a commitment to report back to this chamber in a timely manner as to the status of this re-evaluation. Are you aware at all that such a re-evaluation is occurring? Have you heard that this is taking place at this point in time?

Senator Gold: Thank you. I'm sorry that I wasn't clear in my first answer. No, I'm not aware of such a re-evaluation because I'll need to inquire as to whether one is going on. I will certainly report back as soon as I have an answer.

Senator Loffreda: Thank you.

ORDERS OF THE DAY

POINT OF ORDER

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, you will recall that in early May, Senator Plett raised a point of order concerning a written notice of a question of privilege from Senator Dalphond. The written notice was sent to the Clerk of the Senate on April 26, 2021, and was distributed to all senators, as required by the Rules, on April 27, 2021. The notice was subsequently withdrawn by Senator Dalphond, and the issue never actually came before the Senate.

Senator Plett raised his point of order on May 6, 2021. The Leader of the Opposition was troubled by the content of the written notice and by the fact that it seemed to impugn his motives. He also suggested that the notice misled the Senate and made reference to confidential information arising from negotiations between senators. Senator Dalphond in turn spoke to the issue on May 25, 2021, arguing that there had been no violation of the Rules or of customary procedures and practices.

Honourable senators, the fact that the notice was withdrawn means that, other than the references made to it during debate, its content is not reflected in our parliamentary documents — that is to say in the *Journals of the Senate*, our official record, and the *Debates of the Senate*, the edited transcript of our proceedings. A notice was given, but was then withdrawn before any parliamentary action. As Speaker, I feel restricted in how much it would be appropriate for me to deal with such an ephemeral document that never came before this house, and which colleagues never had the chance to debate and consider. I would, in particular, remind you that notices are not normally the subject of points of order unless and until they are moved for adoption or otherwise formally brought before the Senate.

This said, honourable senators, the concerns raised by Senator Plett are understandable. He was the object of serious accusations. One can understand that he felt that his integrity had come under attack, and did not have an opportunity to respond to those accusations other than by raising a point of order. This is an opportunity for me to once again remind colleagues of the importance of restraint and prudence in our actions. We deal with issues that can give rise to strong feelings, and we must do everything we can to prevent those passions from having deleterious effects upon our work on behalf of all Canadians. I encourage all honourable senators to remember that colleagues are seeking the best for their fellow citizens. We should avoid being unduly harsh in our comments about each other, even when we have deep disagreements, and we should never impugn the motives of our colleagues. Such actions have no place in our Senate debates. Avoiding such behaviour will help us all work with one another.

Since the written notice never actually came before the Senate, it would be inappropriate to deal with this matter further. This said, I trust that colleagues will reflect upon my remarks here, and govern themselves accordingly.

Some Hon. Senators: Hear, hear.

SPEECH FROM THE THRONE

MOTION FOR ADDRESS IN REPLY—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Gagné, seconded by the Honourable Senator Petitclerc:
>
> That the following Address be presented to Her Excellency the Governor General of Canada:
>
> To Her Excellency the Right Honourable Julie Payette, Chancellor and Principal Companion of the Order of Canada, Chancellor and Commander of the Order of Military Merit, Chancellor and Commander of the Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

MAY IT PLEASE YOUR EXCELLENCY:

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

Hon. Dan Christmas: Honourable senators, I rise today in respect of the 2020 Speech from the Throne and specifically to address its measures relating to Indian residential schools.

The speech sought, I believe, to comfort Canadians when it stated that, "Canada is a place where we take care of each other." It noted as well that this country has ". . . work still to be done, including on the road of reconciliation, and in addressing systemic racism."

Further, the speech sought to bring encouragement when it promised that:

The Government will walk the shared path of reconciliation with Indigenous Peoples, and remain focused on implementing the commitments made in 2019.

Finally, the speech acknowledged that, "For too many Canadians, systemic racism is a lived reality."

Colleagues, days ago, Canada stood face to face with its past with the news that a mass grave containing the remains of 215 First Nations children had been found on the grounds of the former Kamloops Indian Residential School.

Canada's public policy through the era of Indian residential schools failed those lost innocents miserably. Nobody "took care" of them. The road to reconciliation that led to Kamloops has been washed out by the tears and anguish of the victims' families and the Kamloops First Nations community.

Manny Jules, well-known Chief Commissioner of the First Nations Tax Commission, is the former chief of the community. His offices are in the heritage building that formerly housed the residential school. He and his siblings were sent to the school.

He knows the sense of pain and loss that is the legacy of being a survivor. It's an intimate agony that requires a long and painful healing journey to overcome.

Another Kamloops Indian Residential School survivor is Dennis Saddleman. He suffered devastating trauma after being forced to attend the institution for 11 years. Years later, as a means of cathartic reckoning, he wrote a poem about the horrors of his journey and the impacts of reconciliation. This poem was called *Monster*. It was read by its author during the public testimony to Canada's Truth and Reconciliation Commission, or TRC. As has been said, there could be no more succinct and powerful contribution to the TRC testimony than the words of this poem. I'm going to read it into the record today, as we all need to be reminded of the singular power of its words.

Before I do, honourable colleagues, I must warn you — its message is stark, cold and heartbreaking. But it is also, ultimately, redemptive. I do not seek to offend anyone by reading it into the record for the ages. Rather, I do so for the sake of the memories of the innocents, and for all those voices, thoughts and dreams that were silenced in any way through the unmitigated tragedy of residential schools.

I wish to dedicate this speech to Chief Louis, 1827 to 1915, who was the last hereditary chief of the Kamloops First Nation, and I also wish to dedicate it to the community of Tk'emlúps te Secwépemc.

• (1510)

I HATE YOU RESIDENTIAL SCHOOL
I HATE YOU
YOU'RE A MONSTER
A HUGE HUNGRY MONSTER
BUILT WITH STEEL BONES
BUILT WITH CEMENT FLESH
YOU'RE A MONSTER
BUILT TO DEVOUR
INNOCENT NATIVE CHILDREN
YOU'RE A COLD-HEARTED MONSTER
COLD AS THE CEMENT FLOORS
YOU HAVE NO LOVE
NO GENTLE ATMOSPHERE
YOUR UGLY FACE GROOVED WITH RED BRICKS
YOUR MONSTER EYES GLARE
FROM GRIMY WINDOWS
MONSTER EYES SO EVIL
MONSTER EYES WATCHING
TERRIFIED CHILDREN
COWER WITH SHAME
I HATE YOU RESIDENTIAL SCHOOL I HATE YOU
YOU'RE A SLIMY MONSTER
OOZING IN THE SHADOWS OF MY PAST
GO AWAY LEAVE ME ALONE
YOU'RE FOLLOWING ME FOLLOWING ME WHEREVER I GO
YOU'RE IN MY DREAMS IN MY MEMORIES
GO AWAY MONSTER GO AWAY
I HATE YOU YOU'RE FOLLOWING ME
I HATE YOU RESIDENTIAL SCHOOL I HATE YOU
YOU'RE A MONSTER WITH HUGE WATERY MOUTH
MOUTH OF DOUBLE DOORS
YOUR WIDE MOUTH TOOK ME
YOUR YELLOW STAINED TEETH CHEWED
THE INDIAN OUT OF ME
YOUR TEETH CRUNCHED MY LANGUAGE
GRINDED MY RITUALS AND MY TRADITIONS
YOUR TASTE BUDS BECAME BITTER
WHEN YOU TASTED MY RED SKIN
YOU SWALLOWED ME WITH DISGUST
YOUR FACE WRINKLED WHEN YOU.
TASTED MY STRONG PRIDE
I HATE YOU RESIDENTIAL SCHOOL I HATE YOU
YOU'RE A MONSTER
YOUR THROAT MUSCLES FORCED ME
DOWN TO YOUR STOMACH
YOUR THROAT MUSCLES SQUEEZED MY HAPPINESS

SQUEEZED MY DREAMS
SQUEEZED MY NATIVE VOICE
YOUR THROAT BECAME CLOGGED WITH MY SACRED SPIRIT
YOU COUGHED AND YOU CHOKED
FOR YOU CANNOT WITH STAND MY
SPIRITUAL SONGS AND DANCES
I HATE YOU RESIDENTIAL SCHOOL I HATE YOU
YOU'RE A MONSTER
YOUR STOMACH UPSET EVERY TIME I WET MY BED
YOUR STOMACH RUMBLED WITH ANGER
EVERY TIME I FELL ASLEEP IN CHURCH
Your stomach growled at me every time I broke the school rules
Your stomach was full You burped
You felt satisfied You rubbed your belly and you didn't care
You didn't care how you ate up my native Culture
You didn't care if you were messy
if you were piggy
You didn't care as long as you ate up my Indianness
I hate you Residential School I hate you
You're a monster
Your veins clotted with cruelty and torture
Your blood poisoned with loneliness and despair
Your heart was cold it pumped fear into me
I hate you Residential School I hate you
You're a monster
Your intestines turned me into foul entrails
Your anal squeezed me
squeezed my confidence
squeezed my self-respect
Your anal squeezed
then you dumped me
Dumped me without parental skills
without life skills
Dumped me without any form of character
without individual talents
without a hope for success.
I hate you Residential School I hate you
You're a monster
You dumped me in the toilet then
You flushed out my good nature
my personalities
I hate you Residential School I hate you
You're a monster……..I hate hate hate you
Thirty three years later
I rode my chevy pony to Kamloops
From the highway I saw the monster
My Gawd! The monster is still alive
I hesitated I wanted to drive on
but something told me to stop
I parked in front of the Residential School
in front of the monster
The monster saw me and it stared at me
The monster saw me and I stared back
We both never said anything for a long time
Finally with a lump in my throat
I said, "Monster I forgive you."
The monster broke into tears
The monster cried and cried
His huge shoulders shook
He motioned for me to come forward
He asked me to sit on his lappy stairs
The monster spoke
You know I didn't like my Government Father
I didn't like my Catholic Church Mother
I'm glad the Native People adopted me
They took me as one of their own
They fixed me up Repaired my mouth of double doors
Washed my window eyes with cedar and fir boughs
They cleansed me with sage and sweetgrass
Now my good spirit lives
The Native People let me stay on their land
They could of burnt me you know instead they let me live
so People can come here to school restore or learn about their culture
The monster said, "I'm glad the Native People gave me another chance
I'm glad Dennis you gave me another chance
The monster smiled
I stood up I told the monster I must go.
Ahead of me is my life. My people are waiting for me
I was at the door of my chevy pony
The monster spoke, "Hey you forgot something
I turned around I saw a ghost child running down the cement steps
It ran towards me and it entered my body
I looked over to the monster I was surprised
I wasn't looking at a monster anymore
I was looking at an old school In my heart I thought
This is where I earned my diploma of survival
I was looking at an old Residential School who
became my elder of my memories
I was looking at a tall building with four stories
stories of hope
stories of dreams
stories of renewal
and stories of tomorrow

As I close colleagues, bear in mind that this poem represents the voices of generations — of the over 150,000 souls who suffered the abuse and neglect of government-sanctioned and church-operated schools — in which between 4,100 to 6,000 Indigenous young people lost their lives.

Hopes, dreams, renewal and tomorrow.

Four words, four aspirations that every Canadian must sear into their consciousness, individually and collectively if Canada is ever to truly be a place where, as the Speech from the Throne states, "we take care of each other."

Wela'lioq.

Some Hon. Senators: Hear, hear!

(On motion of Senator Gagné, debate adjourned.)

INTERNATIONAL MOTHER LANGUAGE DAY BILL

THIRD READING

Hon. Mobina S. B. Jaffer moved third reading of Bill S-211, An Act to establish International Mother Language Day.

She said: Honourable senators, I am really proud today to rise to speak to the third reading of Bill S-211, an Act to establish International Mother Language Day.

I want to take this opportunity to thank Senator Petitclerc and the Social Affairs Committee for really working hard and even sitting on a Friday to study this bill. I truly appreciate all the work you did to make this possible.

[*Translation*]

This day is a way to celebrate, honour and recognize Canadians across the country who proudly speak their mother language.

[*English*]

Honourable senators, all this bill will be doing is declaring February 21 as the mother language day.

[*Translation*]

International Mother Language Day is a day dedicated to celebrating and acknowledging the value and importance of being able to communicate freely, openly and proudly in the mother language of our choice.

• (1520)

[*English*]

Last week, as the sponsor of Bill S-211, I was so delighted to testify alongside Dr. Monjur Chowdhury, founding Executive Director at Pro-active Education for All Children's Enrichment, and Jocelyn Formsma, Executive Director at the National Association of Friendship Centres.

In my testimony at committee, I shared from briefings submitted to the committee. I read the powerful words of Anushua Nag, legislative assistant to Senator Dalphond, who spoke about being a child of immigrants from Bangladesh and how the French, English and Sylheti languages formed key parts of her identity, and that she is proud of all those identities and celebrates them.

I also shared the sentiments from a Grade 9 student, Ayaan Jeraj, who speaks French, English, Spanish and Gujarati. Ayaan spoke about the importance of this bill, in that it will allow young people to carry forward the fight for recognition and celebration of all mother tongue languages in Canada.

Honourable senators, at its core, Bill S-211 is about acknowledging the ways mother tongue languages and multilingualism strengthen Canada's diverse and multicultural society. As we strive for this idea, it is important that we remember, in the 2011 census, more than 60 Indigenous languages were reported, but only 14.5% of First Nations members still had Indigenous language as their mother tongue. In 2016, the number of Indigenous languages reported was more than 70. More than 33 of those languages were spoken by at least 500 individuals. Some were spoken by as few as six people.

[*Translation*]

It is truly heart-rending to see so many Indigenous languages disappear. Every time a language disappears, we lose a part of our identity.

[*English*]

Honourable senators, you have heard me speak about the mother language bill over many years. It has now reached third reading. At the end of third reading, may I humbly ask you to support this bill. Thank you very much, senators.

Some Hon. Senators: Hear, hear.

Hon. Victor Oh: Honourable senators, I rise today to speak to Bill S-211, an Act to establish International Mother Language Day.

This bill was introduced by our colleague, Senator Jaffer. During second reading, she remarked:

> At its heart, this bill is one way to honour and recognize Canadians from coast to coast to coast who proudly speak their mother tongues, which amount to over 200 languages, from Spanish to Gujarati to Punjabi to Tagalog and many others.

Senators, I believe that this is a worthy objective because it recognizes that Canada is a multi-ethnic and multicultural country that houses people from diverse backgrounds. As we all know, multiculturalism is the thread that weaves our national fabric. In Canada, our diversity should continue to be celebrated.

Of course, international mother language day will not be a legal holiday. Rather, it will be a day, among many, recognized by Parliament and the federal government because of the significance for Canada.

It may surprise many to learn that as of 2017, there were 69 nationally recognized days or other observances in Canada. These days were created by federal statute, orders-in-council or parliamentary resolutions. Quite often, I think we fail to remember the significance of many of these days and observances. For instance, in the month of June alone, there are more than 10 official federal days or observances.

Regrettably, far too many of these national days, which have been established in remembrance of something of significance, have been neglected or completely forgotten by most, but senators, we need to remember that these noteworthy days and national observances are very important for so many communities and people in Canada. They serve to signify and honour aspects of our history and our people.

Bill S-211 will honour and recognize Canada's linguistic diversity. This is a valuable objective. Speaking to the importance of language, when my colleague Senator Ataullahjan spoke to this bill at second reading, she quoted Professor Wade Davis, who said:

> A language, of course, is not just a set of grammatical rules or a vocabulary; it's a flash of the human spirit, the vehicle by which the soul of a particular culture comes into the material world. Every language is an old-growth forest of the mind, a watershed of thought, an ecosystem of social, spiritual and psychological possibilities. Each is a window into a universe, a monument to the specific culture that gave it birth and whose spirit it expresses.

These very elegant remarks speak to the richness that diversity has brought to Canada. This richness is sustained through languages and the remarkable cultural inheritance languages convey.

Senator Ataullahjan said, "I know first-hand the correlation between my mother language and my identity." I can testify to that fact as well. In the Oh family, our mother tongue of Mandarin is important to us and is a large part of our identity.

As a child in Singapore, my parents spoke to me and my siblings in Mandarin. When I became a father to my boys, who were born in an English-speaking, multicultural part of Canada, I felt it crucial to instill a connection through language to their family's culture and history. To this day, we speak Mandarin at home. Even though I am trilingual, there is a cultural vitality that comes from communicating in my first language.

Even though my grandchildren are currently less familiar with Mandarin, I still choose to teach them words and phrases in my mother tongue. Hearing them repeat words back to me warms my heart, and without a doubt, strengthens our connection. This, senators, is the power of mother tongues. They are an artery of cultural spirit connecting past and future.

I believe, in a way, that this bill is also about so much more than language. For our immigrants, it recognizes the fact that while adjustment to life in Canada often requires learning new languages, having the ability to retain and protect one's own unique culture is an important part of what it means to be Canadian. For others, such as our Indigenous people, who have fought tirelessly to preserve their native languages in often very difficult circumstances, this day will also honour their continued efforts.

• (1530)

For these reasons, I very much believe in the worth and substance of this bill. With dialects and languages lost around the world every day, this is a very modest way in which we can symbolically honour and recognize the diversity of mother tongues in Canada. I ask all senators to credit the influence of your native languages and to support this legislation.

Thank you, *xie xie*.

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

Hon. Senators: Agreed.

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

INCOME TAX ACT

BILL TO AMEND—THIRD READING

Hon. Ratna Omidvar moved third reading of Bill S-222, An Act to amend the Income Tax Act (use of resources).

She said: Honourable senators, I am delighted to speak at third reading to Bill S-222, the effective and accountable charities act.

In keeping with the interest of so many of my colleagues who wish to speak to their items on the Order Paper after me, I will choose brevity over eloquence to make three brief points.

First, I wish to express my sincere appreciation to the Senate National Finance Committee: to its chair, Senator Mockler, and to steering committee members Senator Klyne and Senator Forest for their facilitation and timely review of this bill. I wish to offer my appreciation as well to Senators Coyle and Mercer for their support of the bill at second reading, with special mention to the leadership of Senator Mercer for his calling into life the Senate charity study on which this bill rests, and to the critic of the bill, Senator Plett, for his support of the bill. A friendly critic is a gift indeed.

Second, very briefly, let me outline the need for this amendment. It will remove a significant hindrance and reams of red tape that result in inefficiencies, legal expenses and power imbalances for charities, both domestically and internationally. It will finally give space to Indigenous and racial justice groups in Canada to play a meaningful role in the charitable sector, which is dealing with a hidden expression of systemic racism in the law. This amendment will also remove the vestiges of colonialism from our international development charities, and it will do all this without sacrificing any measure of accountability for charitably exempt dollars.

Because the amendment lays out the process for assuring resource accountability, there will be upfront due diligence, agreements on activities and timelines, as well as budgets and reporting between the research charity and the non-charity. The non-charity will provide full accountability to the charity for receiving and reporting on the use of funds, as per the timelines agreed upon, and about the progress on outcomes and impact. However, the non-charity will not be controlled or dictated to by the charity, as is the current practice emanating from the law. The project management will rest with the non-charity.

As such, Bill S-222 accomplishes two important objectives: First, it provides accountability; and second, it provides for empowering partnerships. It is not an "either-or." Accountability and empowerment, and accountability and partnerships, are not mutually exclusive concepts.

Finally, colleagues, I humbly look to you for your support in sending this bill to the House of Commons. Thank you.

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I will be equally brief. It is indeed my pleasure to rise to speak to Bill S-222 at third reading. As I said in my second reading speech, although I stand in the role of critic of this bill, I am very supportive of the legislation and am pleased to see it moving along expeditiously.

I hope Senator C. Deacon will take note. He reminded me the other day that he hoped I would be equally enthusiastic about moving forward legislation that was not necessarily brought forward by the Conservatives. I want to assure him that I am doing that today.

I wish to thank Senator Omidvar for her work on this bill, as well as the members of the Standing Senate Committee on National Finance. I would like to note the good work undertaken by the Special Senate Committee on the Charitable Sector. Their study in the last Parliament helped to increase awareness of the challenges faced by the charitable sector and underscored that many changes are needed. This bill addresses one of those changes.

Colleagues, in a parliamentary system that depends on parliamentary opposition to function properly, it is always gratifying to find issues upon which there is broad consensus and cooperation. When that happens in this chamber, as it has with this bill, it leaves one hopeful that the same will be true in the other chamber.

However, as we know, that is not always the case. If the Senate chooses to pass Bill S-222 and send it to the other place, it will be arriving at the eleventh hour before the summer recess. Although the Leader of the Opposition, Erin O'Toole, has expressed his support for making changes to the direction and control regime, it is unknown whether the government is ready to move this bill forward.

I would note that at committee, officials from the Canada Revenue Agency did not express any concern about the proposed changes, apart from the fact that it will take 12 to 18 months to put the changes in place. However, the bill provides a two-year window before coming into force, which will give them ample time to have the necessary consultations and develop new guidance for charities.

Nevertheless, uncertainty over the government's support, the short timeline before rising for the summer and the possibility of a fall election or prorogation all leave the bill's future hanging in the balance. In light of this, I encourage senators to support this bill and send it to the other place as quickly as possible for their consideration.

As Bruce MacDonald, President and CEO of Imagine Canada, noted at committee, the legislation will create "a more effective and efficient system." It will reduce the amount of red tape that charities have to deal with, the number of contracts or agreements that are needed, and the legal costs that organizations are compelled to incur. It will bring Canada into line with other regimes like Australia, the U.S. and the U.K.

Colleagues, as I have noted, the changes proposed by this bill are necessary and long overdue. It is my hope that you will continue to support this bill and vote for it now.

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Agreed.

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

• (1540)

INCOME TAX ACT

BILL TO AMEND—THIRD READING—DEBATE

Hon. Diane F. Griffin moved third reading of Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation).

She said: Honourable senators, I am pleased today to speak to Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation). We studied the bill at the Standing Senate Committee on Agriculture and Forestry, where we heard from Mr. Larry Maguire, the MP sponsor of the bill, from a tax specialist at Deloitte Canada and from other witnesses such as the Canadian Federation of Independent Business, the Canadian Federation of Agriculture, the Canadian Council of Professional Fish Harvesters as well as from the Department of Finance Canada.

Ultimately, the bill passed in our committee without amendment.

It was less than a month ago that Senator Forest and I gave our second reading speeches, so today I will be brief. This bill would make it easier for small businesses, firms and fishing corporations to be handed down from generation to generation, and it has safeguards built in to ensure that people don't skirt the rules. Stakeholders told us that the bill would especially help rural communities and the businesses that keep them going.

The problem addressed by Bill C-208 has existed for decades, and over the years, parliamentarians of all stripes have introduced legislation to correct it. As Brian Janzen, Senior Tax Manager at Deloitte, told our committee:

> This has been studied to death over 25 years. . . .
>
> This is a very basic bill with very basic, clear safeguards. There is no room for loopholes . . .

> . . . we definitely don't need any more studies on this. . . .
>
> It has to be unanimous. I don't see how anyone could be opposed to helping small businesses transfer their business to their children. It's levelling the playing field.

I was struck when Corinne Pohlmann from the Canadian Federation of Independent Business observed:

> Fixing this unfairness by passing this bill quickly would be a bit of good news in an otherwise challenging and difficult year for so many small business owners. . . .

Colleagues, I'm asking for your help. This bill had support from all parties in the House of Commons. Let's vote on this bill and show our farmers, fishers and small business owners that we appreciate them, and we want their businesses to thrive in our communities for many years to come.

Thank you.

Some Hon. Senators: Hear, hear.

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

Hon. Tony Loffreda: Yes. Would Senator Griffin take a question?

Senator Griffin: Certainly.

Senator Loffreda: I do support the bill, but I have a question. In your work on this bill and in your dealings with the sponsor of the bill, has there been discussion about expanding eligibility of this bill to all family-owned corporations — not only small businesses — or for partial sales of family businesses?

I ask the question because not all family-owned businesses fall into the small business definition of this bill, and allowing partial sales is something that I think might deserve further consideration. Partial sales would certainly facilitate a proper transition and training of buyers, where required, which, in many instances, is key to ensuring a viable and vibrant family business landscape in Canada. As our small businesses grow, it would be nice to know that they would be eligible for the same treatment.

As I said, I do support the bill. Thank you for your work on this, but I would like to maybe further expand on this idea if you could share your thoughts with us.

Senator Griffin: Thank you for the questions. The first is about the bill being squarely focused on small- and medium-sized businesses. The reason for that is it was a political decision in the House of Commons in order to gain support for the bill. There was wide support for the idea of helping small businesses with this unjust tax structure, but the point was made to us by the independent business representative as well as the Deloitte tax specialist that this bill should be seen as a good start and that at some point the government may want to extend it to larger businesses. That's why there is a cap on the amount that can be considered at this point.

That's not to say it can't be changed in the near future or long-term future once we see the success of this, and the government, of course, has the option of going further with it.

As for the partial sale of the operation, yes, that can happen, but the purchaser — that is, the kids or the grandkids — must have control of the organization, which would be at least 51% of the total shares, in order for that partial sale to be valid. That's to ensure, first, that the sale will be controlled by the next generation and that the parent, by the way — the seller — cannot own any shares of the purchasing corporation. In other words, they can't be financially involved in this in both places.

I think with these safeguards this bill will indeed be a great start, and I hope it will help a lot of small businesses in our country, whether they be a small family business, a farming business or a fishing corporation owned within a family.

Senator Loffreda: Thank you for the answer, Senator Griffin. As I said, I do support it.

With respect to partial sales, what is also important is that in transitioning businesses — I have seen so many over the years — sometimes you don't want to give the 51% to your children. You want to give them a small portion to train them or to see if they have the management skills to move it forward. That is important for our landscape, and if we look at succession, I don't want to just dump numbers as to how many family businesses will be changing hands, but many will. Perhaps there could be an undertaking from us that we should look into the matter. No bill is perfect at times. I support the bill, but going forward we should make it available to all family businesses and to partially owned or partially sold businesses to allow for proper transition and training.

I do like what you did say that it's a good start, and I urge all senators to support it because it is a good start, and family businesses deserve to be treated on an equitable basis as all business transactions and transitions.

Senator Griffin: Thank you for your comments. I think that's a great suggestion and some future work that could be undertaken.

Senator Loffreda: Thank you very much.

[*Translation*]

Hon. Éric Forest: Honourable senators, I am pleased to take part in the debate at third reading stage of Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation).

I participated in the study at the Standing Senate Committee on Agriculture and Forestry, and I am pleased to report that we heard from officials from the Department of Finance, the Canadian Federation of Independent Business, and representatives of businesses in the fisheries and agriculture sectors.

The unintended consequences of the current tax policy, which penalizes transfers between members of the same family, are well known. This policy favours the dismantling of businesses, forces business owners to choose between their children's future and their own retirement fund, and helps foreigners take over our land and businesses.

• (1550)

[*English*]

Let me focus on the impacts of business dismantling mainly in the agricultural sector, because it is an issue of particular concern to me.

[*Translation*]

Canada, like Europe and the United States, is not immune to the major trend of farm population aging, which could impact succession planning and the consolidation of our businesses.

Just looking around our rural areas and villages, it's easy to see that there has been a major drop in the number of farms, an increase in farm size and, as you might expect, a major increase in the value and debt levels of businesses, which makes transferring them more complicated.

The past few decades have not been easy for our farmers. The phenomena that I mentioned encourage owners to dismantle farms rather than keep them going as family farms.

When a farm is dismantled, or worse, when farmland is abandoned or rezoned for non-agricultural uses, our rural communities inevitably suffer. With fewer children, rural areas often lose their school, followed by the post office, the grocery store and the credit union.

I do not want to be too pessimistic. However, I think a call for vigilance is in order, since Quebec is losing one farm a week right now. Our family farms and SMEs are important to the vitality of our communities.

Let's work to ensure their survival by cutting red tape and, more importantly, eliminating tax inequities rather than encouraging business dismantling.

I think there is a broad enough consensus to recognize that the current tax policy is problematic.

It's bizarre that selling a business to a family member is considered to be a non-arm's length transaction and treated as a dividend, whereas selling a business to an entity outside the family is considered to be an arm's length transaction and treated as a capital gain.

I'd like to give you an idea of the impact of our tax system. It's absurd that the owner of a small business valued at $2.7 million — we're not talking about a multinational here — should have to pay $272,000 for choosing to transfer their farm to their children rather than to a stranger.

In committee, witnesses said they were satisfied with the solution proposed in Bill C-208. Treating the sale of a family business to a child — not a cousin or a nephew — as a capital gain would restore tax fairness as compared to transferring the business to a stranger.

It remains to be seen if this move opens the door to tax evasion.

Officials from the Department of Finance told the committee about their concerns. They said they were worried that it would be hard to tell legitimate family transfers apart from transfers carried out specifically to avoid paying taxes.

That said, the legislative intent is clearly articulated in this bill, which covers only business transfers to children, I repeat, children. Anyone attempting to engage in aggressive tax planning using the accommodation in Bill C-208 could very well end up in court because of the general anti-avoidance provision in sections 245 and 246 of the Income Tax Act. Parliament has the legislative tools it needs to intervene if these amendments are abused.

It is also worth noting that, by requiring the buyer to retain their shares for at least five years, the bill does offer some safeguards to ensure that it is a genuine transfer from one family member to another, not a scheme to avoid paying tax.

I will stop there, colleagues, because I would like us to get to the vote quickly.

[*English*]

Let me be clear: This is not about giving preferential treatment to families with small- or medium-sized enterprises. It is simply a matter of giving them access to the same opportunities that are offered to individuals who are not part of the same family.

[*Translation*]

This is a simple thing we can do to support human-scale businesses, our family businesses, and many communities outside major urban centres. This is an important move that will help us counter the economic and social decline of our regions.

As you know, Bill C-208 was passed by a majority of elected parliamentarians of all parties. I think it would be disrespectful to our regions and to the elected House to let this bill die on the Order Paper without at least voting on it. Running down the clock to avoid a formal vote would undermine our efforts in recent years to enhance the Senate's relevance and credibility.

Thank you, *meegwetch*.

Some Hon. Senators: Hear, hear.

[*English*]

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I rise to speak at third reading of Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation).

As has been made clear in this chamber and in the other place, the government considers this an important public policy objective and that is why the Prime Minister accordingly mandated the Ministers of Finance and Agriculture and Agri-food to work together on tax measures to facilitate the intergenerational transfer of farms. The government wants to achieve that, and it is with this in mind that Bill C-208 bears careful consideration.

However, Canada's tax system is intricate and thus requires a carefully designed approach to achieve those objectives to mitigate the risk of tax avoidance while ensuring appropriate safeguards are in place. It is precisely in this regard that Bill C-208 fails to address these issues and, respectfully, does not have the government's support.

In summary, Bill C-208 aims to amend two of the Income Tax Act's most important and complex anti-avoidance rules. These capital gains stripping and surplus stripping rules deal with the treatment of intercorporate dividends and share sales in the context of the circumstances in which the lifetime capital gains exemption can be claimed so that this exemption is not abused. Any changes to these sections of the act should accordingly be undertaken with caution.

That's where Bill C-208 raises concerns. The bill, as presented, does not require that the parent cease to control the business, nor does it require that the child have any involvement in the said business. Furthermore, it would allow the parent to sell shares to a child's holding corporation and then purchase the child's holding corporation, leaving the child with no interest in the business.

Colleagues, these are serious tax-avoidance opportunities that will come at a significant cost to the fiscal framework which the government has already carefully plotted out in Budget 2021. In short, Bill C-208 would provide considerable benefits to some taxpayers in the form of tax-free distributions of corporate surplus without adequately ensuring that a genuine intergenerational business transfer has occurred.

Trevor McGowan, Director General, of the Tax Policy Branch from the Department of Finance Canada appeared before the Standing Senate Committee on Agriculture and Forestry on Bill C-208 and noted this issue:

> This bill raises a fundamental concern in that it is intended to apply to intergenerational transfers of shares, but it lacks any safeguard to ensure that it is only used for genuine intergenerational transfers, so while the failing of the current rules might be that it contains an anti-avoidance rule that lacks an exception for genuine intergenerational transfers, you'll see Bill C-208 essentially creates a loophole that lacks appropriate safeguards to ensure it is only used for genuine intergenerational transfers.
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> As a result, the loophole introduced by this bill could be used by wealthy individuals to avoid taxes without intergenerational transfer of the business actually taking place. The real challenge in preparing legislation dealing with this is how to draw a line between genuine intergenerational transfers and tax avoidance schemes. This bill doesn't do that; instead, it simply applies regardless of which side of that line a transaction falls on.

• (1600)

Therefore, colleagues, it is important to consider in detail how these anti-avoidance rules work, why they are important and how Bill C-208 fails to maintain their integrity.

The existing anti-avoidance rules in section 84.1 of the act prevent the abuse of the tax system in cases where an individual converts dividend income into lower taxed or tax-free capital gains by selling shares of one corporation to another corporation that is linked to the individual.

A simple example can help illustrate the type of planning that the anti-avoidance rules are intended to prevent. An individual who lives in Ontario and is in the top income tax bracket in 2020 owns an operating corporation with $100,000 of retained earnings. If paid out as a dividend, the owner would pay approximately $48,000 of tax. Therefore, they set up a holding corporation and sell shares of the operating corporation to the holding corporation. If taxed at capital gains rates, the owner would pay approximately $27,000 of tax, saving $21,000, nearly half the tax otherwise payable. If the lifetime capital gains exemption is available, the retained earnings would be extracted tax free.

The surplus stripping rules shut this sort of abuse down by, in specific circumstances, deeming that the individual has received a taxable dividend from the linked holding corporation rather than a capital gain. This effectively prevents the individual from extracting retained earnings from their corporation on a tax-free basis using the lifetime capital gains exemption. By doing so, it ensures that taxpayers cannot use linked corporations to, in effect, remove earnings from their corporations using a contrived sale.

I think all honourable senators would agree that our aim should not be to encourage the use of contrived sales to game the system, particularly those of us who have had experience working in the financial sector. Rather, we should be seeking carefully designed measures to support the genuine intergenerational transfer of family businesses. In this regard, it is important to note that there is currently nothing in the act preventing a parent from selling their shares of the family business directly to their child or grandchildren on a tax-free basis using the lifetime capital gains exemption. In fact, the act currently shelters up to $1 million in capital gains on qualified farm and fishing property.

The issues that Bill C-208 aims to address arise only in multi-tiered corporate structures where one corporation owns a second corporation.

To summarize, while this bill creates planning opportunities that can be used in an intergenerational transfer of a business, it lacks appropriate safeguards to ensure that it is only used for that purpose. There is nothing requiring the parent to cease or wind down running the business. The child is not required to play any role in running the business. In fact, right after extracting the surplus, the child could sell their holding company to the parent for a nominal amount, cutting them out entirely.

Unfortunately, as I believe I have tried to articulate, Bill C-208 would open the door to new tax avoidance opportunities that would unfairly benefit wealthy individuals. In the end, it would provide up to $900,000 tax free to many wealthy taxpayers, or up to $1.8 million for couples who do not transfer any aspect of their business to their children.

Bill C-208 also proposes problematic amendments to section 55 of the act. This section restricts corporations from inappropriately reducing their taxes by paying excessive tax-free dividends between corporations, which in the absence of these restrictions would be taxed as capital gains. This form of tax avoidance planning is known as capital gains stripping.

Bill C-208 poses problems insofar as it affects two exemptions to these anti-avoidance rules. These exemptions authorize businesses that are restructuring, in recognition of their special circumstances, to defer capital gains taxes. The first exemption applies to the restructuring of related corporations, and the second applies to all corporate restructurings.

Bill C-208 would broaden that first exemption so that it applies to brothers and sisters, in breach of the long-standing principle of tax policy that brothers and sisters are considered to have separate and independent economic interests for these purposes.

Changing this exemption would increase the scope for abuse and erode the tax base. By doing so, it may create a problem larger than the one it seeks to address. That's in part because spouses, as well as parents and their children, are already eligible for this exemption because it is presumed that they have shared economic interests.

Although brothers and sisters cannot restructure their participation in a corporation on a tax-deferred basis under the related corporations exemption, they can do so under the second exemption of section 55, which applies to all corporate restructurings.

There are fewer tax avoidance opportunities under this so-called "butterfly exemption," but if Bill C-208 were to be adopted, siblings could undertake business restructurings in which otherwise taxable capital gains realized between corporations would be converted into tax-free intercorporate dividends. This would create new opportunities for tax avoidance in Canada.

Honourable senators, Bill C-208 as currently structured would enable loopholes within the tax system that create opportunities for tax avoidance by the wealthy at the expense of those these measures should rightfully support. Respectfully, for all the reasons I have outlined, I cannot support Bill C-208.

Thank you.

Some Hon. Senators: Hear, hear.

[*Translation*]

Senator Forest: Would Senator Gold take a question?

Senator Gold: Absolutely.

Senator Forest: As you mentioned in your speech, in December 2019, in his mandate letter to the Minister of Finance, the Prime Minister asked him to address this inequity.

Now when you talk to us about these transfers, you have a lot to say about multi-tiered corporate structures, operating corporations and holding companies. Would you agree that, since Bill C-208 limits the capital value of the business to $15 million, these are not multinationals or companies that can afford to pay for legal services and tax services? We are talking about small family-owned businesses. Since we can limit these business transfers to children, for small- and medium-sized businesses that have a maximum value of $15 million, and since the child must hold this capital value for a minimum of five years, don't you think these are sufficient safeguards to promote an environment that's more conducive to transferring our small businesses rather dismantling them?

Senator Gold: Thank you for the question, colleague.

As I said at the beginning of my speech, this bill seeks to fix a major problem, one that the government acknowledges. As I tried to explain in my speech, the bill does not include enough safeguards to ensure that potential abuse can be prevented.

Senator Forest: It is an important bill because the Prime Minister entrusted the responsibility for addressing this inequity to the Minister of Finance in his mandate letter in December 2019, 19 months ago.

Can we agree that Quebec has proposed some interesting and innovative solutions to correct this fiscal imbalance and that, if any abuses or loopholes are detected during the implementation of Bill C-208, sections 245 and 246 of the Income Tax Act on tax avoidance provide the legislator with all the necessary tools to make the changes and corrections needed to close these loopholes? Do you agree with me on that?

Senator Gold: Thank you for the question.

According to the information I have and the testimony of officials from the Department of Finance, there is still a problem with the current bill. That is why, as the Government

Representative in the Senate, I wanted to express the government's point of view in this chamber in order to share its concerns about this bill.

Senator Forest: It's actually the point of view of officials from the Department of Finance, but the majority of elected members in the other place, from all parties, voted in favour of passing Bill C-208.

Thank you very much.

• (1610)

[*English*]

Hon. Colin Deacon: Senator Gold, you stated that this comes at a considerable cost. We asked that of the Finance officials in the Agriculture and Forestry Committee meeting. They were not able to provide us with any estimate of the considerable cost. We know this is already having a punitive effect on family transfers of small businesses, family farms and fishing operations, but there isn't an estimate available to us about the cost. Can you expand on that, please?

Hon. Marc Gold (Government Representative in the Senate): Thank you. Again, I want to repeat that the government fully understands the intent of this bill and accepts that there are inequities in the tax system that this bill seeks to address. That is not at issue. The challenge in estimating the cost is that the cost and the impact on the fiscal framework will be a function of the extent to which people take advantage of the loopholes that I tried to describe or the lack of safeguards to engage in activity, dividend stripping or the like, that they would otherwise not be able to do in the absence of this bill.

In that regard, the estimation of the potential impact requires one to speculate as to how the tax-advising industry and the owners of businesses who have or have decided to set up multi-corporate structures to take advantage of what this bill would allow. In that regard, I think the officials were not able to provide a figure because it depends on how many owners take advantage of the measures contemplated in this bill in an inappropriate way, as opposed to an appropriate way.

Senator C. Deacon: Senator Gold, are you aware that in the House of Commons Committee on Finance, the Finance officials offered that regulatory power could be used and added by the government at a later date if this turned out to be a significant issue? That was confirmed as well by the long-standing chair of the Finance Committee in the other place, Wayne Easter. I'm just wondering if you're aware of that fact.

Senator Gold: Yes. Thank you for that question. I am aware, of course, as all legislators are aware, that it is always possible to further legislate to address, amend or correct issues in legislation that arise or that appear on the face. I believe that issue was also addressed at the committee.

Honourable senators, this is the first day of third reading debate on this bill, a private member's bill. I want honourable senators to understand the importance for us, as the chamber of sober second thought, to have available the government's position on this private member's bill, in this regard, through my speech.

You're perfectly correct, Senator Deacon, that there are opportunities and would-be opportunities in the future for the problems that I have outlined to be addressed. But I think it's only prudent and responsible that the chamber be aware of these problems in the course of the debate.

Senator C. Deacon: Thank you, Senator Gold.

Senator Loffreda: Would Senator Gold take a question?

Senator Gold: Yes, of course.

Senator Loffreda: I respect your speech and the fact that nobody wants tax loopholes. We fight so hard to avoid tax evasion. That is important to all of us. But are you aware that the accounting community largely supports this bill? There is huge support behind this bill. We have a restriction — a whole period of five years — we have the fact that partial sales are not allowed, and, as Senator Forest mentioned, it is strictly for small businesses. I've always said that trust is the currency of every relationship. Why could we not trust our small- and medium-sized businesses to move forward and adjust accordingly in the future?

Senator Gold: To your question, senator, yes, I am aware of the support of the tax community. As I said, I've simply used this opportunity to register the government's concerns and to explain why I cannot support this legislation.

Hon. Donna Dasko: Will Senator Gold take another question?

Senator Gold: Yes, of course.

Senator Dasko: Thank you. Senator Gold, we have learned that in the other place all three parties — or four parties, but three at least — did not support the government's view. I'm wondering if you could enlighten us as to why that might be. You have a compelling argument, I would say. Loopholes are an argument that would certainly appeal to at least two of the three major parties in the other place. I wonder if you could enlighten us as to why the government didn't get support from at least one of the other parties to help you with your argument. Thank you.

Senator Gold: Thank you. I really don't know the answer to that. This was a private member's bill. In that regard, it was supported by members of the Liberal caucus, as it was with other members. There is no question that it addresses a real problem, whether with constituencies or communities, with farming businesses or fishing. I totally understand the support of this bill.

I respect, of course, the work of the other place. I also respect our role as senators, which is to give our own perspective on legislation, as we have done and are doing so here. That's why I feel it appropriate to have registered my concerns.

I'm always happy to answer questions, but I know that there are other speakers who wish to speak, so I will end my answer this way and hope we can move on in the debate.

Hon. Brent Cotter: Will Senator Gold accept one more question on this topic?

Senator Gold: Yes, thank you.

Senator Cotter: Senator Gold, I had no intention of involving myself in this debate, but I am bamboozled, quite frankly, by the Government of Canada's position on this. Let me offer not so much a detailed question — I agree with your point about people engaging in inappropriate tax avoidance, but almost all other aspects of the Government of Canada have articulated that agriculture and agri-food is one of the critical pillars of prosperity going forward in this country. Speaking not so much for fisher people but for farmers, it's agreed across the piece that this is a feature that can strengthen our agricultural community.

I would have thought that the Government of Canada, through you, would have shown up not with opposition but with suggestions to fence around that avoidance so we would have success here rather than opposition. I guess I just don't understand why we're not hearing from the Government of Canada a suggestion, for example, for an amendment or two that could make this work the way the Government of Canada thinks it should. Thank you.

Senator Gold: Thank you. It's a fair question. My understanding, and what I took from the testimony of the officials at the committee, was that although this is an issue that is being worked on, it's complicated. You might have been a better law student than I was when it came to tax; I barely got through by the skin of my teeth. But it's a very complicated area.

• (1620)

They weren't ready, notwithstanding that it is in their mandate and they're working on it. Therefore, it would be presumptuous of me representing the government, without instructions from the government, to offer amendments when, in fact, the officials aren't ready.

This is a question of timing, perhaps, but here we are. I wanted and am duty-bound to register the government's position. But thank you for the question. It's a fair question for sure.

Hon. Yuen Pau Woo: Honourable senators, I am pleased to add my voice to the debate on Bill C-208.

I would like to thank Senator Griffin for her leadership on this bill, as well as other senators who have spoken to it.

The impulses behind this bill are laudable. We can all agree on the importance of tax fairness, family farms and a healthy and thriving agriculture and fisheries sector. This bill, however, has moved through the Senate extremely quickly, to the point where we are now on the precipice of the third reading vote. I fear we have gone too quickly and have not put in the requisite scrutiny to allow for a well-informed decision.

I note, for example, that the bill was sent to committee after only two second reading speeches. With due respect, the second reading speeches were detailed in their coverage of the specifics of the bill, but they were light on its principles and the broader implications.

At committee, there was strong support for the bill from the farming, fishing and accounting communities, all of which will, of course, benefit from the proposed amendments. But there were serious reservations raised by Department of Finance Canada officials, none of which came out in the report from the Standing Senate Committee on Agriculture and Forestry — not even in observations. Those reservations were brushed aside in what appears to have been a rush to get to clause-by-clause consideration. The report provides us with none of the nuance that was heard in committee, and it conveys the impression that this bill was given a clean bill of health.

Before you vote on this bill, colleagues, I ask that you at the very least read the transcripts of the Agriculture and Forestry Committee hearings and pay attention to all of the testimony, including the reservations expressed by Finance Canada officials.

The gist of their reservations — and here I am repeating a bit of what Senator Gold has said — is that the proposed amendments will open tax avoidance opportunities that go well beyond fishing and farming operations. For example, there are no safeguards in the bill as written to prevent a family member from setting up a corporation that receives shares of a farming business from a parent or grandparent and then turning the business back to the parent or grandparent to run. In doing so, the tax savings could be considerable, but it should be clear that the intent of such an action is not the intergenerational transfer of family farms or fishing corporations; it is tax avoidance, plain and simple.

Some of you might think that a little bit of tax leakage might be a price worth paying for the preservation of family farms and fishing operations, but consider the following: This bill covers all qualified businesses, not just farming and fishing operations. The PBO has estimated that there were 1,674,310 qualified businesses in 2014, of which 50,000 were farming corporations and 4,000 were fishing corporations. You can do the math, colleagues, but that means that farming and fishing corporations make up a mere 3% of eligible, qualifying businesses. That percentage is likely overstated, because the number of farming and fishing operations has likely fallen relative to the total number of qualified enterprises over the last seven years.

This bill will open tax avoidance opportunities not just for the 3% of farming and fishing operations that we seem to be focused on, but also for the 97% of other corporations that are eligible.

Given that this bill was studied in the Agriculture and Forestry Committee, there was very little attention paid to the potential users and abusers of the proposed exemption on non-primary-sector corporations. Perhaps the bill should have been studied in the Finance or Banking Committees.

It is too late now, but there is no question in my mind that there have been some major omissions in our collective scrutiny of this bill.

Even if this bill were solely focused on farming and fishing operations, the removal of an anti-avoidance measure opens the door to more aggressive tax planning well beyond those sectors. Surplus-stripping, or asset-stripping, is an issue that affects all corporations in all sectors, which is why an exemption allowing for such in one sector will provide fodder for litigation in other sectors, making it much harder for the CRA to defend anti-avoidance measures in all areas of the tax code.

I understand that this bill is framed as an issue of tax fairness; that a sale of corporate assets to family members should be treated in the same way as a sale to third parties. There is a logic to this view. But selling to family members, dear colleagues, is, by definition, not an arm's-length transaction. Unless we are prepared to say that related-party transactions are arm's-length transactions, we simply cannot treat the two in the same way. To do so would undermine a key principle in tax policy, with potentially far-reaching unintended consequences.

Some of you might recall that we had a similar discussion in 2017 when we debated a provision in the budget implementation act to limit the ability of Canadian-controlled private corporations, or CCPCs, to "sprinkle" shares to family members. The "sprinkling" of shares was defended on similar grounds to the ones that we are hearing on this bill: It was a way for owners of private corporations — often doctors and lawyers — to retain surpluses in the family as a form of savings for retirement. It's a very similar argument. We rejected those arguments in 2017, and I believe rightly so, because of — wait for it — tax fairness.

We should reject this bill on similar grounds.

It might be possible to design an amendment or a bunch of amendments that protect against some of the unintended consequences of this bill. We heard a number of ideas in committee about how that might be done. But here, again, there was no attempt to explore these options further, either in committee or in observations that accompanied the report.

I would add that the issue of tax fairness, fundamentally, is a function of the differential between the tax treatment of capital gains and dividends, which currently stands at a high of about 20 percentage points. It depends upon which province you are in. That differential is a matter of policy, and it can be narrowed by changing the tax rates on either side, capital gains or dividends, with potentially positive implications for reducing income and wealth inequality in this country.

But that option was not explored in this committee, and understandably so, because it was the Agriculture and Forestry Committee. But that reinforces my earlier point that perhaps we should have asked the Finance and/or Banking Committees to also take a look at this bill.

Finally, this bill has been touted as a solution to the problem of the disappearing family farm. I'm very sceptical about this proposition. The diminishing number of family farms in this country has much more to do with business models than it has to do with the tax code. If anything, transferring a loss-making farm corporation within the family could simply mean transferring a loss-making operation from one generation to the next.

Colleagues, Canada has lost one third of its farmers and two thirds of its young farmers in just a single generation, but that is not because of tax policy. This is confirmed by studies on the changing nature and structure of agriculture in Canada. In Ontario, for example, for every dollar spent on farmland in the 1970s, that farmer could hope to generate 4.7 cents in net returns. That number has fallen to about 1 cent in the last decade.

• (1630)

It is a similar story in Manitoba. In the 1970s, a dollar spent on farmland would, on average, yield 8.7 cents in net farm income. Over the past two and a half decades, a combination of falling net incomes and rising land prices has created a situation where Manitoba farmers today generate just 2 or 3 cents for every dollar they spend on land.

Let me put it a different way: There has been a large reduction in the number of farms in Canada, from approximately 300,000 a generation ago to roughly 200,000 today. Realized net farm income over the most recent decade averaged $3.5 billion annually. Let's assume it takes $75,000 in net income to support a family. That means that $3.5 billion in aggregate income annually for the sector as a whole can only support 47,000 farm families — but we have 200,000. The reality for most Canadian farm families is that they operate in a sector that simply cannot financially support them.

The problem of low net incomes of family farms is complicated, and it has to do with the structure of modern agribusiness. It will not be altered overnight. Any policy that facilitates the transfer of farm assets within the family, but does not address some of these structural issues, will do little to stem the decline in family farms.

One could even argue that transferring a farm corporation outside the family could be better for that farm if the new owner brings a better business model to its operation. I'm not necessarily referring to an anonymous megacorporation, but it could be another family that wants to enter the business with new ideas about how to make it work. Intergenerational transfers are not the only means to retain farms that are operated by families.

I heard the view expressed in committee that even though this bill is flawed, we should pass it anyway because doing so will spur the government to come up with the regulatory fixes that are needed, or even come up with a new law that properly addresses the issue. Colleagues, that amounts to saying that we should pass a flawed law in order to get a good law — not a good law that is imperfect, as we often deal with, but a flawed law to start with. I

don't think that is a good way to think about our role as a chamber of careful reflection and deliberation. In fact, I think that is an irresponsible approach to legislation.

I also understand that many of you are responding to calls from your constituents to vote in favour of this bill. No surprise here, given that there are perhaps 2 million qualifying enterprises in the country that could benefit from the bill. By the way, 97% of them are not farming or fishing operations. Each of us will have heard from a business that is affected. The fact that MPs in the other place would feel pressure to respond to a populist bill is understandable, but I would like to think that we are less vulnerable to such pressures.

We, of course, must be responsive to the people and regions we represent, but the very nature of the Senate allows us to look at the bigger picture, take the longer view and resist measures from the other place that do not meet the test of national interest.

Honourable senators, there have been many speeches in this chamber over the past years railing against tax avoidance or what some might call aggressive tax planning. This bill works in the opposite direction. I have no doubt that it will encourage tax avoidance and aggressive tax planning. If you think that is okay because we're only talking about small businesses rather than megacorporations, my response is that the tax code should operate on the same principles regardless of size.

Not only that, but the notion that this bill is mostly about mom-and-pop businesses is erroneous to start with. The exemptions proposed under this bill allow for intergenerational transfers of up to $15 million in tangible, taxable capital. According to Statistics Canada, in 2011, less than 0.5% of all privately owned corporations with fewer than 500 employees had assets greater than $7 million. That means more than 99.5% of private corporations, under this definition, will be covered.

I will sum up. The case for this bill is built on two propositions: Tax fairness and the protection of family farms and fishing operations. Both are worthy goals, and I commend my colleagues for their advocacy on these issues. However, this bill is flawed for three key reasons: it cannot truly address tax fairness without properly closing surplus extraction opportunities in related-party transactions; family farms and fishing operations constitute only a very small portion of the businesses that would be captured by this exemption; and it does not address any of the structural problems facing family farms and could in some ways even accelerate the decline of that sector.

I wish we could take more time to properly study this bill. However, if we do not have the luxury of more time, I hope you will join me in rejecting it. Doing so would not be a rejection of tax fairness or family farms. It would be an affirmation of our role as legislators who take the broader view and who can resist measures that may be popular but which are not in the public interest.

Thank you.

Some Hon. Senators: Hear, hear.

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

Hon. Leo Housakos: Would Senator Woo take a question?

Senator Woo: Yes, of course.

Senator Housakos: I have been listening to the debate attentively. I'm trying to wrap my head around the government's perspective on this — and, quite frankly, yours as well. In essence, what I understand is this: Let's punish millions of law-abiding citizens for something non-law-abiding citizens may or may not do. At the end of the day, those of us that have been in business and in the field of accounting recognize there are plenty of loopholes with Revenue Canada already if somebody doesn't want to be a law-abiding citizen and pay their taxes.

I find it difficult that we are not being responsive as a Parliament — and our government isn't being responsive — to something that touches millions of Canadians. I want to touch upon my question on the main focus of your speech. You talk about tax fairness, Senator Woo. Currently, if a Canadian wants to sell their small business to a family member, it will cost that family member significantly more in taxes than it will for a stranger. In your opinion, is that tax fairness?

Senator Woo: Thank you, Senator Housakos, for the question. The underlying question here is whether a sale within the family is considered a related-party transaction. It's a well-established principle within tax law that transactions within the family are related-party transactions. That is why there is a difference in the treatment of the sale within the family — or transfer of assets or giving of dividends — compared to the transfer of assets — or sale or giving of dividends — to an external third party. Unless we are willing to overcome or to deny this principle in tax law, we will have a challenge in reconciling the difference that you highlighted.

• (1640)

We have heard from the government that they want to try to address this problem, but it is a very troubling one and will require a lot more work to, on the one hand, respect the fact that related-party transactions have to be dealt with in a special way, but at the same time to try to accommodate the interests of small businesses, particularly family farms and fishing operations, that genuinely want to keep the business within the family.

Senator Housakos: Senator Woo, don't you think it would be more reasonable to address the inequity right now in the system as it stands and encourage our government to continue the pursuit of closing tax loopholes, which seems to be a pursuit that has been going on now for decades with very little success?

Senator Woo: Thank you for the question. If you paid attention to Senator Gold's speech or listened to the testimony at the Standing Senate Committee on Agriculture and Forestry, you will know that, in fact, there are mechanisms currently for farmers and fishers to transfer their businesses in a graduated way using the 10% reserve that is allowed to them over time and not have to pay taxes at the higher rate.

That means basically selling directly to the children rather than through the corporate structure and phasing it out in the way that I believe one of our colleagues Senator Loffreda alluded to. They

could phase it out so that the children or grandchildren can take a little more time to learn the ropes, if you would, and acquire the skills needed to run the business.

So there are ways in which it can already be done, and we should pay attention to those mechanisms rather than pass a flawed bill that will, first of all, affect way more than just family farms and fishing operations and, second, will inevitably open up opportunities for tax avoidance.

[*Translation*]

Senator Forest: Would Senator Woo take a question?

Senator Woo: Certainly.

Senator Forest: You gave a good explanation of the problems with how the primary sectors, in particular the agriculture and fishing sectors, are structured. The situation is even more problematic because both of these sectors operate with production quotas. You didn't mention that, but it is part of the reality.

The value of a business and that tax unfairness is what pushes people in these sectors to dismantle their businesses. This means that they sell their quotas, their herds and their equipment instead of transferring them. There are three aspects of the bill that seem important to me right now. You mentioned them as well. The first is the maximum capital amount of $15 million. The second is the requirement that the owner sell to their children and not to extended family members. The third is that the buyer must keep the business in operation for at least five years.

I think we should think about the structural issues with the agricultural and fishing sectors, especially for SMEs. However, don't these three aspects give us at least some assurance that we might achieve our objective, which is to eliminate the existing tax unfairness between a transaction between members of the same family and a transaction between people who have no family ties?

Senator Woo: Thank you for your question, Senator Forest.

[*English*]

On the question of tax fairness, as I said, there is a logic to this bill that tries to create an equilibrium between sales to family members — children or grandchildren — versus sales to third parties. But the reason there is a disequilibrium — I have said this already, but the fundamental reason we are in this place in the first place is because sales to family members are related-party transactions. That's the starting point. Of course, we could wave that away. We could say, "Forget it. Let's just say that transactions between families are not related-party transactions." That would upend the entire tax code. It would be extremely problematic and would open up litigation not just in this area but in a whole bunch of other areas that I have no clue about but I'm sure exist that deal with the question of related-party transactions.

There are different ways of looking at tax fairness, Senator Forest. I believe that this bill looks at it from the very narrow perspective of one transaction comparing a sale to family members to a sale to third parties without fully appreciating the underlying problem that any sale to a family member is treated in a way that has to be given special consideration because it's a related-party transaction.

I appreciate your comment about the bigger structural issues facing the farming and fishing sectors. This is an issue that I hope our Agriculture and Forestry Committee will really wrap its arms around and tackle in a really cold-eyed way, looking not at solutions that help incumbents make it to the finish line, if I can put it that way, perhaps continuing to perpetuate inefficient operations, but to look at the system as a whole and how to make it viable for farmers, for suppliers of agricultural equipment and for consumers as well. This kind of bill, trying to fix one small gear in a very complex machine, could actually make the machine function less well. And that's why even if you like this bill for the tax fairness function, I do not think that the argument that this is good for the farming sector as such holds up. The farming sector faces much more severe problems that will not be solved by these changes to the tax code.

DECLARATION OF PRIVATE INTEREST

Hon. Mobina S. B. Jaffer: Honourable senators, I want to make a declaration of interest that I, Mobina Jaffer, note for the record that I believe I have a private interest that might be affected by the matter currently before the Senate. The general nature of my interest is that my family owns a family farm.

The Hon. the Speaker pro tempore: Honourable senators, Senator Jaffer has made a declaration of private interest regarding Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation) and in accordance with rule 15-7(1), the declaration shall be recorded in the *Journals of the Senate*.

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

On the Order:

> Resuming debate on the motion of the Honourable Senator Griffin, seconded by the Honourable Senator Black (*Alberta*), for the third reading of Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation).

Hon. Tony Loffreda: Would Senator Woo take a question?

Hon. Yuen Pau Woo: Of course.

Senator Loffreda: Senator Woo, thank you for a very compelling speech as usual — very informative and insightful. Yes or no answers. I have three quick questions. You are aware that when it comes to non-arm's-length transactions, the tax authorities could rule and determine a fair market value for that transaction? It happens all the time. I would like to keep it at a question, sorry. I don't want to comment or debate here, but I want to properly give a preamble to that question.

• (1650)

There are many transactions that are non-arm's length, and if they don't occur at fair market value, the tax authorities come back, and for tax purposes you are guilty until proven innocent. That's one.

Two — I've asked Senator Gold the same question — are you aware that the accounting firms, in large part, are in favour of this bill? Actually, some accounting firms here in the province of Quebec are behind having approached the provincial government, which has a similar framework in place, without getting into the details. Are you aware that the Quebec government has a similar framework in place and has approached the federal government? I could read what I have researched, but are you aware of that? They encourage that we support sales to families.

Nobody is saying to pass a flawed bill, but this is a necessary bill that could be monitored going forward. Tax authorities are looking at closing loopholes every single day. Those three quick questions for you. Thank you for your compelling speech. It was very insightful.

Senator Woo: Thank you, Senator Loffreda. The answers are yes and yes.

On the first part, about related party transactions, the issue here, I believe, is that by opening up the definition or the treatment of children and grandchildren as eligible for the capital gains exemption, rather than dividends, provides, as I said in my speech, fodder for types of tax avoidance activities that will be litigated and will make it potentially more difficult for the CRA to defend. So you are right, there will be lots of litigation, and this will open up yet another front.

That the accounting community is supportive, to me, goes neither here nor there. They have their reasons for supporting the bill, and I have already characterized this bill as a popular, if not populist bill, and you can take it for what it's worth.

With respect to Quebec, yes, that was mentioned a number of times in the AGFO testimony. In fact, there was some praise given to the Quebec approach. I believe Finance officials expressed a willingness or a desire to model any changes in federal law after what Quebec had done, but I didn't see any of this in the report from AGFO. I didn't see any observations of that sort, I have not studied it and I would not have the skill to understand it in detail.

In a sense, what you're saying, Senator Loffreda, underscores my point. Apparently, there are better ways of doing this. Presumably they have to be studied, which means this bill as it stands is flawed, as I said before.

Senator Loffreda: Senator Woo, are you aware that actually the Quebec legislation on this is even more aggressive than what is being proposed? In a sense, the accounting community has discussed with the Quebec government from the beginning, making this available to all enterprises, not just small business but making partial sales allowed. This was discussed in full detail in Quebec. I'm just asking the question. I don't want to get into debate. Are you aware of that? Was that properly discussed within the government and within the discussions you undertook in committee?

Senator Woo: I wasn't aware of the more detailed nature of the Quebec law, but again, you are reinforcing exactly my point. There appears to be a different approach, which may or may not be better. I don't know if the Quebec approach is better. We heard testimony that there are aspects of what Quebec has done to deal with the issue, for example, of a child or grandchild who owns the corporation but essentially does something else and lets the parent or grandparent run it. Quebec has found a way of getting around that or making sure it doesn't happen. I don't know what that is, but we didn't hear any of that from the committee.

Therefore, surely to me that is a sign that we have not done our work or we haven't finished our work yet to be able to certainly proceed to a vote at this stage. Or if we have to proceed to a vote, we should at least have a lot of questions remaining about whether this bill is the right one. Thank you.

Hon. Colin Deacon: Senator Woo, would you take one more question?

Senator Woo: Sure.

Senator C. Deacon: Thank you very much. Very compelling speech. You always deliver great insights, and I'm appreciative of those today.

My concern, though, is that this came out of the House from a detailed study in the Finance Committee in the other place and with no recommended amendments, either from that committee or the House itself, from any member of the House of Commons. There are options available here.

Can you explain why Finance officials were not making recommendations and why there was no option taken there? That is what puzzles me. It seems people are happy to keep the current situation in place but not resolve it with any sense of urgency at all.

Senator Woo: Thank you, Senator Deacon. I cannot answer that question. Senator Gold was not able to answer that question. I would be much less able to address it. I don't know what goes on in the House of Commons.

I will say — and you know this well because you were on the committee — that when Finance officials were asked to offer some remedies, I believe they did come up with some suggestions of potential amendments, but again, none of that seemed to come out in the committee report.

Again, to me, all of these questions underscore my fundamental point that we know there are difficulties with this bill. We have been given hints of solutions, but the discussion seems to be that we should barrel ahead to get this done.

Reversing myself a little bit as to why the House passed it with support ostensibly from all parties and with little opposition, I think I explained in my speech, this is a very popular bill. It is a bill that will win you points in whatever riding you come from. If

you are an elected parliamentarian, woe be unto you if you vote against it. That's why we have a special role to play here today, because while we have to be sensitive to the needs of our regions and our constituencies, we have to take the broader view, look at the longer public interest, and all of the questions that I have been getting today suggest that we should either fix this bill or turn it back.

Senator C. Deacon: Thank you.

Hon. Robert Black: Honourable senators, I have risen on a number of occasions to highlight the important role that our farmers, producers and processors play in ensuring Canadians have access to safe, nutritious and affordable food. Many of these operations are small businesses operated by families across the country, and they, along with small, locally owned businesses in other sectors, have continually risen to the challenge of serving Canadians, especially and including over the past 15 difficult months. I have no doubt that it will be these same small businesses that will help us climb out of the pandemic whole going forward.

Today, I rise at third reading to speak to Bill C-208, An Act to amend the Income Tax Act (transfer of small business or family farm or fishing corporation). As you might expect, I will speak in support of the bill.

At this time, I would like to commend the member of Parliament for Brandon-Souris, Mr. Larry Maguire, for bringing this bill forward in the other place and my Canadian Senators Group colleague, Senator Griffin, for sponsoring this bill in the Red Chamber.

• (1700)

It is an honour to work alongside my colleague Senator Griffin both on the Agriculture Committee and as a member of the CSG leadership team. We are indeed a great group of non-partisan senators.

The issues that Bill C-208 address have been on the minds of Canadians from across the country for some time now. Whether you operate a small family farm in Red Deer County, Alberta, own an independent grocery store in Fergus, Ontario or a fishing corporation in Lower Bedeque, Prince Edward Island, small businesses are very familiar with the issues they currently face when selling their businesses to family members.

In fact, just last week, my sister-in-law Rita asked about the progress of this particular bill.

Colleagues, it is clear that Canadians are paying very close attention to what we are working on in this chamber. I am hopeful that, with this knowledge, we can work together to ensure that we do our utmost to continue serving and supporting this great country.

With that, I would like to return to the matter at hand, Bill C-208. This legislation, if passed, would allow small businesses, family farms and family fishing corporations the same tax rate when selling their operations to a family member as they would if they sold to a third party. As many of you may know, under the current regulations, when a person sells their small business to a family member, the difference between the sale price and the original price is considered to be a dividend. However, if the business is sold to a non-family member, the sale is considered a capital gain. A capital gain is taxed at a much lower rate and also allows the seller to use the lifetime capital gains exemption.

Honourable senators, I know we come from a wide variety of backgrounds. We are former public servants, journalists, doctors, lawyers, athletes and business owners, among many other things. However, regardless of where we come from, I believe we can all agree that it is completely unacceptable that it is more financially advantageous for a parent to sell their small business to an absolute stranger than it is to their own children, should they desire.

I was born in and still reside in Fergus, Ontario. Fergus is a small but expanding community within Wellington County. One of the best things about growing up in a small community is knowing the ins and outs of the area and the businesses that support it. As we have all learned during this pandemic, it is the small businesses that are the very backbone — the very backbone — of our communities.

Right now, I am thinking of Fraberts Fresh Food, a family-run market in Fergus that specializes in locally sourced gourmet food, and Ron Wilkin Jewellers, also in Fergus, where I spent many after-school and summer hours in one of my very first off-farm summer jobs. Likewise, I am sure many of you are imagining similar small, locally owned businesses that serve you in your communities. Businesses like Fraberts, Ron Wilkin Jewellers and countless others across Canada are what make our communities feel like home.

Unfortunately, under the current regulations, it is much more difficult to maintain a sustainably operated family business. We know that many small businesses are struggling at present. This pandemic has been one of the most disruptive periods in our lifetime. No sector and no community has been immune to its impact. In many cases, it's the small businesses, local entrepreneurs and organizations that have borne the economic brunt of this crisis. However, Bill C-208 would allow the next generation to become owners and to keep those businesses locally owned.

Farms and small businesses from across the country have already issued their support of this bill, in addition to widespread support from organizations from around the country, including the Ontario Federation of Agriculture, the Canadian Federation of Agriculture, the Grain Growers of Canada, the Canadian Canola Growers Association, and the Canadian Federation of Independent Business. Further, tax managers from Deloitte also support this legislation. It is clear that the bill provides support to the businesses that need it most.

Honourable colleagues, you know that my focus lies in agriculture, so I will take this opportunity to speak very briefly and directly to the impacts Bill C-208 has on Canada's agricultural sector.

Every year, more and more farmers approach retirement. In fact, the Canadian Federation of Agriculture, also known as CFA, estimates that $500 billion in farm assets — $500 billion — are set to change hands within the next 10 years.

Earlier today, all senators received an email letter from the Canadian Federation of Agriculture on Bill C-208. In it, they highlighted that more than 95% of Canadian farms are owned and operated by Canadian farm families. At this time, I would like to quote CFA President, Mary Robinson:

> We need to ensure farm families don't have to face an additional tax bill, potentially in the hundreds of thousands of dollars, just for keeping the business in the family!

Unfortunately, not many Canadian youth consider farming or agriculture in general to be a viable career path, especially given the economic red tape that ties up taking over the family farm. This means that we could be facing a shortage of producers in coming years. Given that this sector was the only one to experience growth over the course of the ongoing pandemic — and experts anticipate demand will continue growing — I believe that we have an obligation to support our youth in agriculture because the opportunities within this industry are as vast as our country's fields.

Honourable colleagues, I don't believe that farmers, fishers or local small-business owners should be penalized if they choose to keep their businesses within the family. We know that it is imperative to invest in our communities today so that we can work to enhance and strengthen our country for tomorrow.

I am hopeful that you can see Bill C-208 will do just that and that you will support your communities by supporting this bill alongside me.

I will leave you with a few questions posed to me recently by a local producer who farms just south of Ottawa. He asked me why Canadian regulations do not treat all businesses and individuals the same and avoid creating a disadvantage for family businesses, including farm families. He noted that his banking institution shared that the family would be in a better fiscal position to sell their half of the farm to a neighbour or an investment group than to a family member. At this time, I would like to echo his sentiments: Is this what we really want for our future farm families?

Honourable senators, Canadians are watching us and the work we are doing in the Red Chamber. We must act now to help small businesses, family farms and fishing corporations across this great country. Please join me in supporting the passage of this very important bill. Thank you. *Meegwetch*.

Some Hon. Senators: Hear, hear.

(On motion of Senator Munson, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEBATE

Hon. David M. Wells moved third reading of Bill C-218, An Act to amend the Criminal Code (sports betting).

He said: Honourable senators, I rise today to speak to Bill C-218, the safe and regulated sports betting act, as Senate sponsor. This bill seeks to regulate single-event sports betting in Canada, strengthen consumer protections to ensure the safety and well-being of those participating, bring legal and taxable revenues inside our borders to invest back into Canadian communities and direct this activity away from organized crime groups and offshore accounts.

I would like to thank my colleagues for working to get this bill to this point, in particular those who spoke at second reading along with Senator Wetston, chair of the Banking, Trade and Commerce Committee, and my fellow members of that committee for their dedicated analysis and focus on this bill during our meetings two weeks ago.

A special thank you also goes to Kevin Waugh, Member of Parliament for Saskatoon—Grasswood, for introducing this bill in the other place and for being a strong advocate for increased regulations, consumer support and community empowerment with respect to single-event sports betting.

I also want to thank my colleague Senator Cotter, the official critic for Bill C-218. His depth of knowledge on this specific subject and his wise counsel throughout the process have been invaluable.

It is also important to acknowledge all of the outreach and messages I've received from Canadians who see this as a positive step forward for our country — community members who are hopeful that this will result in increased funding for essential public priorities.

Colleagues, in my presentation to you today, I will discuss four key issues: what we heard at committee; the legal coverage of match fixing in the Criminal Code; participation of Indigenous communities in the gaming industry; and Canada and the Council of Europe Convention on the Manipulation of Sports Competitions, also known as the Macolin Convention.

Just to provide a brief overview, sports betting has been legal in Canada for decades — since 1985. However, there is a line in the Criminal Code, section 207(4)(b), that makes it illegal to bet on a single-sport event. Canadians can legally bet on two games that are bundled together, but they cannot bet on one of those games alone.

• (1710)

The provincial lottery corporations offer parlay bets, which are bundled bets on two or more games, and Canadians only receive a payout if they can successfully wager on all games. This results

in the ironic situation of the Criminal Code of Canada that mandates that more gambling take place, as bettors are required to bet simultaneously on multiple games instead of just one.

This requirement vastly tips the playing field away from Canadians who wish to bet legally. In an industry where there are concerns around problem gambling and addiction, it seems counterproductive to compel Canadian bettors to participate in more betting than they may wish, and thereby pointing them to the unregulated offshore sites that offer single-event sports betting.

Colleagues, you've heard that $14 billion is being spent by Canadians on single-event sports betting. These bets are being placed every day on offshore gambling sites. These black and grey market activities are happening outside of Canada's legal framework and therefore are not subject to any regulations and taxes are not being collected on revenues. Additionally, billions of dollars are going into the wrong hands every year.

If someone in Canada wants to bet on a hockey game today, it would be as simple as downloading an app on their smartphone and placing that bet. The organization operating that app — and there are many — would then process the financial transaction through offshore accounts circumventing Canada's legal frameworks and regulatory structures.

To make matters worse, many consumers who are actively participating in single-event sports betting through these organizations and their respective apps are not even aware of the fact that the activity is not legal in Canada.

Canadians are placing billions of dollars worth of bets annually through these sites that go entirely unregulated in Canada and are not held to our consumer protection and safety standards. These same Canadians are, oftentimes unknowingly, being exposed to the risks that accompany that. In fact, when dealing with unregulated betting, there are no Canadian regulations around when a payout is deposited, if ever.

As previously mentioned, Canada's provinces and territories have jurisdiction over regulations, licences and other matters pertaining to gaming and betting. The provincial and territorial governments have developed and fine-tuned responsible gaming practices and regulatory frameworks to ensure the integrity of the industry and the safety of those participating.

These governments have been seeking this change for years, and they are ready to respond to it quickly and responsibly. Their regulations and regulatory frameworks are currently in place and would apply to single-event sports betting if this bill passes and the activity can be regulated.

While we cannot dictate the regulatory practices of Canada's provincial governments, what we can do is make this modification to one line of the Criminal Code, thereby empowering them to safely bring single-event sports betting within Canada.

The regulations that would be enacted and bolstered around this activity are tangible and urgently needed. Examples of how potential safeguards could protect Canadians, just to name a few, are age and identity verification, safeguards to protect the integrity of matches and prevent match fixing as well as prohibitions on players, coaches and officials from wagering on sports.

These numerous protections and safeguards are necessary to decrease the risks associated with problem gambling in our communities, but they can only be implemented if this bill is passed.

Currently, there are no provincial safeguard regulations pertaining to single-event sports betting given the underground nature of existing operations. This makes it more likely that minors will participate in betting and more challenging to detect match fixing.

Colleagues, hundreds of millions, perhaps billions of dollars would be unlocked to support addiction research, youth sports programming, health care and education among other priorities. This contrasts with where the revenues from single-event sports betting are currently going.

The community benefits of passing this bill would extend even past those arising from the taxation of and the revenues from legal gaming operations. Estimates show that, within two years after removing single-event sports betting from the Criminal Code, almost 2,700 jobs would be created in Canada. These good jobs would have the average salary in the industry in excess of $65,000 per year.

While these figures are compelling, colleagues, I would not stand here and ask that we support this bill for economic reasons alone. It also makes sense, it is right, and it has Canadian communities at its core. It is for these reasons that there is widespread and sweeping support for this bill, support from provincial governments, community groups, sports leagues, labour unions, lottery corporations and indeed, colleagues, individual Canadians.

Many of Canada's Indigenous communities are strong supporters of this change to the Criminal Code as it would empower them to work with provincial governments to offer this and collect necessary revenues. A letter from the Saskatchewan Indian Gaming Authority, or SIGA, to the Senate stated:

> . . . we simply want the opportunity to compete and offer a product demanded by our customers. We currently see the unregulated grey market conducting business in our province with no benefit back to our stakeholders.

These are their words, colleagues, not mine.

SIGA is a fully non-profit organization that reinvests 100% of its net income from gaming operations into Saskatchewan First Nations communities with the goal of strengthening Indigenous communities through ". . . employment, economic growth, positive community relations and achieving financial self-reliance."

Colleagues, SIGA represents 74 First Nations in Saskatchewan.

Just this morning I had a call from Chief Sheldon Kent of the Black River First Nation of Manitoba. He also sits on the Assembly of Manitoba Chiefs, and he sits on the gaming committee of the assembly. He is forcefully and fully supportive of this legislation.

SIGA's President and CEO Zane Hansen appeared at the first committee meeting and he explained that this would not create new types of gaming. He said:

> It's happening now, but it's happening by operators who aren't licensed to regulate it in our province. Moving this into a regulated atmosphere, we can deliver it well, safely and with a high level of integrity.

Paul Burns, President and CEO of the Canadian Gaming Association, touched on the importance of safeguards and addictions programming at this same meeting. He stated:

> What we've seen is that Canadians do like to bet on sports, but we have also seen that we have some of the best world-class responsible gaming programs. A recent piece of research published through the Alberta Gaming Research Institute also shows that problem gambling rates in this country over the period of time between 2002 and 2018 decreased by 45%. Our education programs are working . . . .

Mr. Burns added that organized crime groups with sports-betting operations are happy to extend credit to bettors. He said:

> There are less than a handful of casinos in this country that will actually extend you credit and it's like applying for a mortgage. . . . There are lots of differences that will come with a regulated, controlled marketplace.

Commissioner of the CFL, Randy Ambrosie expressed that the support for the bill from the CFL is rooted in ensuring the integrity of sport in Canada, creating strong regulatory standards and providing economic benefits to sports leagues and communities. He said that passing this bill would positively impact ". . . all of us in the sports and entertainment industries as we work to build our businesses back."

At the committee, we heard from the Alcohol and Gaming Commission of Ontario and the British Columbia Lottery Corporation about the positive changes to Canada's regulatory landscape that would result from this bill's passage and the community funding that would be unlocked.

Stewart Groumoutis from BCLC explained:

> While more than $1 billion is estimated to be wagered annually in B.C. on sports, we know B.C. players are already making single-events sports bets by heading south of the border to Washington State casinos or using unregulated offshore websites. Neither of these options return revenue to the province of B.C., nor do they support B.C. jobs. . . .

Shelley White, CEO of the Responsible Gambling Council, or RGC, expressed her support for the bill as well. As explained by Ms. White, "RGC is a Canadian, non-profit charitable organization whose purpose is to prevent problem gambling and reduce its impacts." She also stated that, "Canada is regarded as a leader in responsible gambling, and we are proud to be part of this."

Her testimony expressed the council's concerns with the unregulated nature of this industry in Canada:

> Left unregulated, as it is currently, vulnerable people are at risk. It's with these people in mind that we speak to you today. RGC believes that it's in the best interests of Canadians and Canadian society that Bill C-218 should be passed.
>
> This would permit provincial authorities to establish a regulatory framework for single-event sports betting, with consumer protection at the heart of the regulations.

Colleagues, Chief Gina Deer and Chief Ross Montour from the Mohawk Council of Kahnawà:ke testified at committee as well. I spoke to Chief Deer many times. I had Zoom calls with a number of chiefs. They certainly ensured that the committee and I were well informed on this.

• (1720)

Chief Deer stated:

> Let me be clear: Our community endorses the essence of Bill C-218. Indeed, Canadians should have the right to bet on single sports or athletic events.

She went on to say that while the bill is a "positive move for Canada's gaming industry," it does not properly consider the interests of Indigenous people. Chief Montour added that they are looking for a "carve-out" in the Criminal Code. We heard their concerns and we understood them. The issue, though, is deemed outside the scope of Bill C-218, and indeed outside of federal jurisdictional authority over gaming, which lies with the provincial governments and has since 1985.

I understand that the Honourable David Lametti, Minister of Justice and Attorney General of Canada, is undergoing consultations with Indigenous communities and stakeholders regarding, and I quote from his letter, the role of "Indigenous nations and communities in relation to gaming."

I encourage the provinces and territories to work with Indigenous communities and other relevant groups to come to agreements with respect to gaming and to ensure that they would be fully able to benefit from the economic gain that would come from the passage of this bill, and the committee attached an observation to this effect.

The observation reads:

> The committee is of the opinion that, where appropriate, provinces and territories should work with First Nations and relevant groups on agreements related to gaming.

A final point that I would like to speak to is one that was discussed in depth during the committee hearings, and that is match fixing and manipulation.

We heard in this chamber from Senator White at second reading about the risks associated with match fixing. I would like to thank my colleague Senator White for his attention to this issue.

Senator White stated in his second reading speech that ". . . in Canada today it is not illegal to fix a match." While I agree that match fixing is an important priority, I, along with the committee's expert witnesses and contributors, disagree on the state of its legality in Canada and on the right path forward.

I reached out to the Library of Parliament to prepare a research brief on the legal framework around match fixing in Canada. It is, of course, impartial and rooted in fact. The brief explains that, while there is not a provision in the Criminal Code that explicitly mentions match fixing, there are a variety of provisions that cover the act of match fixing, and I will explain why this provides stronger legal coverage.

The most applicable Criminal Code provisions are section 209, section 380 and section 465.

Section 209 most directly applies to match fixing as it criminalizes "Cheating at play," meaning that anyone:

> . . . who, with intent to defraud any person, cheats while playing a game or in holding the stakes for a game or in betting . . .

— has committed a crime.

Section 380 criminalizes fraud. This provision has not only been used to prosecute match fixing, but has also been upheld by the Supreme Court of Canada through *R. v. Riesberry*. The Library of Parliament brief states that the Supreme Court agreed with the Court of Appeal that the facts of the case met the requirements to be considered fraud based on the fact that Mr. Riesberry:

> . . . intended to create an unfair advantage for his horses in their races. This is a finding of fact that Mr. Riesberry knew that his dishonest conduct put bettors at risk of deprivation. That, after all, is what cheating is.

A key feature of match fixing is often bribery, which would satisfy the criminal requirements under the fraud provision in section 380.

Section 465 covers conspiracy, and when combined with another provision like the other two I've mentioned:

> . . . would allow for individuals who work with other individuals for the purpose of match fixing to be prosecuted, even if they themselves do not fix the match.

The brief goes on to state:

> It should also be noted that all that is required for this offence to be made out is an agreement to commit a criminal offence and an intention to act on the agreement. It is not necessary to carry out the act. This would allow, for example, for both a person who pays a referee to throw a match, and the referee themselves, to be prosecuted, even if one or both parties does not follow through.

A legal opinion from the law firm of McCarthy Tétrault comes to similar conclusions and adds that section 462 pertaining to money laundering could also be used to cover aspects of the match fixer's crime.

It is clear that match fixing is indeed illegal in Canada through multiple provisions of the Criminal Code that work together to provide legal coverage. Additionally, the Supreme Court has verified this. Any arguments claiming that match fixing is legal simply because there is not a direct mention of it in the Criminal Code are not accurate.

What's more, colleagues, is that having a provision in the Criminal Code that directly prohibits a specific crime can actually pose a substantial risk to the potential for conviction, as it leaves more room for legal loopholes. By contrast, having multiple broader and more encompassing provisions ensure that there is legal coverage for more aspects of the crime. For example, if you have a law that criminalizes robbery, it is not necessary to have specific laws that criminalize robbery from a bank, a grocery store, a gas station or a pharmacy. It would actually be counterproductive to have those laws, as it leaves room for the laws to be challenged on specificity.

Donald Bourgeois, an expert in gaming law called to the bar of Ontario in 1984, appeared at committee and spoke to this issue and other legal matters. When I asked him about this concern, he stated:

> When you start to become very specific in criminal legislation, you run the risk of the Crown not being able to prove each of the elements. So the risk of having a very detailed provision is that you will not be able to gather the evidence, and you will not be able to prove all of the specific elements beyond a reasonable doubt. The more specific you get, the more the Crown has to prove specific elements in order to get a successful conviction.

Deputy chair of the committee Senator Wallin also directly asked Mr. Bourgeois whether a specific match fixing section of the Criminal Code is necessary. He replied that, no, this is not needed, adding:

> I think it's covered in two ways. One, there is an existing Criminal Code provision in section 209, which combines with section 380, dealing with fraud. The Supreme Court of Canada has very clearly stated that dishonest activity, not just during the game but leading up to the game, is sufficient.

He went on to say:

> The second aspect is that the regulatory structure, combined with a connection to law enforcement, as well as others within the sector, allows the regulatory structure to prevent the problems arising from match fixing.

Mr. Bourgeois discussed the Supreme Court of Canada *Riesberry* decision, adding:

> . . . we have a very clear indication from the Supreme Court as to what constitute elements of the offence. Again, as I indicated, the only reason we know that Mr. Riesberry exists is there was a regulated structure that gave the information that was necessary in order to get a conviction.

Mr. Ambrosie from the Canadian Football League also commented on this, explaining that:

> Information and data are shared between sports organizations, sports book operators, gaming regulators and law enforcement to ensure fair and honest competition on the field, because the integrity of our game means everything to us, and we will work to protect it.

David Phillips, COO of the Alcohol and Gaming Commission of Ontario, added that:

> The fight against international match fixing requires a highly coordinated effort between regulators, law enforcement, sports leagues, operators and independent market monitors.

And this bill would give Canada that regulated marketplace that is a prerequisite to catching match fixing when it does happen.

Colleagues, there is an international treaty that focuses on combating match fixing titled the Convention on the Manipulation of Sports Competitions, also known as the Macolin Convention, which opened for signatures on September 18, 2014. One of its key underpinnings is that there is a regulated marketplace so that match fixing will be discovered in the first place, instead of going under the radar due to a lack of regulations.

Paul Melia, President and CEO of the Canadian Centre for Ethics in Sport, who specializes in ensuring the integrity of sport in our country, supports Canada examining:

> . . . the value of signing on to the Macolin Convention as a way to further ensure we are protecting the health and safety of our athletes and the integrity of sport.

However, he made clear during his committee appearance that passing Bill C-218 should come first in sequence in order to ensure that we have a regulated marketplace prior to potentially signing the convention.

He stated:

> I think the passing of Bill C-218 and the regulatory framework that would support it is a necessary first step.

Colleagues, the committee added another observation to the bill to this effect which reads:

> The committee strongly encourages the federal government to sign the Council of Europe Convention on the Manipulation of Sports Competitions in order to align with international practices on combatting match fixing, and to work with the provinces and territories — which have jurisdiction over gaming — in this regard.

The Senate, of course, cannot compel the federal government to sign on to any international treaty, which is why the committee wrote the observation this way.

• (1730)

It is important to note that, while over 30 countries have signed the convention, very few have ratified it. It has not been ratified by Germany, the United Kingdom, France or any country outside Europe. So while it may be important for Canada to align itself with international best practices, it is most important that we start by ensuring that our laws and regulations are in place to deter criminal activity and to fortify the integrity of our institutions and operations.

To reiterate, colleagues, there is widespread support for this bill from very credible stakeholders with expertise on the relevant issues.

This legislation strengthens consumer protections and has safeguards that provide support for problem gambling and addictions. It dries up revenue streams going to organized crime groups and offshore accounts, redirecting them to legal operations that will be subject to taxation and regulatory measures. It unlocks hundreds of millions of dollars in taxes and revenues annually that can be reinvested into critical programs and communities. It will create well-paying jobs across the country. Colleagues, it is time to bring single-event sports betting into the light of day. Thank you.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Senator Wells, there are a number of senators who wish to ask a question. Will you take a question?

Senator Wells: I would be pleased to, Your Honour.

Hon. Mary Jane McCallum: Senator Wells, Kahnawake's legal status is based on the assertion of an Indigenous right clearly reconcilable with section 35(1) of the Constitution Act, 1982. From the consultation paper of the Alcohol and Gaming Commission of Ontario, Ontario will assess legal standing solely under the Criminal Code, which currently does not make any provisions for First Nations. This is a narrow interpretation of the law by the province and presents a significant risk. Will this apply to other First Nations if their provinces take the same stance?

For this reason, Kahnawake had asked the Committee on Legal and Constitutional Affairs for a fair hearing and just consideration, but it was sent to the Standing Senate Committee on Banking, Trade and Commerce. Could you comment on that as well? Thank you.

Senator Wells: Thank you very much, senator, for your question. It is an important question.

First, it goes to the question of jurisdiction. As I said in my speech — and I believe I said this in my second reading speech as well — Canada delegated the authority for gaming and the regulations around gaming to the provinces. I understand that the Mohawk Council of Kahnawake has tried, a number of times, to engage in discussions around licensing and gaming with the responsible authority, which is the province.

I mentioned in my speech that I spoke to Chief Sheldon Kent of the Assembly of Manitoba Chiefs and asked him specifically about that. I jotted it down because I thought it was important. He said:

> Any consultation should be on the full suite and broader inclusion of First Nations, not just on one line in one bill.

I understand — and I am sure you are aware as well — that our Attorney General and Minister of Justice, David Lametti, has written to First Nations across the country regarding the broad discussion about the inclusion of First Nations, and specifically with regard to section 35.

The other part of your question was about the bill being sent to the Committee on Banking, Trade and Commerce, a committee qualified to examine this issue, and the fact that it did not go to the Legal and Constitutional Affairs Committee. That debate happened here in the Senate and it was the Senate itself that made that decision.

The Hon. the Speaker: Honourable senators, before Senator McCallum poses her supplementary question, there are a number of senators who have questions and we are limited in terms of time. Therefore, I will ask each senator if they have a question and a supplementary. If any senators wish to ask further questions, I will put their names on a list for second round.

Senator McCallum: If there had been better consultation and collaboration with First Nations, would one bill have been able to accommodate these First Nations — instead of now putting First Nations from Saskatchewan and Manitoba with Kahnawake and other provinces — to better accommodate this instead of now doing an amendment so one First Nation's viewpoint isn't excluded at the expense of the others?

We are all aware that First Nations have their own unique governing structures — a right that is referenced by the UN declaration. Why is this bill being passed while consultation is ongoing regarding gaming and First Nations?

Senator Wells: Thank you, Senator McCallum. The audio was not great, but I think I understood your question, namely why is this not being done on a broad scale?

First, the jurisdictional authority for gaming rests with the provinces. In fact, in the case of my province, Newfoundland and Labrador, the province has a partnership with the three other Atlantic provinces and the authority rests under the Atlantic Lottery Corporation.

In relation to consultations with specific groups — or even the encompassing groups in Manitoba, Saskatchewan and Quebec, as you mentioned — I go back to the comment that I heard directly from Chief Kent of the Black River First Nation in Manitoba. Section 35 discussions happen broadly across Canada. I would not dare select three or five or nine provinces to have specific conversations on an item specifically related to section 35, which we recognize is a big part of consultation and inclusion.

I think the broader section 35 discussion rests with Minister Lametti. I know that letters have been exchanged, and those consultations may be beginning or under way. Certainly, an approach has been taken on that. Still, the jurisdictional authority on gaming rests with the provinces and territories.

I think that's as far as I can go in terms of speaking about something outside the jurisdiction of the federal government, where the Senate rests.

Hon. Robert Black: Senator Wells, as sponsor of Bill C-218, I rise today to draw attention to the concerns of the horse-racing industry.

This industry extends far beyond the jobs of jockeys and horse trainers — impacting the tourism, agriculture, manufacturing and gaming industries. In fact, the horse-racing industry is responsible for 50,000 full-time job equivalents across rural and urban Canada and contributes $5.6 billion annually to the national economy.

Like many industries, though, horse racing has been deeply impacted by the COVID-19 pandemic. While the horse-racing industry was already facing increased pressure with the threat of potential unintended consequences caused by the legalization of sports betting, this industry supports the principle of Bill C-218. However, they are hopeful that parliamentarians understand the potential negative impacts on horse racing.

Senator Wells, can you confirm that under the new proposed legislation, fixed-odds wagering on horse racing will not be permitted and the horse-racing industry will be protected? Thank you.

Senator Wells: Thank you, Senator Black. I can confirm that. In fact, you may know that a government bill in the other place, Bill C-13 — proposed and rejected because Bill C-218 was already on the Order Paper — was dealt with by the Standing Committee on Justice and Human Rights, and that specific issue. This bill was amended there to specifically provide for protection of the horse-racing industry.

Hon. Vernon White: Would the honourable senator take a question, please?

Senator Wells: Of course, Senator White.

Senator White: Thank you. You referred to the inability to deal with First Nations issues, as it is being managed by the province. But is it not the Criminal Code of Canada, under section 207, that allows the provinces to manage lotteries today? The suggestion by the Mohawk Council was that they be included with the provinces and territories in terms of the ability to manage and administer their own lotteries, as provinces now have the ability to do.

Senator Wells: Thank you, Senator White. I want to confirm that your question is whether the Mohawks of Kahnawake should have a role to play in the management.

• (1740)

Senator White: You suggested that it was a provincial issue, but the reality is the foundation of lotteries is federal. It's under section 207 of the Criminal Code, which is why we are here today.

Senator Wells: You are absolutely right. It is under federal jurisdiction that has been delegated to the provinces since 1985. The Criminal Code of Canada is obviously a federal code, so it's permitted under the federal Criminal Code to include something like that, but the management and regulation of gaming has been delegated to provincial and territorial authority.

Senator White: I understand that. I listened to the hearings of the Standing Senate Committee on Banking, Trade and Commerce. The suggestion it was outside the parameters of the federal government is not true because it's federal legislation that allows the provinces to do it. In fact, under section 207, it could be changed to say, for the government of a province, either alone or in conjunction with the government of another province, could have been added, or a First Nation or Indigenous group that has an agreement with the Government of Canada could have been added if it had chosen to do that, but in fact the Banking Committee did not consider that.

Senator Wells: Certainly, a number of things could have been added if the government had chosen to do that, but they haven't done that, so we can only work with what we have in front of us.

The Hon. the Speaker: Senator White, I will come back to you if we have time. I'm going to move on. I said one question and supplementary, and then I will come back. Senator McPhedran, please go ahead.

Hon. Marilou McPhedran: My question is to Senator Wells. Do you agree that First Nations not covered by pan-provincial Aboriginal corporations or agreements with a province have no constitutional right to conduct and manage their own gaming operations as an element of their own self-governance?

Senator Wells: Thank you, Senator McPhedran. It's far beyond my ability or scope to suggest what rights the First Nations have under operations that are under provincial jurisdiction as delegated to it by the federal government.

I can't have an opinion on that. It's outside the scope of the bill and outside the scope of what the Senate might consider if it's under provincial authority.

Senator White: If the honourable senator would take another question, please.

Senator Wells: Of course.

Senator White: In your response earlier, you stated that had the government chose to do that, they could have done that, but this is not a government bill. It's a private member's bill, so the government was not involved in the development of this legislation. Why did the committee not give consideration since the government was not involved?

Senator Wells: Thank you for your question. Even though it's a private member's bill and not a government bill, if it should pass this chamber unamended, it becomes a law of Canada and subject to the laws of Canada, whether it's a private member's bill or government legislation. It happens to be a private member's bill because it got there first.

The fact that section 207 exists doesn't change the one line in this bill for the change in the Criminal Code, so I see it having a very indirect effect on that.

Senator White: I appreciate your response, senator, but in fact in the summary of the bill it states, ". . . make it lawful for the government of a province, or a person or entity licensed by the Lieutenant Governor in Council of that province," so there must have been some thought given that other than provinces would be involved in the management of lottery schemes, even though today only provinces are actually involved in the administration of those schemes.

Having watched and read what was said in the Banking Committee, my question is why a Justice official wasn't brought in to walk through whether this was an appropriate time to consider providing gaming authorities to the First Nations who had asked for it and then were given it in the original lotteries act. My point is I don't know that there was enough of a discussion, having watched the Banking Committee, and maybe back to the question earlier about whether the right committee handled this because it was not considered and no witnesses were brought forward.

Senator Wells: Thank you, Senator White. Again, I'm not going to comment on why the Banking Committee was chosen. There were qualified senators on that who brought in expert witnesses where there was need. The witness list was decided by the steering committee recommendations from other committee members and other senators.

The fact that one line in the Criminal Code under Bill C-218 would be changed does not have an effect on the regulatory structure — and I recognize you asked about the regulatory structure within provinces and the roles of First Nations within those regulatory structures — but Bill C-218 changes one line in the Criminal Code. It doesn't enter into the discussion about jurisdictional issues as to why some are included and why some are excluded. In fact, it's not germane to the discussion because it changes one line of the Criminal Code simply allowing betting on single event sports, not on jurisdictional analysis as to why some were included and others not. I think your question makes the bill seem more expansive than it is, and it is not the case.

The Hon. the Speaker: Senator White, I have another Senator who wants to ask a question.

Senator McPhedran: Senator Wells, you shared the committee's observation. How do you suggest that provinces take action here? Can you share specific suggestions based on your extensive consultations with First Nations?

Senator Wells: Thank you, Senator McPhedran. Here is what will happen, and we heard this from the British Columbia Lottery Corporation: With the removal of the prohibition on single event sports betting, nothing else will change. So instead of having to bet on a parlay, which I discussed, you can bet on a single event. You can bet on the Habs and Las Vegas in their next game, and you won't have to add another match that you hope goes your way. Nothing in the operations or regulatory structure will be affected by this bill, other than you will be permitted to bet on a single event. Whether that would include consultations regarding First Nations or the regulatory structure or anything like that, nothing will change. There will just be a modification to the app or the betting process that allows you to wager on a single event.

Hon. Pierre J. Dalphond: Would you take a question, Senator Wells?

Senator Wells: Of course, Senator Dalphond.

Senator Dalphond: Thank you for this interesting speech. I also watched the witnesses that appeared before the Banking Committee, and there was a lawyer who appeared on the last day on the last panel. He referred to the Supreme Court case *Riesberry*, 2015, where the Supreme Court concluded that drugging a horse that will participate in a horse race could be seen as a fraud, because the person drugging the horse is using fraudulent means. But the Supreme Court refers to the following finding:

> The trial judge found that Mr. Riesberry, as a licensed trainer, was bound by rules barring possession of syringes and use of the drugs in question in order to enhance performance: Ontario Racing Commission, Rules of Standardbred Racing, 2008 . . .

There is a government regulatory system that made the act committed by Mr. Riesberry against the rules and, therefore, a fraudulent means. Therefore, the fraud charge could be laid.

When I look at the players in a football league or soccer players, I don't think there are provincial regulations that apply to those sports. Are you saying we will need provincial regulations for the fraud charge to be possible?

Senator Wells: Thank you for your question, Senator Dalphond. No, I'm not saying that. They still would be subject to the provisions of section 209 and the other two sections that I mentioned; they still would be subject to those. That would not change. So these are federal laws against fraud, cheating at play, and I can't remember the last one, but it would include bribery and all the things that are federal statutes now and prohibited under federal statutes. That wouldn't change at all.

• (1750)

Senator Dalphond: If I understand properly what you are saying, the offence of cheating would still be possible but not the offence of fraud against provincial regulations making the behaviour a prohibited behaviour.

Senator Wells: If they do it in Canada, it would be subject to Canadian law. Just because the regulation of a sport or a regulation of a bet might be provincial, if someone commits a fraud that is a federal indictable offence, then that comes under the laws of Canada, whether it's fraud or bribery. These are federal offences, as you know.

Senator McCallum: Will you take another question, Senator Wells?

Senator Wells: With pleasure.

Senator McCallum: There has been documented evidence of provincial interference with the Kahnawake Gaming Commission. Can you confirm that this behaviour will not continue so you can indeed level the playing field for Kahnawake and confirm that other provinces will not do likewise? If it continues with Kahnawake, what are the options that First Nations will have?

Senator Wells: Thank you, Senator McCallum.

Any interference from the provincial authorities to any groups that are participating in gaming, whether approved by the province or not, does not come under the purview of this bill. I'm not sure there are laws involved in that, but because it doesn't come under the purview of the bill — colleagues, I don't want this to be overcomplicated in any way. This is a bill that allows single-event sports betting. Any of the structures around regulatory platforms and the operation of gaming in a province is only associated with this bill in a tertiary way but not the focus of this bill.

The Hon. the Speaker: Senator Wells, your time has expired.

Senator Cotter, before you begin, I have to apologize in advance that I will be interrupting you in about five minutes.

Hon. Brent Cotter: Your Honour, it reminds me of something that was written on the headstone of a person who had died that read, "I expected this," and I'm expecting you will interrupt me in five minutes' time.

I have a set of remarks and, with respect, in order to try to keep them organized, I might make a few references to some of the questions that were posed to Senator Wells. He has offered an extensive explanation and justification for the wisdom of this bill and I don't want to repeat very much of that.

I think it would be helpful to speak to a few of the points that were discussed in a preliminary way and first observations. I'm always uncomfortable engaging Senator Dalphond on legal points, but I want to speak a word or two about the concept of the crime of fraud.

I obtained a legal opinion from an eminent criminal law scholar on the very point that Senator White raised in the discussion about the effectiveness of the existing Criminal Code provisions. I would like to focus these remarks on fraud.

Fraud requires that the Crown prove an act of ". . . deceit, falsehood or other fraudulent means . . . ." The courts, including the Supreme Court of Canada, have given a broad interpretation of some other fraudulent means. It helps that Mr. Riesberry was violating the rules of the horse racing association when he did what he did, but almost anything unlawful is seen by the courts to fit into the category of "other fraudulent means." As a result, fraud has a wide scope of applications. I'll come back to that in one the sets of remarks I will make later.

With respect to the questions that were posed by Senator White regarding the bill and whether it could have been amended to include the references that he and the Kahnawake First Nation proposed, it's a legitimate point, but I think it asks for the bill to go so far beyond just the question of what it was proposing to amend in the Criminal Code as to offer a restructuring of the gaming regime in the country. That would mean not just the question of single-event sports betting but all of gaming — the gaming work that is now done professionally at Kahnawake and in other jurisdictions in the country as well.

With respect to Senator McPhedran's question about whether there is an inherent right to gaming, upon which the Kahnawake First Nation justifies its work, that has never been authoritatively litigated in this country. I will speak to that in my main remarks. In many cases it is the subject of legitimate debate and some trial courts have heard evidence on the question, but it has not been definitively resolved. It has provided a basis for Kahnawake to pursue gaming, including online gaming, in this country — and uninterrupted, as I understand — but other jurisdictions, including my own in Saskatchewan, have constructed a different framework that I will speak to when I can complete my complete remarks.

I will turn to what I would say at the outset of the remarks and then move on.

I wanted to offer a series of explanations and justifications, but I think Senator Wells has covered that territory extremely well. As is pretty obvious, I'm not much of a critic of this bill — in fact, I'm a supporter of it. All of the arguments he advanced are true, and even those witnesses at the Banking Committee who were skeptical or had reservations supported the adoption of the legislation combined with a satisfactory regulatory framework.

I want to make three points. I want to give you an analogy and offer a personal story in my remarks. My role here is to try to persuade you that, even if you have some cautions, this is still a worthwhile bill to support. I will feel like I am arguing as an advocate for a wise decision to approve.

The legislation in fact doesn't create a single-event sports betting market, it just legalizes it and regulates it. That market already exists in the grey and dark corners that trouble us. That was a point made by PricewaterhouseCoopers in an extensive report they did. In addition, they wrote:

> . . . regulatory oversight within Canada's sports betting market can facilitate greater levels of player protection and sporting integrity and can guard against money laundering and other illegal activities that may occur in the "grey and black market".

As Senator Wells identified, all of the leading entities for whom integrity is critical to this question — integrity of sport and integrity of gaming — expressed support for the bill provided that regulation was rigorous. That's the Responsible Gaming Council of Canada we heard about, the Canadian Centre for Ethics in Sport and all of the professional leagues for whom the absence of integrity destroys their industry.

Second, it's useful to keep in mind that the 1985 amendments that transferred gaming to the provinces were also part of federal-provincial comity. It transferred a resource-generation initiative to the provinces and in that sense it was a constructive development in federal-provincial relations. This amendment, in a small additional way, will do the same.

I would say, anticipating I could get interrupted at any moment, if you have even a gnawing concern that the provinces are not capable of getting this right, I would ask you to have a bit more confidence in them. In the architecture of our federation, provinces have more responsibilities than in any other federative nation in the Western world, and they do a pretty good job of administering it: health, education, the world of work — 94% of workers in Canada work in the context of provincial jurisdiction — the administration of justice, major aspects of the economy and — I would remind you this one is needed — what binds us together as a country perhaps more than any one thing, as a badge of identity for Canadians, is Medicare. That's the product of the mind and heart of a prairie premier and a team of brilliant provincial advisers.

• (1800)

Have some faith in the provinces to get this right. They have so far.

The Hon. the Speaker: Honourable senators, it's now six o'clock and pursuant to rule 3-3(1) and the order adopted on October 27, 2020, I'm obliged to leave the chair until seven o'clock unless there is leave that the sitting continue.

If you wish the sitting to be suspended, please say "suspend."

Hon. Peter Harder: Suspend.

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

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

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

Hon. Brent Cotter: My grandfather was a decent God-fearing man who attended church every week. He was a devout Roman Catholic and always on the lookout for converts. Once a friend asked him, "Bill, could I come along to your church and learn how things go there?" My grandfather, on the lookout, as I say, took him along, and they sat in the church service on Sunday. Something happened at the beginning of the service, and the friend leaned over and asked my grandfather, "What does that mean?" My grandfather explained. A little bit later in the service, the friend leaned over and asked again, "What does that mean?" My grandfather patiently explained. About halfway through the service, the priest went over to a lectern at the side of the church and carefully removed his watch, as I am doing now, and set it on the lectern. The friend leaned over and asked, "What does that mean?" My grandfather shook his head sadly and said, "Not a damn thing." When my two hours is up, Your Honour, I hope you will give me a signal.

I was observing a few aspects of the sports betting bill, and I would like to turn to a third point, then an analogy and then a personal story.

The third point — and here I should acknowledge that this concern was raised to me by Senator White, and I thought it one that deserved serious consideration — is not so much about the laws on match fixing but on what might be an Achilles heel on the subject of sports betting; not its effects on major league sports, but the vulnerability at lower levels of sport where players, coaches and officials are less well-paid and potentially more susceptible to the temptation to be bought off to throw a match or shave points in a sport. A legal sports betting regime doesn't add to that risk. If risk does exist, it's already there, but still.

Another example where a regulatory framework can do good work comes from the U.S. I have a number of research students working with me this summer, mostly law students. They are doing terrific work. On this topic, two of them, Meghan Johnson and Rhett Kehoe, took a look at the U.S. where sports betting has been legal since 2018.

Here is what they learned. To date, 23 states have put in place legal, regulated sports betting regimes. A comfortable majority of them have excluded — that is, made illegal — betting on some sports where the risks are greater, for example, betting on college sports, or minor league baseball. This won't prevent unscrupulous people from acting unscrupulously outside the legal regime. Laws rarely make bad people good, but the legal regime can be structured not to countenance it. Making these kinds of behaviours clearly unlawful can reinforce and assist in prosecuting the criminality of the behaviour.

I think that a regulatory regime here can actually help.

Now, to an analogy: I have a lifelong friend. We grew up in Moose Jaw together. His name is Dave. We have been friends for 50 years. We went to university at the same time. We didn't have much money, so we took out student loans. We worked summer jobs and part-time jobs during the year. He worked hard and did well.

A number of years ago, he rose to become the CEO of a steel company. He is now retired from that work, but he is the chair of the board of directors of one of the largest steel companies in North America. When that happened, as a show of loyalty, I bought a few shares in the company.

What I immediately learned was that the shares in the company are surprisingly volatile. The day it was announced he was the chair of the board, the share price dropped by 10%. I was confused about the volatility of the shares of such a large company, which was, as I say, one of the largest steel companies in North America. Dave explained to me that his company is a trading company rather than an investing company. They trade 20 to 30 million shares a day. It's volatile. People are constantly trading their shares, and they are not investing in the steel company so much as trading in it. This got me thinking about day traders in the stock market.

Day traders are the thousands of Canadians — my knowledge on this is limited, so you'll have to forgive me if this feels like Grade 4; that's about as much as I know — who buy and sell shares in the stock market in the course of a single day or within a few hours in the course of a day. They do this based on their analysis of whether the stock price will go up or down that day or in the next hour.

They bet on the price movement of the stock's share, for example, by buying it for $10 a share at the opening of the market and selling it when it goes up to $11 an hour later. They bet in favour of the stock, or the opposite: They think that the stock price is going to go down, so they sell the shares at the beginning of the market for $10, and then they buy them an hour later when the share price has dropped to $9. They short the shares, and they have to buy them back to cover their sale at a higher price. They bet against the stock.

This is mostly done online. The day trader has a relationship with a trading entity, often a bank, through which they make purchases and sales of the shares. That entity, say, the Bank of Nova Scotia's trading platform, places the purchase and sale orders for them in the stock market, completes the transactions on their behalf and charges a small fee or commission. The transaction attracts a small tax.

I have shared this analogy with Senator Marwah and he didn't want me to use the next phrase, but to try to make my point I'm going to anyway. People place these "bets" essentially millions of times a day. The Bank of Nova Scotia does not use this word, but the Bank of Nova Scotia's online platform is their "bookie," a very honourable and principled bookie but a bookie nonetheless. The betting framework is carefully regulated by the bank's trading arm, the stock exchanges and government agencies.

Day trading doesn't add value to the economy the way investing in a company does, but we are fine with it. People place their bets; sometimes they win, sometimes they lose. With the thrill of victory comes the agony of defeat from time to time.

I will continue with the analogy for a moment.

Sometimes there is stock manipulation and people get taken advantage of. A stock trader learns — though nobody else does — that the CEO of a company had a heart attack last night. This usually drives down the price of a stock. He sells the shares before anyone knows and this prevents a loss. Alas, some unknowing person bought the shares at too high a price.

Or worse, there is a major fraud under way. A Canadian gold mining company announces that it has found gold in vast quantities in a mining exploration in Indonesia. People frantically buy shares in the company. The shares skyrocket. The discovery of gold is a complete hoax. Fraudsters "salted" the mine with flecks of gold to give the appearance that it was a discovery of vast amounts of gold. When this is discovered, the share price plunges to zero. This is a true story; those who bet on the company were bilked. Many people, mostly in Western Canada, lost billions of dollars.

The same thing happened to my grandfather — my plumbing, hockey-playing, God-fearing grandfather — in his retirement. He didn't have billions to bet with as, perhaps, some other plumbers do, but he did bet on one of these sham companies and lost his shirt, or at least part of it.

Somebody rigged the game of buying and selling shares in these companies and someone lost — unfairly. Someone fixed the match, so to speak. To protect these people from this rigging of the game, one option would be to make trading in stocks illegal. We don't do that. It would be ridiculous.

What we do is we strengthen the regulation to make the trading fair. We go for transparency. We establish rules about the timely disclosure of material information. It is made public that the CEO of the company had a heart attack last night, so maybe you shouldn't buy their shares today. To put it in a sporting context, the Saskatchewan Roughriders football quarterback fell in the shower last night, broke his arm and won't be playing in the Banjo Bowl this weekend, so maybe you shouldn't bet on their team.

• (1910)

Some might say you shouldn't bet on their team anyway.

We established disclosure requirements on insiders to prevent forms of trading on inside information. We put in place oversight mechanisms to enable public agencies to track and monitor the stock markets to identify and investigate unusual patterns of transactions, to detect and investigate and, if necessary, prosecute wrongdoing.

All of this was done within the existing legal framework of Canada where the Criminal Code does the job well in cases of criminal misconduct, and regulatory agencies, virtually all of which are delivered under provincial jurisdiction, do a good job at regulating financial markets. This is what our colleague Senator Wetston did in exemplary fashion in his previous career.

We legalize and we regulate. I hope you are seeing the analogy to sports betting.

It would be a mistake, I think, to give up on or ignore the sports betting market, especially as this market is going to thrive underground anyway and in problematic ways. It is far better to decriminalize and regulate the market in ways that enable us to significantly better address the vulnerabilities that it already creates.

I support this bill because it seems to me to be the right way to go on the subject, but I have another motivation as well, ultimately connected to Indigenous opportunity. For this, I will recount a personal story. It's a story I have never shared publicly before.

As I have mentioned previously, I served as a deputy attorney general in Saskatchewan for five years in the mid-1990s. This was a time when governments and others were turning their minds to gaming and casinos, the regulation of which had been, as Senator Wells noted, turned over to the provinces in the 1985 amendments to the Criminal Code, authorizing the provinces to "conduct and manage gaming."

As Saskatchewan was slowly, reluctantly turning its mind to gaming and casinos, a First Nation in the southeast of the province went ahead and opened its own casino. This was — let me use these words — "inconsistent" with the Criminal Code. After a period of operation, the RCMP came in and shut down the casino, and took custody of all the gaming equipment and cash at the casino. Criminal charges were laid. The First Nation and its leadership were none too happy. There is more to the legal aspect of the story, including an exercise of great wisdom, it turned out, by the Saskatchewan Court of Appeal, but I want to share a personal aspect of this story that I think is related to this legislation today.

A couple of days after the RCMP intervention — a raid, I think it's fair to call it, handled with as great care as possible but a raid nevertheless — I received a call from the assistant commissioner of the RCMP. The deputy commissioner is the highest RCMP authority in the province. Larry Proke was the deputy commissioner, known to some of you in this chamber. He was someone who had an outstanding career in police leadership. He informed me that the RCMP had received credible information concerning threats on the lives of three people in government as a result of the shutdown of the casino. One of those three was me. He wanted to arrange for my house to be guarded at night by RCMP officers until the threat had been addressed and fully investigated.

When the most senior RCMP officer in the province calls you regarding something like that, you listen. My house was guarded at night, and I took to driving my kids to school in the mornings until the threat had dissipated.

I won't speak much about my own emotions connected with all of this other than to say it was a mixture of confusion, anger and a bit of fear. But for me personally, what came next was more important and directly connected with what we are discussing today.

Gradually, I began to consider what would have motivated people — good, decent people — to make those kinds of threats. I actually thought I knew who was behind the threats. Slowly, I began to understand. I am not the most insightful guy in the world — my family would confirm that — but I eventually got there, and I want to invite you to come there with me tonight.

Imagine that you are in a leadership position at a First Nation. Your community is on a small postage stamp of land. The history of your community is that your people were more or less shoved onto this land a century ago. The land is not very productive. There is no economy to speak of. There are few jobs. You feel that Ottawa is not providing enough money for basic services, health, social services and education that your community desperately needs. Young people leave and move to the cities, where they are marginalized, feel marginalized, looked down upon, get mixed up with the wrong people and their lives in the cities too often spiral downward. Too many lives end up in darkness.

You are inclined to curse the darkness, but that isn't going to change much. You want to make a difference. You have an idea. You have seen how Indian casinos near Phoenix, Tuscaloosa or Albuquerque have brought prosperity to Indian bands in the United States. Maybe on a small scale, the same thing could happen for your First Nation.

You and your colleagues agree to cobble together what band resources you can. This is not a venture where you can go to the Bank of Nova Scotia and take out a mortgage. You buy some second-hand slot machines and gaming tables, and get some people with expertise in gaming to help you set up. Young people from your community get hired and trained, and you open up a casino. Lo and behold, people come. They gamble. They lose a little bit for the most part — that is kind of the way casinos work. Money starts to accumulate to pay salaries for your young people and to flow money back to your community.

Instead of cursing the darkness, you have lit a candle. And then, just as hope for prosperity for your community arrives, so does the government to shut you down. Who wouldn't be angry?

I had to get outside of myself and outside of my role as a senior legal person in the government to see some of this. I didn't see it all at once.

The story, though, has a happy ending. Following a wise decision on the criminal matter at the Saskatchewan Court of Appeal, we dropped the criminal charges and sat down at the negotiating table. I am not all that supportive of gaming, but my reflections led me to understand both the need and opportunity for First Nations to become part of the gaming economy. I became a proponent.

We struck a framework agreement, one that I championed. On the sticky question of jurisdiction — and here I'm thinking of the legitimate concerns of Senator McCallum — we agreed to disagree. What I proposed in this framework agreement was that the Federation of Sovereign Indigenous Nations would write a "whereas" clause asserting that gaming was an inherent right. I wrote a "whereas" clause asserting that the province's authority to conduct and manage gaming came pursuant to the Criminal Code. Then we got down to the business of creating a mutually agreed upon professional framework for gaming in the province.

With respect to revenues, First Nations would get half and the province would get the other half. To ensure fairness, the profits were equalized. Under provincial legislation, the Saskatchewan Indian Gaming Authority, a non-profit entity to which Senator Wells spoke, would be established. It would run the Indian casinos under the mutually agreed framework of rules.

The SIGA profits would be shared among all 74 First Nations in the province. Whether you were of the Whitecap Dakota First Nation where the Saskatoon casino was located — and a profitable one it is; my sister loses money there on a regular basis — or the Cumberland House Cree Nation or Cote First Nation far away from the casino market, this arrangement has generated good jobs in the thousands for Indigenous people in Saskatchewan, plus opportunities for Indigenous business and tens of millions of dollars that flow to those 74 First Nations to hire additional teachers, nurses, social workers and teachers' aides, based on each First Nation's own needs.

It hasn't solved the many challenges faced by First Nations communities, but it was one step on the road to reconciliation before that word became fashionable.

Now let us jump to today. The bill we are considering today will create modest additional opportunities for First Nations to participate through their gaming structures in a legal, regulated sports betting market. In Saskatchewan, it will generate 50 or so good jobs. It will generate another $10 million to $20 million a year flowing back to Saskatchewan's First Nations in the way that I described. It is supported by SIGA, the gaming authority, and by the 74 First Nations of Saskatchewan. It won't solve the challenges faced by First Nations, but it will help.

• (1920)

Here is the point connected to the discussions we've had over the last few days about Bill C-15 with respect to reconciliation with Indigenous peoples: It won't always be easy, and it won't arrive in one big bang. It will arrive in the form of a thousand threads of accommodation. Many will be small and thin. Perhaps this one is. But those thousand threads of accommodation woven together, of which this is one, will create the fabric of reconciliation with Indigenous peoples.

Even if I had reservations about the wisdom of this bill, which I do not, it would be difficult for me — and I hope difficult for you — to oppose it and stand in the way of this strand in the fabric of reconciliation. I hope you can see your way through to supporting this bill.

Let me close with this: If this bill is adopted into Canadian law, I intend, at the next Banjo Bowl, to try my hand at sports betting for the first time and place a $20 bet on my beloved Saskatchewan Roughriders, even if the quarterback breaks his arm the night before the game, however unwise some of you may

think such a bet would be. Perhaps Senator Plett will try his hand by betting on the Blue Bombers and we can compare notes after the game.

Thank you, *hiy hiy*.

Hon. Mary Jane McCallum: Would you take a question, Senator Cotter?

Senator Cotter: Yes, I would.

Senator McCallum: Senator Cotter, you said to have some faith in provinces. As a First Nations person who works with Indigenous people across the country, the problem is that the provincial-Indigenous relationship is not good. When I look at Bill C-92, we had conversations with people in Alberta, Saskatchewan and Manitoba who are unable to get to the table because the province is unwilling. That's something that we have to clear up because we passed the bill.

What if you can't get the province to the table? Those thousand threads of accommodation haven't happened, they still won't happen and you can't legalize and regulate if it's under provincial jurisdiction. How do you propose to deal with this when we keep passing laws that keep putting Indigenous people in the interjurisdictional gap? That's something that we haven't dealt with as a Senate, and we keep passing laws and people keep getting in the gap. Would you make a comment, please.

Senator Cotter: It's easiest for me to speak about Saskatchewan. I think the model I've described has been a constructive partnership among First Nations and with First Nations and the province. That model has actually been adapted and adopted in other parts of the country to the credit of other jurisdictions.

If one is thinking about First Nations who may be operating without partnerships with the province, this legislation has no effect on them. It doesn't compromise their ability to operate. Those are choices that they get to continue to make. I understand the line of argument, and I'm not unsympathetic to the jurisdictional argument. I think we finessed it in Saskatchewan. It just seems to me that a line in the Criminal Code is not the place on which to focus for the construction of our jurisdictional framework that reaches, and I think should reach, far beyond the question of gaming, and particularly single-event sports betting.

Hon. Vernon White: Would the honourable member take a question, please?

Senator Cotter: Yes, certainly.

Senator White: I'll start by thanking the researchers you brought in, because I think it's relevant that the researchers talk about the 19 states in the U.S. Each of those states operates like Canada does, in that we have one piece of legislation that manages sports betting, as we would a country.

The comments in particular about not allowing university sports, as an example. Certainly an issue that was raised in 2013 and again now is: Who will be included in a betting regime? There is no amendment brought forward, not even an observation, in fact, that would not allow betting on Junior C hockey, for example. Why was no consideration given to either the sports body having to approve being entered into the regime or even excluding a certain age group?

Senator Cotter: Thank you, Senator White. I think those are good questions, but they're actually questions for the provincial regulatory authority as they are in, let's say, the state of Kansas or Oklahoma. My understanding is that the framework that provinces have, and have available to put in place for this, are ready to go, and nothing operates until that regulatory framework is in place. Each province will make its own choices.

Part of the reason I mentioned Tommy Douglas in my remarks, though not specifically by name, is that I think it's inadequate not to have confidence that the provincial regulatory authorities will do their jobs well here. Aside from the fact that provinces can do this work well — and they do this kind of regulatory work across wide spectrums of our lives well — they have an enormous interest in the integrity of the betting regime being maintained and succeeding, because its failure erodes the whole enterprise. I don't like to use the phrase "skin in the game," but they have a critical commitment to integrity, and I think they will make the kinds of choices that you and I hope they would make to protect the more vulnerable range of sports here.

Senator White: If I may, Senator Cotter, I understand that, but whether it's Oklahoma, New Jersey or New York, those states actually drafted the legislation as we are doing right now. They didn't receive it from the federal government. They are at the exact same level as we are. Really, they made the decision in their legislative process, not always in their administrative process, to exclude NCAA football, as an example, tier 3. Wouldn't this be the place for that amendment to occur now, rather than putting it onto the provinces, who may or may not make the right decision? I'm not suggesting they will all make the wrong one, but I'm not suggesting they will make the right one either.

Senator Cotter: I think they make a choice. There was, let me call it, a grand bargain struck in 1985 to reconstruct the world of gaming, gambling and lotteries. You transfer the whole range of gaming jurisdiction to the conduct and management of the province. You can invite the province then, and you should expect the province to put a regulatory regime in place. Whether they did it by passing a law or writing regulations in relation to conduct and management of gaming, I don't think it makes very much difference. You might like legislative oversight in Saskatchewan or British Columbia for it, but you're going to get the same outcomes.

With respect, I have not heard anybody say that the regulatory frameworks for gaming that exist in these other provinces, as it is now, have failed because it's done through a regulatory process.

Hon. Lucie Moncion: Would Senator Cotter take another question?

Senator Cotter: Yes, certainly.

Senator Moncion: Thank you, senator. I enjoyed your speech very much. Whenever you speak, it is always well researched and well delivered.

My concern — and it is the same question that I've been asking — is no matter how much regulation there is in place, the problem of addiction is something that is of great concern to me. You haven't addressed this in your speech. I would like to hear your opinion on the problem of addiction.

Senator Cotter: Thank you for the question, senator. There is the potential for addiction in all ranges of gaming and gambling. Quite frankly, it's the one reservation I have about it — not the fact that somebody might decide to risk their money and lose it, but get caught up too significantly.

That's happening now. I've forgotten the exact numbers, but the fact of the matter is that it is suggested that Canadians bet $13.5 billion a year on single-event sports betting. Some of that is being done by people who have, unfortunately, become addicted to it. They've been drawn into it too much. They have a range of vulnerabilities, and it feeds this worry.

• (1930)

One of the things is we have no idea who they are because all of that betting is taking place in some form of darkness or semi-darkness. This legislation might increase the amount of betting that takes place — moderately, I expect — but it will bring much of that into the light and will enable responsible gaming regimes that exist now to engage with those people who are at risk. I understand the strategy is to try to prevent it — if not prevent it, identify it and then treat it, if that's the language. Responsible gaming organizations, like the one that Senator Wells referred to, have done not only excellent, but high-quality-level research to know how to do this well if they can get access to and partner with gaming agencies that are responsible.

Well, you know, the illegal market isn't particularly responsible. They don't really have an interest in addressing vulnerable gamblers and potential addicts. They don't have their own responsible gaming program. Right now, in the legal framework of gaming, gaming facilities and regulators are investing $125 million a year to address responsible gaming. The statistics suggest that the level of addictive gaming is declining. It's still not a complete answer, but there will be more invested as a result of this coming above the table and revenues being generated that can be used by gaming authorities. My understanding of the evidence that we heard is they are committed to doing that.

So it doesn't provide a perfect answer, but in my view addressing addictive gaming will be improved from the current circumstances with a legal and regulatory framework.

Senator Moncion: The fact that you just said bring it "into the light," I think is something that I had not heard from the witnesses, so thank you for that, senator.

[*Translation*]

Hon. Renée Dupuis: Would Senator Cotter take another question?

Senator Cotter: Yes.

Senator Dupuis: Senator Cotter, I'd like to come back to what you told us about the agreement with the FSIN, the Federation of Sovereign Indigenous Nations. I would like to know if this agreement came before or after the 1996 Supreme Court ruling in *Pamajewon*.

You may recall that, in that case, the Supreme Court considered whether a First Nation had an Aboriginal right to keep a common gaming house. You spoke about working in the office of Saskatchewan's Attorney General in the mid-1990s, and I know that the Attorney General was one of the intervenors, along with other provincial attorneys general. Did this agreement come before or after the Supreme Court ruling?

[*English*]

Senator Cotter: As is often the case in Saskatchewan, we are kind of an advance party visionary on these questions. This agreement was made before the litigation to which Senator Dupuis refers, and it was, as I think I described, a practical solution to not let jurisdictional disagreement get in the way of what seemed like an opportunity for the province but also for First Nations.

[*Translation*]

Senator Dupuis: My understanding is that, at that time, Saskatchewan's approach was to allow First Nations to keep common gaming houses under their Aboriginal or treaty rights, which left the issue entirely in limbo. There is nothing to prevent a court from one day concluding that this right exists, if it is proven, and that it would set aside the bill we are studying.

[*English*]

Senator Cotter: I think that's correct. The bill in this consideration doesn't speak to that question. In terms of the specifics of Saskatchewan, charges were laid in the matter of the casino raid I described. Everybody was convicted. First Nations people were involved, including some American people who were assisting in the running of the casino. A number of those convictions were upheld at the Court of Appeal, but First Nations people and the community argued there was a treaty right to gaming. The Court of Appeal felt that that evidence was inadequate and sent the matter back for retrial. That was the point at which the government and prosecutors, with encouragement from me, elected not to proceed with the charges and instead negotiated the framework I talked about.

So the definitive answer to the treaty-right question was never addressed in the courts. It was, in a sense, set to the side so that we could move on with an agreement that met everybody's expectations.

Hon. Paula Simons: Senator Cotter, would you be willing to take another question?

Senator Cotter: I certainly would, yes.

Senator Simons: Both today and in your speech at second reading you gave us very folksy examples of ordinary people placing small wagers on sports games. If that's what we were talking about, I would have no concerns about this bill. What I

am very concerned about is that I believe this bill lays the groundwork for very-high-volume sports betting in the midst of games, where a company like Rogers, for example, proposes to set up a platform. You can imagine betting not just on the outcome of the game but on the outcome of every play, and you are betting in real time and betting extremely quickly on digital platforms. There might be thousands of micro-bets in each game. I think the potential for addiction is far greater, far more akin to something like a video lottery terminal, or VLT, than conventional sports betting.

I'm wondering, when your answer to Senator Moncion was very hopeful about addiction, if you have given consideration to the fact that we are not talking about people making friendly wagers on the Roughriders or the Elks, but instead this kind of instantaneous, very quick digital platform where the money would move very quickly, and people would be watching and betting on their phones. It would be instantaneous. There would be that instant adrenalin rush, which is part of that addiction cycle.

I'm just wondering if you have given consideration to the way in which new online technologies weaponize this kind of wagering.

Senator Cotter: Thank you. I had a decent understanding of some of these questions with respect to gaming in the 1990s. I served on the board of directors of the gaming framework corporations. One of the things I learned then and, in fact, I was reminded of it implicitly in the question that Senator Black asked earlier about horse racing, is that one of the great challenges of horse racing is that the feedback is slow. You have to wait for a whole race. You go for a whole evening, and how many races are there in the course of an evening or an afternoon? Not too many. What happens with people in gaming is the more instantaneous feedback feeds their enthusiasm, and people are, I guess, losing patience with waiting.

So I accept the legitimacy of the premise of your question, senator, but that can be said about almost anything now. You gave the example of VLTs, and they seem to me to be shockingly addictive. Quite frankly, that may also be true. Let me speak about two people I know who are day traders.

The Hon. the Speaker: Senator Cotter, your time has expired. Are you asking for five more minutes?

Some Hon. Senators: No.

The Hon. the Speaker: Leave is not granted. Resuming debate, Senator White.

Senator White: Honourable senators, today I will speak to Bill C-218, which will alter sports betting in Canada, allowing bettors to make bets on individual events, even segments of an event, rather than multiple events, as is the law in Canada today. There are several areas I wish to speak to in this bill, but I will focus on one specific concern. My focus today will be on sports betting and the inevitable match fixing that will occur when we move to single-event betting.

• (1940)

As noted in the bill and spoken to by the sponsor, the critic and others, allowing for single-event betting will require a change in the Criminal Code. When we bring single-event betting into Canada, we will have a problem with match fixing. Every other country does, so why would we be different? This bill will see growth in betting on sports, not just the games between first-tier sports like the NHL, NBA and others, but as well between and within any other league or match the province wants.

In other countries — European, Asian as well as Australia — we see single-event betting in junior soccer leagues, badminton tournaments, friendly cricket matches and electronic sporting events. It's not just the events. How about whether a specific player will score in the next game, get a penalty or get in a fight? You name it. If the province wants to, and the bettor is willing to, it can be wagered. What if a league said, "No thanks, not us?" Well, that's too bad. As a league, the athletes do not have the ability to refuse. It isn't about them. It's about gambling. We will see what the U.K. and Australia have seen: lower-level sports included.

This bill would open up single-event betting for whatever purposes the province wants, and, as I stated, we already know how bad their addiction has become. They will certainly open up amateur sports to this betting. It's not about sports. It's about gambling.

What about match fixing? In countries where single-event betting is legal — Europe, Australia, Asia — we have seen dramatic and extensive instances of game fixing in cricket, soccer matches — I could go on.

Declan Hill, a Canadian journalist and author, wrote in his PhD thesis and in his book *The Fix* specifically about the problems of match fixing and the potential for that here in Canada. I mention Dr. Hill as he is one of the foremost experts in the world, speaking at conferences and universities around the world to educate on the problem of match fixing. He wrote in *The Globe and Mail* in December that if we legalize single-event betting in Canada, we must make match fixing illegal, which it is not in Canada today.

Declan Hill was not a witness in the hearings of the Standing Senate Committee on Banking, Trade and Commerce, or BANC, even though his name had been put forward. He was not a witness at the House for the same reason. He could have imparted wisdom to this committee and their decision making. He states categorically that the greatest threat to the integrity of sport in Canada is match fixing. He says the reality is that the issue will not be the big game where team one is expected to lose to the better team, team two, and instead the weaker team wins the game. He says the games being fixed will be the same game, but the spread will indicate that the weaker team will lose by two goals instead of losing by four. You see, the public expected a loss and they got a loss. The bookmakers predicted a loss and they got a loss. However, they lost outside the spread, causing millions of dollars to be won or lost as a result of the fix. He also indicates it's likely to be in the second or third tiers of sport. It's not at the top of the sport where the fix will occur. There is less publicity and lower scrutiny in the lower levels.

The CEO of the Canadian Centre for Ethics in Sport, Paul Melia, states that legalizing bookmaking:

> . . . comes with associated risks to the safety of our athletes and the integrity of Canadian sport through the threat of match manipulation.

He continues, stating that:

> Match manipulation is linked to organized crime. It takes advantage of vulnerable athletes, officials, coaches and other support staff in order to fix the outcome of a sporting competition . . .

He stated that in a confidential review that was conducted, the sports found to be at high risk include:

> . . . badminton, combat sports, cricket, e-sports, Canadian Football League, certain leagues of the Canadian Hockey League, the Ontario Hockey League, the Western Hockey League, soccer and tennis.

He continued in saying, "Once this legislation is passed, the risk to these sports may grow even higher." Melia said fixing need not involve the final outcome of any crooked match, but rather anomalies such as whether, in tennis, the athlete is going to double fault in the second game of the second set.

Richard McLaren, who authored a 2016 report into state-sponsored Russian doping, and David Howman, a former Director-General of the World Anti-Doping Agency, painted an alarming picture about match fixing at a symposium on match manipulation gambling in sport in Toronto in 2019. McLaren, a Canadian law professor and CEO of McLaren Global Sport Solutions, said that doping and match fixing combined were the two biggest issues affecting the integrity of sport, yet manipulating outcomes was a bigger problem. He said:

> What makes sport different than entertainment is unpredictability. Fixing results removes the greatest and most important characteristic, that unpredictability . . . . If it loses unpredictability because of fixed results the passion for sport is diminished and that is a much bigger issue.

He stated that match fixing has become increasingly pervasive in recent years across a number of sports.

Let's talk about Canada. In 2012, the CBC produced a story about match fixing in the Canadian Soccer League. They identified that up to 42% of all games were manipulated or fixed. While the result cast Canadian soccer in poor light, action was taken by sports officials — but not by the courts and not by law enforcement or prosecutors. Why not? They said that Canada is limited in its ability to prosecute match fixing because there are no specific provisions in the Criminal Code to prevent such activity.

One of the concerns I have with the passing of this bill is that passing it appears to be more important than passing it right. It can be seen clearly in BANC when my friend Senator Wallin asked Mr. Paul Burns, the CEO of the Canadian Gaming Association, about match fixing. His response tells the story that those opposing this amendment — the one I will make — want to be heard when he said, "We firmly believe that there are already provisions in the Criminal Code . . . ." He goes on to state that the Criminal Code has a section called "Cheating at play" — section 209 — that states:

> Every person who, with intent to defraud any person, cheats while playing a game or in holding the stakes for a game or in betting is guilty of . . . an indictable offence . . . .

When I met with our lawyers, they were clear that this refers to cheating in a game of chance, not sport — cheating in a card game or bingo game, and I could go on. However, here is the key piece of evidence and interesting to the core of what I think is going on when I say clearly that people pressing for no amendment are doing so solely to expedite the legislation and not to ensure the legislation is done properly.

Rick Westhead, a senior correspondent for TSN, did an investigation into the Canadian Soccer League scandal I mentioned earlier, where 42% of the games were manipulated. He asked Mr. Paul Burns of the Canadian Gaming Association what he thought about there being no criminal charges in relation to the Canadian Soccer League. This Paul Burns, the same one I spoke of when he said to BANC that there was legislation for match fixing, had quite a different idea during his interview. Specifically, when asked about charges in relation to the Canadian Soccer League, he stated:

> It's not easy in Canada because we don't have specific match-fixing laws like they do in the U.K. and Australia.

The sponsor of the bill in the other place stated that this same Paul Burns has done a lot for them in preparing for this legislation. I'm not suggesting Mr. Burns is doing anything other than what the Canadian Gaming Association expects him to do. He is certainly not acting on behalf of sport, though, or ethics in sport, or Canadians or us.

He works for ". . . a national trade association that represents leading operators and suppliers in Canada's gaming, sports betting, eSports, and lottery industries. . . ."

When proponents speak to the belief that the Criminal Code of Canada already has us covered, it is simply not true. If you don't believe me, or if you don't believe the foremost expert on match fixing, Declan Hill, or if you don't believe the investigators in relation to the Canadian Soccer League investigation — having left dozens of potential criminal charges there — then maybe we believe the star witness of both BANC and the committee in the House, Paul Burns, the CEO, when he said there was no law against it like there was in the U.K.

In the United Kingdom, the government believed their legislation was not sufficient to combat match fixing and enacted the Gambling Act with a new offence entitled "Cheating" drafted in such a way so as to address the variety of match-fixing offences that arise and provide a sufficient deterrent. Each Australian state had to enact similar legislation when they approved single-event betting, and I believe we must do it here today as well. In fact, I would argue, having heard from the sponsor when he talked about the difficulty of having to find the

elements in an offence, I would suggest that match fixing would provide clarity around the elements that would be required rather than fraud.

A reminder: Some will argue that the current law "Cheating at play" — 209 of the Criminal Code — is sufficient. Discussions with the former lawyer who managed this legislation through the House and Senate in 2013, and with legal representation in the Senate, clearly show that it is not for sport — it is for games, as in betting and gambling. As for timeliness, which continues to be raised, we in the Senate try to get it right. For this bill to be right, it must make match fixing illegal as well.

As for timing, the reality is that some in the committee had my amendment before their first meeting and failed to call a single witness specific to match fixing, including Declan Hill who lives in Ottawa. They could have fixed this themselves, trying this on their desks in the committee, but chose not to act on it. I am asking you to support an amendment that will correct that error. I ask you to support this amendment. Let's send the amended bill back to the other place fixed.

• (1950)

MOTION IN AMENDMENT NEGATIVED

Hon. Vernon White: Therefore, honourable senators, in amendment, I move:

That Bill C-218 be not now read a third time, but that it be amended on page 1 by adding the following after line 9:

"**2.1 The Act is amended by adding the following after section 207.1:**

208 (1) Every person commits an offence who

(a) cheats at gambling; or

(b) does anything for the purpose of enabling or assisting another person to cheat at gambling.

(2) For the purposes of subsection (1), it is immaterial whether a person who cheats

(a) improves their chances of winning anything; or

(b) wins anything.

(3) For the purposes of subsection (1), cheating includes actual or attempted deception or interference in connection with

(a) the process by which gambling is conducted; or

(b) a real or virtual game, race or other event or process to which gambling relates.

(4) Every person who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than two years; or

(b) an offence punishable on summary conviction.".

The Hon. the Speaker: Senator White, you have about three and a half minutes left in your time. There are a couple of senators who wish to ask questions. Would you take a question?

Senator White: Absolutely, Your Honour.

Hon. Denise Batters: Senator White, I have reviewed the proceedings of the Senate Banking Committee which dealt with this bill, which, of course amends the Criminal Code. I note that only one witness with a legal background was called as a witness on this bill. During that particular testimony at the Banking Committee, there was a case referred to — the Supreme Court's *Riesberry* case where charges were laid for section 209 as well as fraud with respect to a horse race being fixed. This does appear to be a case of fixing, but could you explain why these Criminal Code offences may not be a solution for other match-fixing cases?

Senator White: Thank you for the question. It's interesting. If it's a trainer, a syringe and a horse, the clarity and the elements are easily met when it comes to whether or not that's a fraud. But I would argue, having served 32 years in policing, 8 years of which my only responsibility was fraud cases, I almost never laid fraud charges because it's so difficult to prove the elements of a fraud charge. In fact, as my learned friend Senator Dalphond talked about being able to prove that, in a soccer game, the goaltender knew that if he allowed a spread, it would cause the specific loss of funding for a specific person or the public, is almost impossible. In fact, I think if fraud charges would have been appropriate, then the Canadian Soccer League, when the police and the RCMP were investigating that, we would have at least seen one criminal charge come out of that. Instead we've seen none. And in fact we've seen none in Canada with the exception of the one trainer, one horse, one syringe case.

Senator Batters: Senator White, which specific elements of the match-fixing offence some expressed concerns about would be more difficult to prove? Would that be particular offences dealing with the match or that someone is trying to fix it?

Senator White: Thank you very much. The clarity found around a specific offence of match fixing, I think, would remove any ambiguity whether or not other charges could be laid. When I looked — they have taken my piece of legislation from me, so I don't have it. But the elements have great clarity in the fact that anybody involved in the shifting or manipulation of a match could be convicted of a criminal offence. Much more difficult when only using fraud and, in fact, I would argue impossible under 209 where cheating at play has to do with a game of chance, not a sports match. So I think the clarity we would get from match fixing would certainly clear up any ambiguity, I think. It would make this a clear offence. And I think if we're going to see increased single-event betting across all sports and ages, I think we also have to make sure that we have the tools for law enforcement to do their job.

The Hon. the Speaker: There are other senators who wish to ask questions, however your time has expired, Senator White.

Hon. David M. Wells: Thank you, Senator White, for bringing that forward.

Again, I think it's important to note that the Supreme Court of Canada has upheld that match fixing is covered specifically through the fraud provisions. Interestingly, Senator White brought up Paul Melia, whom I used actually in quoting in my speech, where he is supportive of this legislation as is, but I would like to address a couple of things.

As noted in my third-reading speech, colleagues, the committee heard from expert witnesses that strongly expressed the point that a specific entry on match fixing in the Criminal Code is unnecessary and perhaps even unhelpful.

We heard from Senator White the dangers of match fixing. I agree that's important. At committee, we heard from Donald Bourgeois — again, I spoke about this just a short time ago — an expert in gaming law. He spoke about the *Riesberry* case that would not have made its way through the legal system if it were not for the existing regulatory framework. So that's key, colleagues. What we're doing, we're including single-event sports betting under the existing regulatory framework so we can actually go after these types, these attempts at match fixing.

Increasing regulations and safeguards would allow more of these cases to be discovered and prosecuted to protect the integrity of the sport. In fact, regulation would also prove to be a significant deterrent, as opposed to now where match fixing may or may not occur. We don't know because there is nothing that falls under the regulatory regime of Canada or the provinces who control this, with respect to single-match betting.

Again, you heard in my speech earlier that match fixing is illegal in Canada, full stop, under sections 209, 380 and 465, that all work together under the umbrella of those sections of the code. So having something very specific — as we heard from Senator Batters, who mentioned the legal expert at committee — that in fact could be a hindrance because of having to prove the specific elements. The example I would use is that if it's illegal to rob a grocery store and someone robs a fruit stand, could that be considered robbing a grocery store because it's a fruit stand, whereas robbery is illegal, and that would be covered under that rubric.

That's all I have, colleagues. I don't support the amendment. I think Senator White's assertions are not grounded, and I would urge you not to support the amendment.

The Hon. the Speaker: Senator White, a question?

Senator White: If I may.

Senator Wells: Please.

Senator White: Are you suggesting that we could charge someone with fraud if they robbed a fruit store? Because the specific offence would be robbery, and in this case, you are saying we should not use the offence of match fixing but try and figure out if we can use another criminal offence with different elements to try and fit the specific case of match fixing. So I'm not sure that analogy helped me.

Senator Wells: Thank you, Senator White. So the greater umbrella section of the code, working together, as it did in the *Riesberry* case — under fraud, under cheating at play — those are the elements that would be easier to prove under the larger rubric of the laws that are existing.

Senator White: If I may, Your Honour, I have a follow-up.

In the *Riesberry* case — if I may, senator — was the individual convicted of cheating at play under section 209?

Senator Wells: I don't know what he was convicted of, but I know he was —

Senator White: He wasn't convicted of 209.

Senator Wells: Sure, but I know his conviction was upheld by the Supreme Court using a variety of laws in the Criminal Code.

Hon. Brent Cotter: The cheating-at-play matter was actually referred back to trial, but he was convicted of fraud.

I'd like to make a brief intervention. Out of respect for his background in the world of criminal justice, I felt I had a duty — and I think we all do — to take Senator White's concerns seriously.

I have some background on the legal side of criminal justice, including with respect to fraud. And I had to pay a fair amount of attention to understand the elements of the offence of fraud in particular. I was pretty confident that the existing provisions dealing with fraud would sufficiently cover issues of match fixing, but Senator White's concerns gave me pause. And to consider this, I used some of my office budget to retain a leading criminal law scholar Steve Coughlan, recommended to me by leading lawyers in the area of criminal law to provide an opinion.

His view unequivocally — and I shared this with Senator White — is that the Criminal Code, including the fraud provisions in cheating at play, are more than adequate to handle the range of match-fixing strategies that might occur, all backed up by the Supreme Court decision in 2015 to which the senators have referred. Professor Coughlan's conclusion, and I quote, was:

> . . . the current provisions in the Criminal Code are capable of dealing with improper attempts to manipulate the result in a sporting event.

A witness at the Banking Committee, Mr. Bourgeois, gave a similar opinion. A legal opinion that I saw commissioned by a proponent of the bill and prepared by a very distinguished practising lawyer in Nova Scotia Joel Pink, Q.C. — often referred to as the dean of criminal lawyers in Nova Scotia — came to similar conclusions.

• (2000)

I was also interested in Professor Hill's work, and I reviewed a study he conducted of prosecutors on these matters in the European Union and concluded that the greatest challenge to

prosecution was not the legal framework in their countries but the challenge of getting evidence. It's kind of obvious when you think about it. The people who get bilked are themselves committing crimes, and they're not that keen to come forward. Regulation and legalization would actually help us to identify and detect crimes.

Out of courtesy, I think — and I appreciated this from Senator White. He shared his proposed amendment with me a week or so ago, and I asked Professor Coughlan to comment on it. First, he concluded that the proposed amendment doesn't add anything to the common law understanding of cheating that is not addressed by the already-existing fraud coverage in the code. And second is a technical and important point that, in a sense, Senator Wells alluded to: that the particular can drive out the general.

Senator White's amendment applies to gambling. Gambling has no definition in the Criminal Code. To the extent that the word "gambling" has been interpreted in the courts, it is equated to gaming. That means the gambling provision that Senator White proposes applies to gaming. By definition in the Criminal Code, gaming applies to "games of chance" or mixed skill and chance.

In order for the amendment's specific prohibition against cheating or deception in gambling to work, it can only apply to those kinds of games where there is, as quoted by the Supreme Court of Canada, the "systematic resort to chance" involved in many games, such as the throw of dice or the deal of cards. Indeed, in this horse-racing, match-fixing issue, the court had to conclude that horse racing was a game of mixed skill and chance, where the skill is the horses and the chance is in which slot the horses start in order for it to fit within the gaming regime.

The kinds of sports we are talking about are not gaming. The Supreme Court itself has said, in fact, those kinds of activities are not games. There are not the "unpredictables that may occasionally defeat skill," and there is the intractable problem: Since most sports are defined as games of skill, not games of mixed chance and skill, the gambling provisions proposed in this amendment miss the mark in relation to sports.

It is a small example — not intended by Senator White or those who helped him draft this — of the risk of being so particular that you can miss the mark. With the greatest respect, this is not the process by which we construct criminal law.

To the credit of those who have examined this, the status quo is adequate, and I would urge that you not adopt the amendment.

Some Hon. Senators: Hear, hear.

Hon. Marty Deacon: Honourable senators, I would like to speak to this amendment out of great respect. I speak not as a lawyer or an expert in criminal justice but as an individual who has witnessed and worked at the table tirelessly to resolve a wide range of blatant match-fixing and match-manipulation issues.

I can't thank Senator White enough for bringing to the Senate and to the table the whole area of match and competition manipulation. Sadly, it is a big deal here and internationally. Having the opportunity to work with athletes who are aspiring to be the very best they can be in the world is really something to see, along with all aspects of the impact of this. So while I absolutely support the care, interest and concern around match manipulation and the intent of Senator White's comments and expertise today, I can't support the amendment.

My work has put me at the table internationally trying to understand the issues of match manipulation, the magnitude of it in professional and amateur sports, but particularly amateur sports, and as Senator White talked about, second-tier sport. We were unable to wait for the signing of an international treaty. We had to work diligently at this. When we sit at the table and look at the laws, the Criminal Code and the rules in other countries, the feedback was that Canada has the diligence, and this is covered by the provisions and the layering of our Criminal Code.

It was shocking for me to see the holes and the loopholes that other large, advanced countries did not have. I felt assured. Personally, as a female, this has been a pretty risky project to take on internationally, but I care very much about getting this whole area of manipulation right and trying to do better, but not by supporting this amendment this evening.

Some Hon. Senators: Hear, hear.

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

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

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

Senator LaBoucane-Benson: Your Honour, 15 minutes.

The Hon. the Speaker: The vote will take place at 8:21. Call in the senators.

• (2020)

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

YEAS
THE HONOURABLE SENATORS

Anderson	Harder
Batters	Kutcher
Boniface	McCallum
Bovey	McPhedran
Busson	Mercer
Cordy	Miville-Dechêne
Dagenais	Munson
Dawson	Pate
Downe	Simons
Forest	Tannas
Francis	Verner
Griffin	White—24

NAYS
THE HONOURABLE SENATORS

Ataullahjan	Marshall
Bellemare	Martin
Black (*Alberta*)	Marwah
Black (*Ontario*)	Massicotte
Boehm	Mégie
Boisvenu	Mockler
Carignan	Ngo
Cormier	Oh
Cotter	Patterson
Deacon (*Nova Scotia*)	Plett
Deacon (*Ontario*)	Ravalia
Dean	Richards
Duncan	Ringuette
Frum	Saint-Germain
Housakos	Seidman
Jaffer	Smith
Loffreda	Wells
MacDonald	Wetston
Manning	Woo—38

ABSTENTIONS
THE HONOURABLE SENATORS

Bernard	Forest-Niesing
Brazeau	Gagné
Coyle	Gold
Dasko	LaBoucane-Benson
Dupuis	Moncion—10

• (2030)

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

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

Hon. Peter Harder: Honourable senators, five short years from now soccer fans from around the world will stream into Canada carrying their countries' hopes in a sporting event only second to the Olympics in popularity. The FIFA World Cup of soccer, which Canada will jointly host with the United States and Mexico in 2026, will be a showpiece for our country as it has been for other hosts. It has also generated billions of dollars in economic output for previous host nations. As we all know, money can also attract unscrupulous actors who exploit events through cheating and, in the case of sports, manipulating the games themselves. What a shame it would be if something like this were to mar the World Cup here in Canada. It is, however, a possibility that experts say we must work to avoid.

It has relevance for the bill we are debating today, which would allow Canadians to bet single-game sports. Let me begin by saying that I support the intent of this bill. I believe it is in some sense inevitable, given that Canadian betting dollars are and will be moving to other jurisdictions that are more advanced than ours on issues involving sports betting.

It is also a measure that, if done probably, will aid many sporting organizations across our country, and they need help. But I do have some concerns, chief among them the prospect of match fixing. In a white paper produced in October 2019 by a national symposium on the subject, authors warned that rapid changes in technology and growing popularity of online gambling platforms present an increased threat of match manipulation in Canada. Further, attempts to corrupt athletes are on the rise. The white paper stated, "This threat has the potential to cause severe damage to the integrity of Canada's most beloved sports." Hockey to the Canadian Football League, as well as many other sports, were identified as being at risk.

It goes on to say:

> With Canada's co-hosting of the United 2026 FIFA World Cup, it is urgent for government to address this issue or risk reputational damage.

That would be commensurate with the Ben Johnson saga. Furthermore:

> While Canada is now regarded as a leader in the global anti-doping movement, we must now take a more proactive stance regarding match manipulation.

Ben Johnson, as you may recall, was the Canadian sprinter caught using banned substances during the 1988 Seoul Olympic Games. It took us a long time to recover from the hits taken to our reputation for fair play. As mentioned, I believe in the intent of this bill, but I would add two cautions.

First, the bill should require agreements between the provincial gaming bodies and the various sporting organizations allowing for the use of the organizations' matches in the betting scheme.

Second, we must eventually deal with the aforementioned match fixing. While the fixing of matches of big-league sports often grab large headlines, in many ways it is in the lower leagues and among those who receive the least pay where the practice is more acute and more at risk.

We have all, for example, read accounts of the needy college athlete, particularly in the United States, who receives no compensation for taking part in sports competitions and is eventually bribed to provide tips about a team's strategy or to blow a game. These are not behaviours distinct to our neighbours. It happens here too.

In 2015, for instance, it was revealed by a report in a British newspaper that each of the 12 teams comprising the Canadian Soccer League had been involved in some sort of match fixing on at least three occasions. In another story, the CBC reported in 2012 that a player in the same league accepted a bribe to fix a match in 2009.

• (2040)

These sorts of actions lead to a feeling of betrayal among sports supporters. If single-game betting is allowed without the issue of match manipulation being addressed, it also risks dissuading individuals who want to lay bets in the first place. Why bother if you can't trust that the dice aren't loaded?

Unlike the United States, Canada currently allows only for parlay betting, under which bettors must pick two or more winners to collect on the win. In single-game betting, the player only has to bet on one game, meaning a fixer has to successfully manipulate only one game or one portion of a game.

Sports integrity experts offer many ways in which potential abuses can be dealt with, including the call for the establishment of a federal commission; better education for athletes, coaches, officials and sporting organizations; and the creation of an independent sport integrity unit for Canada.

Another recommendation of the symposium cited earlier is that Canada become a signatory to the Council of Europe Convention on the Manipulation of Sports Competitions. This, I believe, is a measure we should support.

The aim of this multilateral treaty is simple. It is to prevent, detect and punish match fixing. It is a key tool and guide which provides a structure that allows signatories to better align efforts and coordinate their actions to combat match manipulation. These acts include coordination between international activities and projects; assistance and consultancy to public authorities; and thematic debates related to governments, gaming and lottery officials, law enforcement and sporting organizations and others. It has been signed and/or ratified by 37 countries, but not Canada.

Given the need to protect Canada's integrity as a sporting nation, as well as citizens who will take part in this new activity, I would strongly agree with the observation put forward by the Standing Senate Committee on Banking, Trade and Commerce that the government be encouraged to sign the Council of Europe Convention on the Manipulation of Sports Competitions. I thank Senators Klyne and Cotter for ensuring that such observations are strongly made in the report from the committee that is before this chamber. I speak tonight to underscore this observation in the hopes that the government will act on it upon the Royal Assent of this legislation.

Thank you.

Some Hon. Senators: Hear, hear.

Hon. Marty Deacon: Honourable senators, I rise to speak to Bill C-218, the safe and regulated sports betting act. This is a topic that has been on my mind since similar legislation was introduced all the way back in 2011. There has been momentum building toward it ever since, and while I know there are some challenges, I will speak today on why I've come to support this legislation.

I have closely observed this bill in committee, made note of the observations and heard from a number of athletes, sports organizations and stakeholders that this bill would impact.

We have heard today much of the data; that this is a $14 billion industry in Canada that is unregulated and unsupervised through offshore betting and criminal gangs. There is no protection for the consumer, no support for those with a gambling addiction and, of course, there is no benefit to the Canadian economy.

A past friend and colleague of mine, Paul Melia, appeared at the Justice Committee in the other place while studying this legislation. He serves as President and CEO of the Canadian Centre for Ethics in Sport. Here's what he had to say on this bill:

> I think the legislation provides an opportunity to provide greater services and support to those who may become addicted to gambling than the current system, where we have an unregulated market and where it's going on. We're not really aware of how much is going on, who may be addicted and who might be harmed, so I think there's an opportunity to provide the appropriate services.

Colleagues, we must also recognize the change brought about to bear on this industry through smartphones and ever-expanding internet access. In 2011, when similar legislation was introduced, I could not have imagined supporting this legislation, yet here we

are 10 years later, and the fact is that anyone with access to a phone and a cellular system can place a bet on sporting events anywhere and that is exactly what is happening.

As I worked through this legislation, I was reminded of the work we did on the cannabis bill. The fact is that whether we wanted it or not, people were participating in this market. No amount of criminalization was going to stop that, so instead, we brought it into the open. Businesses were created, innovations entered the market. Most importantly, we could be honest about the harms associated with it and address them out in the open.

Mental health and addiction issues I do not take lightly. This is a big issue that we must dig into and respond to. Senators, on such matters, and I think we heard it said earlier today by Senator Plett, I do believe that sunshine is the best disinfectant, and that by bringing the gambling industry into the light of day, we can combat some of the harms associated with it.

Over the course of the debate on this legislation, I have also been reminded about legal jurisdiction and the parallel structures that govern Canadians. I have listened to Indigenous viewpoints with respect to their differing concerns and wishes. Through such discussion, I am now much clearer on the important role that the provinces and territories will play if this legislation comes to pass. I am hopeful that the provinces and territories will work with First Nations to assure that it will be implemented in an equitable and safe way.

There are concerns over the integrity of sport and match fixing, at times also called competition manipulation. Over the past 20 years, I directly observed the action and intent of match manipulation and betting and gambling in amateur sport. Yes, young people sometimes knowingly or unknowingly are targeted to participate in some aspect of this all over the world.

I will never forget the shame, shock and embarrassment resulting from match fixing in my sport at the 2012 Olympic Games. While the world watched live on television and online, four women's doubles teams, that is eight athletes, were disqualified from the London Olympic Games after deliberately losing a match to gain advantage in the future medals round. It was a very low moment that is rare, but not that rare, at the Olympic Games.

Different countries have different laws which can also result in terrible results. By the way, betting has been around since the very ancient Olympics in Greece. Over the years, I have been developing an education program that highlights regulations with respect to betting restrictions and match manipulation. The education of athletes in understanding corruption and corruption offences continues to be critical. In this work, we have defined four areas of corruption: first, best effort; second, betting, a grab-all term for soliciting, facilitating and offering; third, inside information; and fourth, reporting.

The International Olympic Committee now has an Olympic Movement Unit that is dedicated to the prevention of manipulation of competitions. Shortly before the pandemic, I hosted a world championship in Markham, Ontario. Athletes from 60 countries had to participate in an integrity program before they stepped on the field of play. They needed to understand the issues related to doping and match manipulation before they started competition.

I share this with you today because single-sports betting and match and/or competition manipulation has many tentacles that must be first supported by the right legislation and regulations. This sharing is also a representation of the fact that it is not just professional sport that wishes this legislation to move forward, it is also amateur sport. It is in the best interests of all of our athletes, even the sometimes forgotten ones.

Colleagues, I'm able to look at this legislation through the lens of the athlete, spectator, educator and builder. I have directly observed serious out-of-control betting and match fixing that has hurt Canadians while competing on the other side of the world.

As far as athletes are concerned, like all segments of society, our Canadian sports leagues have been decimated by the pandemic. Athletes will return, but they will need spectators and interest to even get close to the level they were before the pandemic hit. I believe this bill will help.

From the view of those placing bets, by removing one line from the Criminal Code, we can provide the much-needed support to provinces and territories to move forward and support so much in the communities that are already affected by the incredibly active illicit gambling industry. We are also behind the rest of the world on this, and it's time to catch up and get ahead of the curve.

Thank you. *Meegwetch*.

• (2050)

The Hon. the Speaker: On debate, Senator McCallum.

Senator McCallum, before you begin, I must apologize in advance that at 9 p.m. I will have to interrupt you.

Hon. Mary Jane McCallum: Honourable senators, I rise today to speak to Bill C-218 and to voice the legitimate concerns that have been raised by the Mohawks of Kahnawake. In doing so, I will also be bringing forward an amendment on their behalf, which I will explain in detail below.

Over the past 25 years, Kahnawake has built a successful gaming industry within its territory. They have created revenue that has been used for essential services in their community, most notably, organizations whose mandate is to support language and culture in Kahnawake.

The profits from Mohawk Online, an online gaming venture wholly owned by the Mohawk Council of Kahnawà:ke, have helped Kahnawake during the COVID-19 pandemic. To date, Mohawk Online has contributed $4 million to the Kahnawake Economic Relief Measures Fund.

Gaming in Kahnawake has created opportunities — not just for their own people but for those in surrounding communities.

Kahnawake's gaming industry is subject to a robust regulatory regime established by the Kahnawake Gaming Commission, known and replicated worldwide.

In a July 2020 meeting with the late grand chief Joe Norton, Minister Lametti complimented Kahnawake on having created a "legitimate gaming architecture that makes Kahnawake world leaders — and it is worth supporting."

Kahnawake did all of this on the strength of their own jurisdiction, their own resources and their own ingenuity. It is a perfect example of what our Governor General once referred to as "Indigenous genius."

Kahnawake's gaming industry is a shining example of an Indigenous community using its own efforts to create economic sustainability. This is something that should also be encouraged and supported by the Government of Canada.

Honourable senators, Mohawk people have engaged in gaming and sports betting since time immemorial. Games of chance and wagering on sporting events, such as lacrosse, are an integral part of the Mohawk culture. Gaming features in Mohawk creation stories and have always been integral to Mohawk culture and to Mohawk relationships with other nations.

For 25 years, the Mohawks of Kahnawake have asserted an "Aboriginal right" — an inherent Indigenous right that is reconcilable with section 35(1) of the Constitution Act, 1982 — to conduct, facilitate and regulate gaming and gaming-related activities within and from the Mohawk Territory of Kahnawake.

Kahnawake has compiled historical evidence and legal opinions that fully support the assertion of its Indigenous right. In 25 years, their position has never been challenged by any governmental agency or authority.

The amendments to the Criminal Code, as they are presently set out in Bill C-218, do not reflect the Mohawks of Kahnawake's right and threaten the continued economic resilience of their community.

Bill C-218 will amend section 207(4) to remove the prohibition against single-event sports wagering for provinces, but without recognizing Indigenous governments operating legitimate, regulated, well-established gaming on sports events — and in particular, those Indigenous governments that do so on the strength of an Aboriginal right.

Kahnawake takes no issue with the code being amended to allow for this new gaming activity. Kahnawake does, however, take issue with Parliament's ongoing failure to amend the code to reflect and accommodate the Aboriginal right held by Indigenous communities.

Kahnawake has tried to work with the House and the Senate on Bill C-218. Chiefs from the Mohawk Council of Kahnawake gave a presentation to the House standing committee and to the Senate standing committee and proposed specific language for additional amendments. Their proposed amendments were ignored by the House standing committee, although that committee did agree to add an amendment proposed by the horse-racing industry. It is easy to see how Kahnawake would conclude that, for the House standing committee, horses were more important than Indigenous peoples.

Chief Gina Deer and Chief Ross Montour also submitted Kahnawake's proposed amendments to the Senate standing committee. Their request for amendments to Bill C-218 were again ignored.

The proposed amendment, which I am now bringing forward on their behalf, will address the injustice the Government of Canada created when, in 1985, it sold the authority to "conduct and manage" gaming to the provinces — without consulting with or considering the interests of Indigenous peoples. The proposed amendment would allow Kahnawake and other Indigenous communities to negotiate their own agreements directly with Canada.

Existing agreements between First Nations and many of the provinces are accomplished through the provisions in section 207(1)(a) and (b) of the Criminal Code. These provisions would remain in place. The proposed amendments simply give Indigenous communities — which historically have been ignored and excluded from the industry at the provincial level — another avenue to negotiate an agreement for gaming and betting.

Kahnawake's proposed amendments are a perfect example of reconciliation and accommodation in action. It is more than a little ironic that the initiative for this gesture of reconciliation and accommodations comes from a First Nation, not from the Government of Canada.

Honourable senators, advocates of Bill C-218 in its present form often say the bill simply "levels the playing field" by giving provincial lotteries access to the single-event sports wagering market. They insinuate that Kahnawake is objecting to the bill because it wants to preserve its "monopoly" over this market.

These suggestions are false. Bill C-218 will certainly change the playing field, but it will not be level. Why?

The provinces and their agencies restrict any legal interpretation of Kahnawake's activities to the Criminal Code. They use the fact that Kahnawake's rights have never been formally recognized to cast doubt over the legitimacy of Kahnawake's endeavours.

Kahnawake can cite numerous occasions over the past 25 years when provincial lotteries have deliberately interfered with Kahnawake's ability to forge commercial relationships. Without a formal recognition of its jurisdiction under federal law, provinces will continue to block Kahnawake from routes to market and customers — marginalizing and undermining Kahnawake's industry.

In a word, without an accommodation in Bill C-218, there will be no "level playing field." Provincial lotteries will be given free rein to occupy the field, to the exclusion of Kahnawake.

Colleagues, there are those who have suggested that Kahnawake "just keep doing what they have been doing for 25 years." This suggestion is cynical and disingenuous. Kahnawake has laboured under the cloud of those who have suggested that they have no jurisdiction over gaming and that their gaming operations are "illegal."

How does it make any sense to suggest that Kahnawake simply continue to operate under this sort of vicious and unfounded stigma? Kahnawake has come to the House and to the Senate with a proposal that would remove that stigma and accommodate their jurisdiction through an agreement or arrangement with Canada. Isn't that what we want to see?

Over the past 25 years, Kahnawake has built a successful socio-economic gaming industry, despite having the dark cloud of legal uncertainty hanging over their heads. Imagine what this community — and many other Indigenous communities in Canada — could do if that cloud were to be lifted.

Honourable senators, some of you have suggested that Canada has no role in gaming — that it is a "provincial matter" and therefore "outside federal jurisdiction." This is not correct.

The Supreme Court of Canada has held that gaming is a matter that falls within the "dual aspect" doctrine. Accordingly, gaming can be subject to legislation by both the federal and provincial governments. Parliament has jurisdiction to legislate regarding the criminal aspect of gaming, and the provincial legislatures have the jurisdiction to regulate the property and civil rights aspects of gaming.

• (2100)

In fact, until it sold the authority to "conduct and regulate" gaming to the provinces —

The Hon. the Speaker: Excuse me, Senator McCallum, I'm sorry for interrupting you.

Hon. Yuen Pau Woo: I would like to ask this chamber to give leave to allow Senator McCallum to finish her speech.

The Hon. the Speaker: Senator Woo is asking for leave for Senator McCallum to finish her speech. Anybody opposed, please say "no." Agreed.

Senator McCallum: It is cynical and disingenuous for Canada to say we sold the authority over gaming to the provinces in 1985 and now there's nothing we can do.

We as senators must recognize the errors of the past and do our best to correct them. Why are we even considering the approval of a bill that will destroy the economy of one of Canada's largest First Nations when a simple solution has been provided to us? We have a chance here to embrace Kahnawà:ke and other Indigenous communities under the law, but if we do not include the proposed amendment we are instead choosing to push them away, forcing them to remain in a legal no-man's land.

MOTION IN AMENDMENT—DEBATE

Hon. Mary Jane McCallum: Therefore, honourable senators, in amendment, I move:

That Bill C-218 be not now read a third time, but that it be amended in clause 2, on page 1, by replacing line 5 with the following:

"**2 (1) Subsection 207(1) of the *Criminal Code* is amended by adding the following after paragraph (a):**

(a.1) for an Indigenous council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982* to conduct and manage a lottery scheme under an agreement or arrangement with the Government of Canada;

(2) Paragraph 207(4)(b) of the Act is re-".

Thank you, senators.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Ordinarily we would move to debate on that amendment now. The table has noted that Senator McCallum has time, and Senator McPhedran has a question.

Senator McCallum, would you accept a question?

Senator Carignan: I think the time has expired, Your Honour.

The Hon. the Speaker: Honourable senators, leave was granted for Senator McCallum to finish her speech. That can easily be interpreted as her speaking time. She has three minutes left, so I will allow the question.

I clearly understand the objection, but if we give a little latitude here in terms of speaking time versus the actual speech, I think we can allow one question.

Hon. Marilou McPhedran: In your speech, Senator McCallum, you referenced the fact that the province has been interfering with the Kahnawà:ke Gaming Commission. Can you give examples of that interference?

Senator McCallum: Yes, I can. Thank you for the question.

With Mohawks of Kahnawà:ke Online and Evolution Gaming, in 2015 an online casino soft supplier Evolution Gaming launched its products on Mohawk Online, a socio-economic online gaming website across Canada. Evolution described the launch as a groundbreaking deal. Evolution's games proved popular with Canadian customers and quickly became a significant source of income for Kahnawà:ke.

In April 2017, Evolution entered an agreement to provide its products to the British Columbia Lottery Corporation, BCLC. Evolution then informed Mohawk Online that BCLC had instructed them to withdraw their products from Mohawk Online's website based on a general rule that under the Canadian Criminal Code only provincial governments may operate online gambling.

Mohawk Online's previously accepted legal opinions and arguments were dismissed and Evolution's games were withdrawn, causing significant financial losses to Kahnawà:ke.

Mohawk Online later discovered that BCLC was allowing Evolution to continue to supply games to offshore operators targeting Canada, including only Mohawk Online. Mohawk Online has been singled out by BCLC. The lottery had applied commercial pressure on Evolution to dismiss Kahnawà:ke's legal arguments and focus solely on the absence of any mention of First Nations under the Criminal Code.

Once BCLC's exclusion order ensured that Mohawk Online had lost the games, customers and revenues, Evolution was free to continue supplying games both to BCLC and the offshore industry targeting Canada, regardless of the status of offshore operators under the Criminal Code.

In 2016, Mohawk Online approached casino games supplier NetEnt about carrying their games on its website. NetEnt told Mohawk Online that the provinces would not appreciate NetEnt having any connection to companies with a tie to Kahnawà:ke. NetEnt supplies products to both the provincial lotteries and offshore operators targeting Canada. Only the absence of any mention of First Nations under the Criminal Code is used to force lottery commercial partners into not supplying Mohawk Online. Neither the lotteries nor their commercial partners are interested in respecting or enforcing the Criminal Code. It is simply being used as an anti-competition mechanism.

Over the past 20-plus years, at least four testing agencies discontinued their relationship with Kahnawà:ke Gaming and they declined to provide service, citing pressures from provincial authorities.

The Hon. the Speaker: Senator McCallum, your time has expired.

(*At 9:07 p.m., pursuant to the orders adopted by the Senate on October 27, 2020 and December 17, 2020, the Senate adjourned until Monday, June 21, 2021, at 2 p.m.*)

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