SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 44th PARLIAMENT • VOLUME 153 • NUMBER 81

OFFICIAL REPORT
(HANSARD)

Thursday, November 17, 2022

The Honourable GEORGE J. FUREY,
Speaker

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Publications Centre: Publications@sen.parl.gc.ca

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

THE SENATE

Thursday, November 17, 2022

(Pursuant to rule 3-6(1) the Senate was recalled to sit at 1 p.m. on November 17, 2022, rather than 2 p.m., as previously ordered.)

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

Prayers.

SENATORS' STATEMENTS

NATIONAL CHILD DAY

Hon. Rosemary Moodie: Honourable senators, I rise in celebration of Canada's children and National Child Day, taking place this Sunday, November 20.

National Child Day is a celebration of the UN Convention on the Rights of the Child, which was adopted by the UN on November 20, 1989. By signing that convention, we committed here in Canada to ensuring that every child has the opportunity to reach their full potential through the respect of their rights.

Unfortunately, as we celebrate National Child Day, our pediatric health care system is in crisis. Rates of respiratory illness have reached crisis levels in children's hospitals across the country, leading to cancelled surgeries, overburdened emergency rooms and ICUs being forced to operate above capacity. In my province of Ontario, ERs are seeing respiratory complaints at triple the seasonal average in kids aged 5 to 17. Simultaneously, we have a crisis on pharmacy shelves. Children's pain and fever medications are in short supply, leaving many parents unable to manage their children's illnesses at home.

Children are our future. If we hurt them or allow them to be hurt or fail to respond to their hurt, we hurt ourselves. At the National Child Day breakfast, which I co-hosted on Tuesday with Senator Francis, I called on attendees to be authentic in our celebrations. Authentic celebration means a commitment to work for the changes our children need and to address the issues they face. Federal, provincial and territorial leaders must work together for the good of children across Canada, not only on this file but on all files. Our children should never be jurisdictional bargaining chips.

Colleagues, this crisis is just one in which it is clear we need a strategy for children in Canada. This crisis was not created overnight. Good leaders identify and address problems long before they become critical. The best gift we could give children for National Child Day is the assurance that we will work together to ensure that they have a brighter future.

As I conclude, I want to invite all colleagues and staff to a panel discussion on Monday afternoon, co-hosted by myself and Children's Healthcare Canada, on this crisis, how it happened and where it goes from here. It will include pediatric health care leaders from throughout Canada and will be moderated by *The Globe and Mail* columnist André Picard. We do hope you can watch. Thank you, *meegwetch*.

THE LATE WILLIAM (BILL) SAUNDERS

Hon. David M. Wells: Honourable senators, today I rise to pay tribute to William "Bill" Saunders, who served in the British Royal Navy during the Second World War and was a pillar of the Royal Canadian Legion Branch 1 in St. John's, Newfoundland and Labrador. After a long life of dedicated service, Bill Saunders passed away at the age of 101.

At 18 years old, Bill joined the navy and served from May 1940 to July 1946. He was a ship's gunner during the war, including the D-Day Allied invasion of Normandy, and was in the convoy when the first Allied vessels arrived to liberate Hong Kong in August 1945.

Bill followed in the footsteps of his father, William Saunders Sr., who was a member of the Royal Newfoundland Regiment during World War I and fought in the Battle of the Somme.

Bill joined the Royal Canadian Legion in 1949 and served as their Sergeant-at-Arms until he was 98. As its longest-serving member, Bill spent almost every day at the Legion Branch 1 and was always around for a chat or to give advice. As a mentor to many young men and women, Bill is remembered as a quiet personality who loved reading and sharing his knowledge with others.

As Branch 1 President Colin Patey said:

> If you needed to know something, Bill was the one to go to because he had either seen it, done it or could tell you which direction to go in.

As part of his volunteer work, Bill helped advocate for the needs of the elderly veterans confined to their homes and was instrumental in bringing to schools educational programming around remembrance.

His photo hangs on the wall at the entrance to the Legion Branch 1 members' lounge in St. John's. It was Bill Saunders and people like him who helped to protect our freedoms and the way of life we enjoy today.

Bill is predeceased by his wife, Elizabeth Brenda. They were married for 69 years. He is remembered by his community and his loving family: three devoted children, Denise, Diane and David; as well as his three grandchildren, Jennifer, Rhys and Stephanie; his sister, Jean Chafe; as well as nieces and nephews. And, of course, a legion of friends.

Hon. Senators: Hear, hear.

THE LATE JOSEPH HILDEBRAND

Hon. Marty Klyne: Honourable senators, I rise to pay tribute to Joseph Hildebrand, a soldier, rancher and family man from Saskatchewan who was killed while fighting for freedom in Ukraine.

Joseph died while helping to retrieve casualties near the Ukrainian city of Bakhmut, an epicentre of fighting in eastern Ukraine. For him, however, this was no ordinary mission, nor was Joseph an ordinary soldier. He was a volunteer, a man who chose of his own free will to go overseas and to put himself in harm's way by joining the fight, to stay true to his beliefs and to help others.

Being a soldier was Joseph's calling. Shortly after high school, he served two tours of duty in Afghanistan, where he saw combat and helped train Afghan forces. When he returned home, he worked as a rancher and raised a family, whom he loved dearly. Joseph was a true country boy and he loved his home, but he was always a soldier at heart. It's hard to believe, but this was not Joseph's first effort at serving overseas on a volunteer basis. He previously went to great lengths to join the battle in Syria when the conflict broke out there some years ago.

As his family members have described it, Joseph's desire to serve in the armed forces was "an itch he couldn't scratch" while working as a civilian. When the war in Ukraine broke out, he felt compelled to do his part. For him, it wasn't a choice — he had to go. Joseph knew that he was doing the right thing by going to Ukraine, even if that meant putting himself in danger.

As senators will know, while Canada has provided support to Ukraine in the form of military aid, supplies and training, our country has not taken an active combat role. Yet a small but brave number of Canadians have gone anyway, and Joseph was one of them. His memory is a testament to those who have died in the ongoing battle for freedom.

Joseph Hildebrand lived and died in service to others. We will never forget his sacrifice. Our hearts are with his friends and family as they endure this difficult time. I hope they take comfort in knowing that he is a hero. Thank you.

Hon. Senators: Hear, hear.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Raphaël Grenier-Benoit and Aldéa Landry. They are the guests of the Honourable Senator Cormier.

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

Hon. Senators: Hear, hear!

[*English*]

• (1310)

EPILEPSY AWARENESS

Hon. Robert Black: Honourable senators, I rise today to highlight epilepsy awareness efforts, and more specifically, SLC13A5 epilepsy. As many of you may not be familiar with this condition, I would like to take this opportunity to share my family's recent epilepsy story.

On June 4, 2021, we welcomed our third grandson, Rowan Cameron Black, into our family. While Rowan's birth was a week earlier than expected, he arrived into the world a beautiful baby boy. However, we soon discovered he was dealing with frequent and serious seizures while still at Guelph General Hospital. We would later learn this was one of the first signs of SLC13A5 epilepsy.

At that time, we had no idea what was going to happen. Fortunately, the doctors at both Guelph General and McMaster Children's Hospital provided the best possible care to Rowan and his parents during that stressful and uncertain time.

This was the first time our family had ever dealt with complications during the birth of a child or epilepsy itself, and, as I am sure many of you know, neither is an easy feat to handle. According to the Canadian Epilepsy Alliance, almost 260,000 Canadians have epilepsy. In fact, including Rowan, currently there are fewer than five officially diagnosed individuals in Canada with the relatively new disease SLC13A5.

While Rowan has had countless seizures, he has also received excellent care from the many wonderful medical professionals who have attended to him and from epilepsy support services, such as the TESS Research Foundation, which was founded to improve the lives of those affected by SLC13A5 epilepsy.

The TESS Research Foundation, while based out of the United States, works globally to support those diagnosed with SLC13A5 and their families. Some of you may have noticed the bracelet I wear, acknowledging Rowan as a TESS Superhero. I am proud to support our grandson and the foundation's efforts in increasing awareness about this severe neurological disorder.

Honourable colleagues, epilepsy awareness efforts take place throughout the year around the world. For example, International Epilepsy Day takes place in February. We in Canada mark Epilepsy Awareness Month in March with Purple Day, the U.S. raises awareness in November, and the U.K. recognizes the condition in May.

With that being said, I chose to highlight epilepsy and SLC13A5 this week after Rowan was taken by air ambulance to Victoria Hospital in London, Ontario, following his most recent 45-minute-long seizure earlier this week. I hope when the time comes in March, many of you will choose to wear purple with me on Purple Day as we mark Epilepsy Awareness Month in Canada.

At this time, I would like to give a shout-out and thank the teams at Guelph General Hospital, McMaster Children's Hospital, Groves Memorial Community Hospital, Victoria Hospital, the TESS Research Foundation and Ronald McDonald House for continuing to serve and support families in communities across Canada and beyond. I know it is appreciated by countless families, including my own.

Thank you, *meegwetch*.

CANADA-CUBA RELATIONS

Hon. Leo Housakos: Honourable senators, I rise today to give thanks to the Macdonald-Laurier Institute for their work earlier this week in hosting a very distinguished panel of guests to discuss Canada and Cuba in the world of expanding authoritarianism and for inviting me to be part of the discussion.

Those distinguished guests included none other than the pro-democracy activist and defender of human rights Rosa María Paya, who has dedicated her life to promoting international solidarity with the people of Cuba and seeking justice for her father, Oswaldo Paya, a name many of you may be familiar with.

Rosa is the founder of an organization called Cuba Decide. She was joined by other freedom fighters and defenders of human rights: Michael Lima, Sarah Teich of the Macdonald-Laurier Institute, Dr. Angel Omar Vento and Josefa Vento.

During the event, we discussed the ongoing struggle of the Cuban people for freedom, dignity and basic human rights. The Cuban people have long suffered under generations of vicious dictators who have curtailed the rights and freedoms of the citizenry with oppressive acts of violence, murder and detention. And never has their struggle been more apparent than in the events we have seen unfold in the past few years.

But we also spoke about how that fits into the rise of authoritarianism around the world and what countries like Canada need to do to fight it.

Even now, the continued calls by freedom-loving Cuban Canadians to support those leading the peaceful struggle for human rights and democracy in Cuba have thus far been ignored by our government, whose policy toward Cuba has been based on silence and, even more worrisome, inaction.

Given the new reality that the world is living with, it is more important than ever that Canada supports unity among defenders of democracy at a global level in the face of accelerated expansion of authoritarian regimes around the world.

The world is entering a new era that requires new strategic thinking to redefine international relations between democracies and autocracies. Canada should take a significant step in that direction by denouncing the illegitimacy of the Cuban regime, whose system and representatives have never been freely elected by the people.

Instead of supporting and legitimizing the same Cuban regime that justifies the invasion of Ukraine with Kremlin propaganda, Canada should recognize the pro-democratic opposition in Cuba as a valid interlocutor in our relationship with the island.

Long live democracy. Thank you.

An Hon. Senator: Hear, hear.

DANIEL N. PAUL, C.M., O.N.S.

Hon. Brian Francis: Honourable senators, I would like to begin by acknowledging that we are gathered on the traditional unceded, unsurrendered territory of the Algonquin Anishinaabe people.

I rise today on behalf of our colleague Senator Wanda Thomas Bernard, who could not be with us today. Her words are as follows:

> I wish to pay tribute to an incredible person, Mi'kmaw Elder Dr. Daniel Paul. I have known Dan Paul for many years and have always admired his drive for social change and his fierce dedication to bringing justice to the Mi'kmaq.
>
> Daniel Paul has been instrumental in expanding our collective understanding of Mi'kmaq history and helping to dismantle colonialism in Nova Scotia. His book *We Were Not the Savages* is essential reading for all Nova Scotians. In his own words, "it's our history." His attempts to achieve a more just society have benefited all Nova Scotians, including African Nova Scotians.
>
> Dan Paul advocated for the critical re-evaluation of Halifax's founder, Edward Cornwallis, as a celebrated figure in Nova Scotia. Dr. Paul has been a long-time advocate, informing the public about Cornwallis's violent history of scalping proclamations and cultural genocide.
>
> The Cornwallis statue in downtown Halifax was finally removed in 2018, and I will always attribute that triumph largely to his 30 plus years of public education.
>
> During my time teaching social work at Dalhousie University, Dr. Paul regularly appeared as a guest speaker in my classes. Dan Paul has advocated for contributions of Indigenous people to be recognized in Nova Scotia. Today, I invite Canadians to learn more about his contributions to social change.
>
> His impact is significant, and he continues to inspire many social work students who have had the privilege of learning through reading the fourth edition of his book.

Elder Daniel Paul, thank you for all you have done for Nova Scotia. Your commitment to social change is admirable and will continue to inspire me for years to come.

Asante, *wela'lin*, thank you.

ROUTINE PROCEEDINGS

THE ESTIMATES, 2022-23

SUPPLEMENTARY ESTIMATES (B) TABLED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the Supplementary Estimates (B), 2022-23.

[*Translation*]

JUSTICE

CHARTER STATEMENT IN RELATION TO BILL S-11— DOCUMENT TABLED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, a Charter Statement prepared by the Minister of Justice in relation to Bill S-11, A fourth Act to harmonize federal law with the civil law of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law, pursuant to the *Department of Justice Act*, R.S.C. 1985, c. J-2, sbs. 4.2(1).

SUBSTANTIVE EQUALITY OF CANADA'S OFFICIAL LANGUAGES BILL

BILL TO AMEND—FIRST REPORT OF OFFICIAL LANGUAGES COMMITTEE ON SUBJECT MATTER TABLED

Hon. René Cormier: Honourable senators, I have the honour to table, in both official languages, the first report of the Standing Senate Committee on Official Languages, which deals with the subject matter of Bill C-13, An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts, and I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

• (1320)

[*English*]

THE ESTIMATES, 2022-23

NOTICE OF MOTION TO AUTHORIZE NATIONAL FINANCE COMMITTEE TO STUDY SUPPLEMENTARY ESTIMATES (B)

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2023; and

That, for the purpose of this study, the committee have the power to meet, even though the Senate may then be sitting or adjourned, and that rules 12-18(1) and 12-18(2) be suspended in relation thereto.

QUESTION PERIOD

FOREIGN AFFAIRS

ELECTION INTEGRITY

Hon. Donald Neil Plett (Leader of the Opposition): Senator Gold, my question today will touch upon what I asked you on Tuesday, which is the issue of foreign interference in our democracy, as confirmed by reports that the Prime Minister had been briefed in January that there was, in fact, interference by Beijing in the 2019 federal election. In particular, I want to ask you about a very stark contrast in your government's policy approach.

On the one hand, your government is demonstrating total inaction on the issue of foreign interference. On the other hand, your government loudly proclaimed that foreign interference justified the invocation of the Emergencies Act earlier this year, even though CSIS clearly informed the government that the "Freedom Convoy" did not pose a national security threat and that it wasn't supported by foreign state interference. Senator Gold, you will understand the resulting confusion.

Can you clarify what threshold your government adheres to when it comes to judging whether foreign interference constitutes a national security threat?

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

With regard to the invocation of the Emergencies Act, that is a matter that is being studied and reviewed, and properly so, in a process led by Justice Rouleau. I have every confidence in Justice Rouleau to come to a proper decision, based upon all the testimony he has been provided with.

With regard to the question of Chinese and other state interference into our democratic institutions and our elections, the government remains of the view that this is a serious and unacceptable matter. It is taking steps to investigate in all areas, and it will continue to do so in the best interests of Canadians.

Senator Plett: Clearly I wasn't asking you for an opinion on the convoy. I was asking what threshold your government adheres to. It has nothing to do with the inquiry or Justice Rouleau making a decision on this; it has to do with what standards are being used.

Senator Gold, let's be clear: The two situations I just raised don't give Canadians much clarity on what your government considers a risk and/or a priority. What has your government done when it was informed of a sophisticated campaign by the Chinese Communist regime to subvert Canadian democracy, and was this matter referred to Elections Canada?

Senator Gold: Thank you for your question.

The government took and does take those allegations seriously. They are being properly investigated, as appropriate in a responsible, democratic government.

With regard to your question about the standard, as I have explained in this chamber on many occasions, the government's decision to invoke the Emergencies Act was taken based upon a host of considerations and input from a host of sources. All of that is a matter that is being openly dealt with by the process headed by Justice Rouleau.

INDIGENOUS SERVICES

INDIGENOUS CHILD WELFARE

Hon. Elizabeth Marshall: My question is for the Leader of the Government in the Senate.

Senator Gold, last July the government and the Assembly of First Nations reached an agreement in principle to compensate First Nations children and families harmed by the on-reserve child welfare system. To support the agreement in principle, the appropriation bill — approved in June — provided Indigenous Services Canada with $20 billion to compensate those children and their families. But, last month, the Canadian Human Rights Tribunal would not approve the agreement in principle, and the government still has the $20 billion approved.

My question is about the $20 billion. It is a significant amount of money. It is in the fiscal framework. At this point in the fiscal year — which ends in four months — it is unlikely to be spent. If it is not spent, it could be used to reduce the deficit.

My concern is that the government will use it for some other purpose and spend it. Since the agreement in principle has not been approved, what is the government planning to do with the $20 billion?

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

The government is committed to using that $20 billion for the long-term reform of First Nations Child and Family Services and, with Jordan's Principle, continues to work with the Assembly of First Nations and other partners to that end.

The government is disappointed in the decision of the Canadian Human Rights Tribunal. Although it recognizes the importance and significance of the historic $20-billion agreement, it is disappointing — primarily and fundamentally for First Nations individuals and partners who are eagerly seeking compensation to which they're entitled. The government is working with them to make that happen.

Senator Marshall: Could you give us more details with regard to how the government is proceeding? We are looking at $20 billion that, most likely, won't be spent this year. Are they working on it now, or is it something that has been earmarked for the next fiscal year? I would like to know exactly where they are in the process, because it seems as though they are back to square one. Could you provide us with a further update?

Senator Gold: Thank you for the question. This is an important initiative that the government has been working on with its partners for a long time. I don't think it is back to square one. The government is continuing to work with the AFN, Moushoom and Trout counsel — and is grateful for the work they have all done to date — and will continue to work with those partners to find a solution.

INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT

STRATEGIC INNOVATION FUND

Hon. Colin Deacon: This question is for the Government Representative in the Senate.

Senator Gold, in November 2020, the federal government announced a targeted $250-million investment over five years to support Canada's innovative intellectual-property-rich firms. This was to be administered through the Strategic Innovation Fund.

You may recall that I recently shared my concern about Canada's worrisome IP challenges, so you won't be surprised that I fully support the intention of this initiative. However, two years later, a recent report in *The Logic* revealed that no funds have yet been deployed.

Senator Gold, when will Canadian companies start to receive this funding, incentivizing them to strengthen their IP portfolios, which is crucial to their global competitiveness?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question and for recognizing the historic initiative — the first ever — Intellectual Property Strategy introduced in 2018, with investments of over $250 million. Budget 2021 invested $90 million to create ElevateIP, a program to help accelerators and incubators provide startups with access to intellectual property expertise. The government is finalizing the structuring of this program with leading business accelerators across the country so as to provide maximum effectiveness for this program.

Moreover, Budget 2021 also invested $75 million to the National Research Council's Industrial Research Assistance Program to provide high-growth client firms with access to expert intellectual property services through IP assist; indeed, many companies are already benefiting from that assistance.

• (1330)

On the issue of the timelines, senator, I'll make inquiries with the government and report back to the chamber as soon as I have an answer.

Senator C. Deacon: Thank you, Senator Gold. A further question perhaps that you could give to the government. They recently announced that Nokia will receive $40 million through the Strategic Innovation Fund. However, the IP generated from that investment will flow to Nokia's head office in Finland. While there are no restrictions on the transfer of IP for foreign companies, this is not the case for Canadian companies.

Senator Gold, why are the Strategic Innovation Fund funding terms for IP transfer different for Canadian companies versus foreign companies? Is there not a concern that these restrictions will strategically disadvantage Canadian companies?

Senator Gold: Thank you. I'll certainly add that to the questions I pursue with the government.

[*Translation*]

HEALTH

INVESTMENT IN EQUIPMENT, RESEARCH AND INNOVATION

Hon. Marie-Françoise Mégie: Honourable senators, my question is for the Government Representative in the Senate.

Senator Gold, the day before yesterday, parliamentarians had the opportunity to meet representatives from the Canadian Association of Radiologists. The association wanted to raise the alarm about the seriously antiquated medical imaging equipment in Canada and the need for strategic investment to improve access to medical imaging and, consequently, foster better patient outcomes.

According to the Canadian Agency for Drugs and Technologies in Health, the number of CT scan and MRI machines per capita is significantly lower than in OECD countries. In fact, Canada significantly lags behind international standards in this area.

Will the Government of Canada listen to this call for urgent intervention and commit to collaborating with the provincial and territorial governments to ensure that targeted investments in health are allocated to improving medical imaging services?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. The government has been working with the provinces and territories for quite some time, not only by providing funding, but also by implementing a national health care vision that meets Canadians' needs. The government has made significant investments to support health care systems, including $72 billion during the pandemic, and those investments will go up by 10% in March 2023 in addition to the 5% supplementary increase announced a few months ago. The government is committed to working with its provincial and territorial counterparts, regulatory bodies, health care workers and Canadians to create and implement strategies to improve health care in Canada. I am told that a collaborative process is under way to find concrete solutions.

Senator Mégie: Thank you for that information. However, I also wanted to remind you that the Standing Senate Committee on Social Affairs, Science and Technology conducted a study on artificial intelligence a few years ago. Representatives of the Canadian Association of Radiologists spoke about the need for artificial intelligence for both operations and diagnostics to help radiologists triage urgent cases and identify common results by automating the standard measures and reporting models.

Does the federal government plan to increase the percentage of health care funding allocated to the innovative project that links artificial intelligence and health research through investments in the Canadian institutes of health research specific to artificial intelligence?

Senator Gold: Thank you for the supplementary question. The government continues to prioritize investments in science, research and collaboration across multiple sectors to generate innovative solutions for priorities such as health. The government recently announced investments in the National Research Council of Canada to advance over 60 innovative research projects, including in the field of health.

Of the projects that are receiving funding, I would like to note the BC Cancer Agency and the Centre for Commercialisation of Cancer Immunotherapy, which are being granted $2 million and $1 million respectively to better equip hospitals with specialized infrastructure. Similarly, the Ottawa Hospital Research Institute is receiving $198,000 for the use of artificial intelligence and for the university. As Minister Champagne said, and I quote:

> Supporting researchers and businesses across Canada who are working to innovate and build new knowledge is so important . . . . Together, we will achieve more and create real changes in critical areas such as health care, sustainability and technology.

[*English*]

CHILDREN'S MEDICATION SHORTAGE

Hon. Brian Francis: My question is for Senator Gold. Senator Gold, I read a troubling article in this morning's *The Globe and Mail* written by Tanya Talaga. She explained that in September an Ontario regional pharmacist from the First Nations and Inuit Health Branch, which is part of Indigenous Services Canada, sent a memo warning staff of the coming shortage of children's pain medication and asking them to keep the expired product. *The Globe and Mail* health reporters could not find this type of directive anywhere else in Canada. In addition, another federal department, Health Canada, has advised against administering expired medication to children because it may not be safe or effective.

Senator Gold, could you please explain why there seems to be a different standard of care for First Nations children in Ontario? Could you also tell us whether this advice to stockpile expired children's medicine has been provided to any other group in Canada?

Hon. Marc Gold (Government Representative in the Senate): Thank you, Senator Francis, for raising that troubling issue. I'm going to have to look into it, and I will provide a response as soon as I can get one.

Senator Francis: Senator Gold, your government announced on Monday that a foreign supply of children's acetaminophen had been secured and would be ". . . available for sale at retail and community pharmacies in the coming weeks." Parents in more urban or suburban settings have been scouring pharmacies to find these needed pain relievers for their children as we're facing a pediatric care crisis. However, families in northern and remote communities where supply is low or non-existing cannot simply search dozens of stores. In order to ensure that First Nations children have an equal chance to thrive as other children, Canada has a moral and legal obligation to ensure sustainable quality in the provision of services.

Senator Gold, can you please let us know how much of the foreign supply of children's medication will be provided to First Nations people and communities? I'd like to see a detailed breakdown of the distribution.

Senator Gold: Thank you for your question, and I will endeavour to get an answer to that and provide it to the chamber as soon as I can.

[Senator Gold]

PRIVY COUNCIL OFFICE

CANADIAN ASSOCIATION OF FAIRS AND EXHIBITIONS

Hon. Robert Black: My question is for the Government Representative in the Senate. As you may know, the Canadian Association of Fairs and Exhibitions, also known as CAFE, held their Fair Day on the Hill yesterday. I had the pleasure of meeting with their representatives yesterday afternoon to discuss the challenges facing the 743 fairs and exhibitions and their organizations that they represent across Canada. They highlighted that the organization continues to be bounced from department to department at the federal level as they seek a home base for support and services. This is an ongoing issue that I had previously raised with many federal ministers since being appointed in 2018. Every response I received pointed me in a different direction and to a different department.

In July 2021, I wrote again to the Ministers of Heritage, Finance, Rural Economic Development and Agriculture and Agri-Food urging them to work together to determine which department CAFE should be primarily working with. To date, I've only received one response from Minister Bibeau.

Honourable colleagues, fairs and exhibitions and the volunteers involved are community builders. The fairs have existed for over a century, and play an integral role in connecting rural, urban and agricultural communities. It's unthinkable that no federal department will claim the portfolio to help these heritage-billed events that strengthen the economies of countless rural and agriculture communities.

Senator Gold, can you tell me which department CAFE should be working with to ensure these fairs and exhibitions will be around for generations to come?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. The government recognizes the importance that fairs and exhibitions have and the contribution they make in communities across the country. I understand the challenges that have been brought about in recent years especially by the pandemic. The government remains committed to ensuring that such fairs, tourism events, cultural and community sectors have the support they need and recover from the impacts they suffered because of the pandemic. That's why the government launched the Major Festivals and Events Support Initiative to help major Canadian festivals survive and adapt to the pandemic.

• (1340)

I understand that the government — notably Agriculture and Agri-Food Canada — continues to engage with some of the largest fairs and exhibitions through the AgriCompetitiveness and AgriCommunication programs. The government — notably Agriculture and Heritage — is always open to further discussions on how it can improve its services and be of assistance.

Senator Black: The 739 smaller fairs and exhibitions aren't eligible for the grants you speak of. Can you tell us to where they should be directed so that they, too, can get support?

Senator Gold: Again, thank you. I don't have the answer to that. I'm not punting it to Agriculture and Heritage, although that is the primary place to go. I will certainly make inquiries, and, when I get an answer, I'll communicate it to you directly as well as to the chamber.

TRANSPORT

ONTARIO AERODROME

Hon. Donald Neil Plett (Leader of the Opposition): Government leader, a few weeks ago, the Minister of Transport appeared before the Senate during Question Period and answered a number of questions related to his portfolio. When asked whether he had approved the Georgina Aerodrome in Ontario, the minister responded:

> The minister him or herself needs to wait for officials — independent, non-partisan officials — to do the assessment and submit a recommendation to the minister, which I have not yet seen.

Those were his words.

However, it has come to my attention that, in fact, Transport Canada has already completed their regulatory review of the proposal, meaning the minister had already approved the aerodrome as for the CAR-307 regulations.

Senator Gold, will Minister Alghabra correct his statement and apologize to the residents of Georgina, and the Senate, for his lack of transparency on and attentiveness to the issues surrounding the Georgina aerodrome?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I certainly cannot answer your question directly based simply on the assertions and assumptions you're making about what was known or not known at the time of the minister's appearance.

I have every confidence in the minister's integrity and transparency, as he demonstrated here before the chamber. I'll certainly make inquiries based upon your question, as I always do when I don't have the answer, but I'm simply not in a position to comment on the assumptions and assertions that informed your question.

Senator Plett: Assertions, possibly; but assumptions, no. They are facts, leader Gold, not assumptions.

The member of Parliament for the area Scot Davidson had been advocating for his constituents for months on the issue of the aerodrome. He has tried on numerous occasions to get answers on the status of the proposal and to advise the minister's office of the many issues with it, but the entire process has lacked any transparency or communication.

The fact that the Minister of Transport did not present the facts accurately when specifically asked here is very concerning, Senator Gold, but seems to be part of a pattern regarding this file and, indeed, many others. Senator Gold, what is the minister trying to hide?

Senator Gold: I know this is Question Period, and I do my best to answer, but it's very hard to find an appropriate answer to a question that assumes bad faith on the part of a minister of the Crown. I think that will be sufficient for my answer.

[*Translation*]

FOREIGN AFFAIRS

FOREIGN INFLUENCE IN CANADA

Hon. Leo Housakos: My question is for the government leader. Yuesheng Wang, a researcher employed by Hydro-Québec, appeared in court in Longueuil yesterday, after being arrested on Monday by the RCMP, accused of economic espionage for the benefit of China. *La Presse* reported that Tina Zhu was there to support him.

Ms. Zhu said she was a representative of the Canada-China Friendship Promotion Association, an organization whose exact workings are nebulous. Ms. Zhu said she does not work for the Chinese government and that it's a coincidence that she advocates for Chinese officials in Canada and peddles the same messages as Beijing.

A bill I introduced in the Senate last February, Bill-237, would have allowed us to determine whether Ms. Zhu is working for the Chinese government. Unfortunately, that bill was blocked by a senator appointed by the Trudeau government.

Senator Gold, why does the Trudeau government oppose Bill S-237 and the creation of a foreign influence registry? The provisions of that bill would easily apply to authoritarian countries such as China, Iran and Russia.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, Senator Housakos. I am not doing anything to block the bill. Every bill introduced in the Senate must be properly examined, step by step, and your bill will be treated the same as every other bill.

Senator Housakos: Senator Gold, we have seen many examples of the Leader of the Government in the Senate exerting his power. When you have an interest in a bill, you have influence. Right now, Canada is in a situation where it is truly threatened by a number of countries that are trying to influence it.

The charges against Mr. Wang are very serious and unprecedented in the history of Canada. Senator Gold, can you reassure Canadians and confirm that the Trudeau government will see the proceedings against Mr. Wang through to the end and will not come to an agreement with the Chinese government to bury the matter, as it often does?

Senator Gold: Given that the proceedings involving Mr. Wang are under way, it would be inappropriate for me to comment. All I can say, Senator Housakos, is that the government takes very seriously the interference of any country, including China, in our institutions and democratic process. We will continue to defend the interests of Canadians in that regard.

[*English*]

NATIONAL DEFENCE

ARCTIC SOVEREIGNTY

Hon. Donald Neil Plett (Leader of the Opposition): Government leader, on Tuesday, the Auditor General released a report that referenced significant delays in procuring Arctic-capable vessels and icebreakers. When it comes to the icebreaker fleet, that fleet is now between 35 and 53 years of age. It's urgent that the vessels be replaced since, given the age of the ships, a major failure could occur at any time, leader, yet no replacement vessel has been ordered, let alone construction started.

Why has this government failed so completely in addressing the issue — an issue that is so vital for Canada?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. First, the government thanks the Office of the Auditor General for their report on the surveillance of Arctic waters. The government accepts the findings and the recommendations of the report and will continue to work with partners to address the gaps in Arctic maritime domain awareness.

For Canada, our maritime domain awareness in the Arctic is critical to ensuring we can manage the risks and respond to incidents that would have an impact on our security, environment and economy. I have, on a number of occasions, cited the investments the government has made, both to modernize NORAD, our space capabilities, our remotely piloted aircraft systems, our offshore patrol ships and the enhancement of our surveillance. I'll not repeat those; they are on the record. It will continue to make investments and do what it needs to do to defend our North.

Senator Plett: Government leader, in 2019, the government announced that it would add a third shipyard to the National Shipbuilding Strategy specifically for the purpose of building icebreakers. That shipyard was to be Davie Shipbuilding in Quebec.

In 2020, the government indicated that an agreement with Davie, adding it as a third shipyard, would be initiated by the end of 2020. Nothing happened, government leader.

In 2021, the government publicly stated that an agreement with Davie, adding it as a third shipyard, would be initiated by the end of 2021. Again, nothing happened.

Now, this past June, the government said once again that an agreement with Davie would be reached by the end of this year. Government leader, is something actually going to happen this year or will there just be another promise next year?

• (1350)

Senator Gold: The government is committed to building a world-class marine industry through the National Shipbuilding Strategy. To achieve that, and to meet the evolving needs of the Canadian Coast Guard, the government, I'm advised, is moving forward with the construction of two polar icebreakers at Canadian shipyards — at Davie shipyard in Lévis, and Seaspan in Vancouver. It will be done under the auspices of the National Shipbuilding Strategy to support communities, the High Arctic, science and Canadian sovereignty in the North.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I have the honour to table the answers to the following oral questions:

Response to the oral question asked in the Senate on September 21, 2022, by the Honourable Senator Housakos, concerning Taiwan — Global Affairs Canada.

Response to the oral question asked in the Senate on September 21, 2022, by the Honourable Senator Housakos, concerning Taiwan — Immigration, Refugees and Citizenship Canada.

Response to the oral question asked in the Senate on September 29, 2022, by the Honourable Senator Dupuis, concerning the report of the Commissioner of the Environment and Sustainable Development on Funding Climate-Ready Infrastructure.

IMMIGRATION, REFUGEES AND CITIZENSHIP

TAIWAN

(*Response to question raised by the Honourable Leo Housakos on September 21, 2022*)

Foreign Affairs

Since 1970, Canada's One China Policy has recognized the People's Republic of China as the sole legitimate government of China, noting — neither challenging nor endorsing — the Chinese government's position on Taiwan. Consistent with this policy, Canada continues to develop unofficial but valuable economic, cultural and people-to-people ties with Taiwan. Canada is represented in Taiwan by the Canadian Trade Office in Taipei, which is a locally incorporated entity staffed by Canada-based and locally engaged staff. It has been Canada's long-standing practice to avoid any actions or statements that could imply recognition of Taiwan as a sovereign state.

While remaining consistent with its One China Policy, Canada will continue its multi-faceted engagement with and on Taiwan, which includes collaborating on trade, technology, health, democratic governance and countering disinformation, while continuing to work to enhance peace and stability across the Taiwan Strait.

(*Response to question raised by the Honourable Leo Housakos on September 21, 2022*)

Insofar as Immigration, Refugees and Citizenship Canada (IRCC) is concerned:

Consistent with its long-standing One China Policy, Canada does not recognize a diplomatic or official passport from Taiwan.

Taiwanese persons with a passport issued by the Ministry of Foreign Affairs in Taiwan which includes a personal identification number do not require a temporary resident visa to travel to or through Canada since 2010. Eligible Taiwanese travellers are required to apply for Canada's electronic travel authorization (eTA) to visit or transit through Canada. The eTA process is done online, and in most cases, authorization may be issued in a matter of minutes.

Those transiting through Canada and who hold a passport from Taiwan that does not have a personal identification number may be eligible to transit through Canada without an eTA if they are en route to, or departing from, the United States (U.S.), as part of the Transit Without Visa Program (TWOV). To benefit from the TWOV, an individual must hold a valid passport or travel document issued by their country of citizenship, must hold a valid U.S. visa, and must be travelling through an eligible airport and on a participating airline. A list of participating airlines and airports is available on Canada.ca website "Transit Without Visa Program".

INFRASTRUCTURE

REPORT OF THE COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT ON FUNDING CLIMATE-READY INFRASTRUCTURE

(*Response to question raised by the Honourable Renée Dupuis on September 29, 2022*)

Infrastructure Canada (INFC) recognizes the importance of reporting on program progress toward gender, diversity and inclusion commitments. While the department may not collect program-level data regarding the distribution of benefits by gender (as well as other identity factors) for historical and older programs, it collects other data the department may analyze to assess Gender-Based Analysis Plus (GBA Plus) impacts.

INFC programs achieve the government's commitments by delivering funding to support initiatives and infrastructure that improve the quality of life for Canadians, including vulnerable groups. Policies and programs may take into account considerations such as accessibility, inclusivity and community benefits. Where possible, the department reports on GBA Plus impacts through reporting such as the Departmental Results Report and program evaluations.

As per the Treasury Board Policy on Results, program evaluations include horizontal considerations such as assessments from a GBA Plus perspective that include program design and delivery. Evaluations of the Investing in Canada Infrastructure Program and Smart Cities Challenge are planned for 2022-23 and 2023-24. The department is currently developing a plan to improve the measurement and reporting of programs toward gender, diversity and inclusivity that includes capacity building and the identification and assessment of knowledge and process gaps.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: third reading of Bill C-31, followed by third reading of Bill C-5, followed by consideration of Motion No. 68, followed by all remaining items in the order that they appear on the Order Paper.

[*English*]

COST OF LIVING RELIEF BILL, NO. 2 (TARGETED SUPPORT FOR HOUSEHOLDS)

THIRD READING—DEBATE

Hon. Hassan Yussuff moved third reading of Bill C-31, An Act respecting cost of living relief measures related to dental care and rental housing.

He said: Honourable senators, I rise today on third reading of Bill C-31, An Act respecting cost of living relief measures related to dental care and rental housing. I want to thank the members of the National Finance Committee for their work on the study of this bill, and the witnesses who appeared to give testimony on it.

Honourable senators, the bill before us is simply about helping people who need our help — from helping low-income Canadians deal with the increase in rent, to ensuring low-income and middle-income families have the financial means to provide basic oral health care for their children. I want to be clear that both the rental and dental benefits are meant to be short-term measures — not long-term solutions. The rental benefit is a

short-term measure to help deal with the increase in rent that many low-income Canadians have experienced in the past year, and the dental benefit is an interim measure to bridge the gap to a permanent national dental solution for children. These measures are needed now. The sooner we pass this bill, the sooner Canadians who need help and assistance will take care of their children's teeth and health and, of course, put a roof over their head to do so.

Today, I want to talk about what these two benefits are — which is just as important as what they're not — and how they can make a difference in the lives of low-income Canadians and working families. Let me start with the rental benefit, and what it is not meant to solve. It is not a benefit intended to address the long-term affordable housing problem that the country faces. What it's meant to do is provide short-term relief to an acute problem of rental increase resulting, in part, from a record 40-year inflation rate.

According to Rentals.ca's November report, the average rent in Canada has increased about $100 per month from the pre-pandemic level in the fall of 2019. The one-time tax benefit of $500 is intended to assist low-income renters with the increase in rent they have experienced. Most of all, Canadian renters have had to dig further into their pockets to pay their rent. However, the rent increase experienced by low-income renters have hurt them disproportionately. The rental benefit is estimated to help 1.8 million low-income renters across the country, and deal with the increase in rent they have experienced. This includes an estimated 17,000 low-income renters in Newfoundland and Labrador; 570,000 in Quebec; 60,000 in Manitoba; and over 700,000 in my home province of Ontario. These are not just statistics. These are individuals who are struggling to deal with rental challenges and to pay their rent on a monthly basis.

While the rental benefit is a targeted, short-term measure, the government, through the National Housing Strategy, has many other long-term initiatives in order to address the challenges associated with ensuring housing is a right — not a privilege — in this country. One such program is the Canada Housing Benefit which the rental benefit is a top-up for. The Canada Housing Benefit is a $4 billion long-term program that provides an average of $2,500 per year in direct support to families and individuals with housing needs. Both of these programs will make a significant difference in the lives of Canadians who are struggling with paying their rent on a monthly basis in this country.

Now I'd like to focus on the dental benefits that will help an estimated 500,000 children under the age of 12 in low-income and middle-income families. This benefit is not meant to cover all the dental care needs of our children, nor is it meant to replace the current provincial, territorial or private plans. It's also not meant to be a permanent long-term solution for a national children's dental program. What this dental benefit is meant to be is an interim program to bridge the gap until a permanent national program is put in place. In the interim, the government intends to take the necessary steps to build a comprehensive, long-term program that includes engaging with key stakeholders — including the provinces, the territories, Indigenous organizations, dental associations and industry — to help inform their approach in implementing a long-term Canadian dental care program.

The intent of the dental benefit is to ensure children under the age of 12 in low-income families immediately have access to basic dental care that is not provided through provincial, territorial or private dental plans across this country. The benefit also intends for parents — who do not have the ability to pay out of pocket for their children's dental care — to apply up front for this through the Canada Revenue Agency, or CRA. I know there are some senators who believe that the interim benefit could have been better. Some are considering amendments to try and make it so. I first want to remind everyone that this is an interim measure, and I expect the final long-term program that is developed through the consultation I mentioned earlier will not only make a difference in the debate here today, but also a better program in the end. It's through the consultation process that I would encourage both senators and stakeholders who have ideas on improving the program to make their opinions known — not by holding up the benefit that can help children now.

Second, the government intends this benefit to be ready and implemented in two weeks: on December 1. They have made it clear that to do so, this bill needs to receive Royal Assent by tomorrow. Any delay now risks parents having to wait longer to access the dental care benefit for their children.

I want to use a very personal example, colleagues, to explain how this benefit can help young children: A little over a year ago, my nephew and his wife both died very tragically. They left behind four orphaned boys, all under the age of 12. As our family struggled to take care of them, I know the challenges in raising these four boys to have a decent life will not be easy. Their grandparents, who are old, now have to take on this responsibility. I know this benefit will touch their lives. It will equally touch the lives of many children across this country. The fact of the matter is that in my family, people do their best to help these four boys become responsible adults as we struggle to deal with all of the needs they will encounter in their young lives. It is not easy. It is not easy for the many families who struggle with these challenges to provide basic needs for their children.

• (1400)

As a senator, I came from modest means, so I understand what struggle is all about. For all of us in this chamber, I'm sure each one of us have family members, friends and colleagues who are going to be touched by this benefit.

In conclusion, I hope you have a better understanding of what these two benefits intend to achieve and what they do not intend to achieve. The housing benefit is intended to assist low-income renters with the rental increase they have experienced because of the acute problem of high inflation and not with the systemic problem of the lack of affordable housing in this country. Likewise, the dental benefit is an interim program, not a permanent program, to cover the basic dental needs of children under the age of 12 not otherwise covered under existing plans, while a long-term national solution is developed through consultation.

Colleagues, the short-term and interim measures in the bill can make a real difference right now for low- and middle-income Canadians with the financial pressures of rent increases and ensuring children have access to basic dental care.

Honourable senators, we are approaching the holiday season, when the times are always a little tougher for those in our society who struggle with affordability issues. It is in these times when people worry about their finances and their kids' well-being. I therefore urge you, colleagues, to keep this in mind and pass this bill quickly so we can assist Canadians who need our help.

I will be available for any questions. Thank you very much.

Hon. Senators: Hear, hear.

Hon. Yuen Pau Woo: Senator Yussuff, would you take a question?

Senator Yussuff: With honour.

Senator Woo: Thank you so much for your third reading speech and especially for sharing that personal story on the importance and necessity of the Canada dental benefit.

The $1 billion or so that will be spent will indeed benefit hundreds of thousands of children. The money, of course, is going to address dental decay, and there is no money set aside for preventative dental care. It is not part of this bill, and I'm not about to move an amendment to include prevention, but can you talk a bit about the thinking for the longer-term plan, the more permanent dental care plan, and whether that might include something as basic and beneficial as fluoridation of our water? In this country, about 60% of Canadians don't have access to fluoridated water, including in my home city of Vancouver. In the United States, it is the opposite, only 40% of Americans do not have access to fluoridated water.

I wonder if it is possible for the federal government, in its longer-term plan, to think about a way of incentivizing municipalities to invest in fluoridation because fluoridation is as much a health investment as it is an infrastructure investment.

Senator Yussuff: Thank you, Senator Woo. I think you raised a very important point for us all to consider.

As you know, the science on fluoridation is well known. It has been documented to be extremely important in dealing with cavities and the challenges in keeping our teeth in healthy order. We live in a federation. As I keep saying constantly, it is unique in the world. We love each other very well, but we don't do the same things throughout this land. I'm hoping that at the end of the day, as the government develops a national program, working with the provinces and territories and Indigenous organizations, this will be a serious consideration, because the responsibility of provinces to make this mandatory in their jurisdictions remains with them and them alone. The federal government cannot impose, but it can incentivize the provinces to make this a reality. Equally, I think the education that our citizens need to understand about fluoridation is important for us to put in front of them.

There are still those who argue fluoridation should not be a regular feature of our water system. The evidence is quite clear. I do hope as we debate a national program, with the federal government working with the provinces and territories, this will become part of the debate that certainly can make this country a better place for us, to keep tooth decay at bay and helping young children to have a brighter future.

Hon. Colin Deacon: Thank you, Senator Yussuff, for your speech.

This week there was a very good op-ed in *The Hill Times* from a Canadian prepaid credit card group talking about how a prepaid credit card for distributing the funds would allow for the funds to be restricted to use in dentistry and eliminate the need for the paper-based audit that has been promised in the future. This financial technology tool is something that I would hope was considered in the development of this program. If it wasn't, could you perhaps at some point ask the officials why they didn't consider it, other than it is just something that they viewed as being more complicated and didn't even explore it? It would be a very easy way of preventing fraud. That is a criticism of a very good program. I would appreciate it if you could just reach out to the officials at some point and see whether or not this was even explored.

Senator Yussuff: Thank you, Senator Deacon, for the question.

As you know, there is a desire to get this program and the money that is associated with it as quickly as possible into the hands of parents who need it to help their children get access to basic dental care. In the context of doing so, the government, of course, has looked to the CRA, recognizing the experience they gained from CERB — the Canada Emergency Response Benefit — delivery to Canadians who needed it in a very short period of time. You are raising a valid point, and it should be considered in the future program delivery, working with the provinces and territories. I will certainly raise it with the minister and his staff for consideration for the future program, because I do believe clearly CRA can do this. There are processes in place to ensure they can prevent fraud. As you know, anyone determined to commit fraud can do so regardless of whatever measures you may put in place.

There is also, within the context of the CRA, delivery of this benefit to parents for their children's needs. There are penalties should someone decide to commit fraud at the same time.

I do recognize you are raising an important point that should be thought about in a very coherent way, and I hope the government will consider that. Thank you.

Hon. Tony Loffreda: Honourable senators, I rise to speak to Bill C-31, the government's proposed cost of living relief act No. 2, which offers targeted support for lower- and moderate-income households in a time of high inflation.

I want to start by congratulating and thanking Senator Yussuff for such an insightful and emotional personal speech. Thank you very much.

Part 1 of Bill C-31 proposes a tax-free dental care benefit for parents with children under the age of 12 whose household income is below $90,000 and who do not have access to dental insurance. In Part 2 of the bill, it authorizes a one-time rental housing benefit for eligible applicants who paid rent on their principal residence in 2022.

[*Translation*]

It was an honour for me to study this bill at the Standing Senate Committee on National Finance. For our work we held four meetings with witnesses. Twenty-five witnesses appeared, including public officials, the Parliamentary Budget Officer, and representatives from dental associations and the housing sector. We also had the privilege of receiving three ministers.

Today I will take a few moments to address four topics that were explored during our meetings.

[*English*]

The first issue I want to address is inflation. In my view, the sums being injected into the economy with Bill C-31 should not have a noticeable impact on inflation. I spoke about this during my second reading speech on Bill C-30, the GST tax rebate, and I stand by those comments.

The Parliamentary Budget Officer, or PBO, estimates that the dental benefit will cost $703 million, while the cost of the one-time top-up to the Canada housing benefit program will increase federal spending by $940 million. In a $2.8 trillion economy, the injection of an addition $1.6 billion is nominal.

• (1410)

As I said a few weeks ago, the doubling of the GST tax rebate in Bill C-30 along with the measures in Bill C-31 amount to 0.1% of Canada's GDP in additional costs. This amount is not insignificant, but it is a fraction of the country's GDP.

I appreciate these measures increase government spending at a time when fiscal restraint is needed. However, I think the dental benefit could unclog our emergency rooms, and end up being a cost-saving investment. Our committee was told that 1% of emergency room visits made by patients with non-urgent dental conditions cost the health care system an estimated $1.8 billion in 2017.

Not only will this benefit help our youth access proper dental care, but I hope it will have the added benefit of encouraging better overall oral health and prevention. We know that more than one in five Canadians avoided dental care because of cost. This interim benefit is expected to allow some half a million children to finally have access to basic dental services.

[*Translation*]

As Senator Mégie put it so well, when it comes to health, an ounce of prevention is worth a pound of cure. Lynne Tomson, Assistant Deputy Minister at Health Canada, also stressed the importance of prevention, which, over time, would result in significant savings. Prevention and early intervention will also be less expensive to the system as a whole. Moreover, Minister Duclos recognizes that putting off or completely avoiding dental care can have serious consequences for people's health.

This in turn can increase the public's dependence on costly sectors such as cardiology, cancer and emergency services.

[*English*]

The second issue I want to address is the displacement risk. In other words, will this publicly funded dental benefit encourage employers to cancel or reduce dental coverage for their employees? It is an important question that cannot be glossed over.

[*Translation*]

Last week, I met with representatives of the Canadian Life and Health Insurance Association, which shares my concerns about a risk of displacement. Consider the following statistics: In 2021, personal insurers in Canada provided coverage for more than 29 million insured and paid out more than $30 billon in extended health benefits, including $9.5 billion for dental care.

The association is concerned, as am I, that employers will opt to reduce or cancel their coverage, given that the state is prepared to intervene. It would not be prudent to transfer these amounts of money to the public. Naturally, this issue will have to be resolved when the government undertakes to enhance the current dental benefit or create a permanent program.

[*English*]

Health Canada explained that it does not anticipate a displacement at this time, but acknowledged that it is an element of concern that will be taken into consideration as it designs the longer term program.

I strongly encourage the government to consider ways of incentivizing businesses to keep their current coverage. It is not realistic to penalize corporations for dropping plans. Incentivizing is the way to go.

The third point I want to discuss is the labour shortages in the industry. Naturally, the expectation is that the dental benefit will finally allow some of our kids to receive proper dental care. I'm sure this is a huge relief for many parents who are unable to afford dental fees. I hope these kids will soon book their appointments and get the care they deserve.

But will the industry be able to manage an influx of new patients? The short answer is yes. But it will not necessarily be easy. Human resource challenges also exist in the sector, especially with respect to dental hygienists and dental assistants.

Dr. Lynn Tomkins, President of the Canadian Dental Association, assured our committee that there is not a shortage of dentists. Rather, there is a distribution issue. The association would like to see more young dentists going to remote and rural areas. But as she said, "We will deal with the influx of new patients that come in."

I'm also reassured that within the definitions in the bill, "dental care services" means the service that a dentist, denturist or dental hygienist is lawfully entitled to provide. Ondina Love, CEO of the Canadian Dental Hygienists Association, reminded our committee that her industry counts over 30,000 hygienists among its ranks, and that they offer care in innovative ways such as stand-alone clinics, community clinics, daycares, schools and mobile settings.

Unfortunately, while dental hygienists are captured in the bill, the ten dental schools across the country are not. Dr. Walter Siqueira, Dean of the College of Dentistry at the University of Saskatchewan, who also serves as President of the Association of Canadian Faculties of Dentistry, feels they have been left out.

Dental schools see around 350,000 patient visits per year, and they could help with the increase in new patients. He explained, for example, that "In the north of Saskatchewan, basically 80% of dental care is provided by our dental school clinics."

Dental schools already have a network of clinics and programs tailored to the people Bill C-31 targets. As he told us, with the proper support, dental schools could double the number of patients they see since they are well placed to become a core element of a much larger network of community and institutional clinics for the provision of dental care to those most in need.

It is clear that the government must collaborate with the schools as it expands and elaborates the permanent program. Minister Duclos appears to be open to engaging with them.

[*Translation*]

Finally, the last issue I want to address is the permanent dental program that the government is looking to establish. As a reminder, the government's 2022 budget sets out an investment of $5.3 billion over five years. The government is proposing that the benefit, which we are currently studying, would initially cover those under the age of 12. The intention is to then extend the benefit to those under 18, seniors and persons with disabilities in 2023. Finally, full implementation of a new permanent plan is slated for 2025.

[*English*]

As the government undertakes the study, development and implementation of a permanent program, a few issues deserve further consideration. Data collection will be key in assessing the success of the temporary benefit.

The government will have to evaluate the uptake rate, identify who benefits from this subsidy, identify any gaps and measure to what extent the amount of the benefit is in line with the cost of dental care. This may be difficult to accomplish, and there are certainly some privacy considerations. However, this is something that should be considered before we implement a more robust and hopefully data-driven, longer-term program.

Minister Duclos assured us in committee that his department will monitor health and other outcomes, and improve the benefits as required. Health Canada also confirmed that it will be receiving statistics from Canada Revenue Agency to see what the uptake is by province.

The Canadian Dental Hygienists Association also calls upon the government to measure access to dental care and the provision of oral health and dental care services to determine the return on investment of this newly implemented dental care program.

Dr. Siqueira strongly believes in the value of data too. Here's what he wrote to Minister Duclos:

> As the government develops and rolls out various elements of this new national dental program, researchers in dental schools can evaluate the outcomes and provide information to make changes where necessary.

With the cost of living increasing at a rapid pace, the government should also monitor any potential increase in dental fees.

Some concerns were raised in committee about the possibility of fee hikes. While legitimate, I personally don't expect any increases. Like the Parliamentary Budget Officer said, in fact, that the bill is targeted to specific segments of the Canadian population, it lessens the impact of undue profit-taking.

Dr. James Taylor, Chief Dental Officer with the Public Health Agency of Canada, also believes that if fees do go up, it would be due to cost of labour, cost of materials and not simply supply and demand.

In a follow-up written submission, the Canadian Dental Association provided information on the average treatment cost per visit. The association informed us that:

> The median claim per visits for a patient under the age of 12 was $150. Half of all claims fell between $92 and $233 [and] overall, 95.6% of all claims submitted were less than $650.

As we know, applicants with an income of less than $70,000 are eligible for a yearly dental benefit of $650. Those who make between $70,000 and $80,000 are eligible for $390, and those who make between $80,000 and $90,000 are eligible for $260.

• (1420)

Some argue that the dental benefit is not generous enough. I, too, was concerned that $650 per year may not be sufficient for basic dental care. However, now that we have received these figures, I'm reassured. Of course, it won't be enough for everyone, but it's a great start. Let us not lose sight of what this is: an interim benefit, a starting point.

The Canada Revenue Agency should also try to monitor that the funds it distributes are being used for their intended purposes, since eligible applicants can receive the benefit before their kids receive dental care. As I often say, trust is the currency of every relationship. I trust that parents will use these funds for the health and well-being of their kids.

We were reminded by Senator Yussuff that the CRA:

> . . . is also well equipped to guard against fraud and ensure the program is being accessed as intended.
>
> The CRA will take steps to implement additional verification and security measures up front . . . .

But this is certainly something that needs to be monitored.

In conclusion, honourable senators, Bill C-31 is a good bill. I feel it is appropriate at this time for the government to invest in Canadians who are struggling the most to make ends meet, particularly for two basic human needs: shelter and health care.

I will vote in favour of Bill C-31, but I believe the hard work is still to come. Implementing a permanent dental program will be a huge undertaking.

If the government is to pursue this initiative, it will have to consult widely, budget accordingly and legislate a program that has all the accountability and transparency measures needed to ensure its success. When the time comes, I'm confident the Senate will be ready and willing to take the necessary time to review any future dental program.

Thank you, *meegwetch*.

Hon. Brent Cotter: Honourable senators, I rise to speak in support of Bill C-31. I will speak only to the component related to the dental benefit for children.

I want to thank Senator Yussuff and, before him, Senator Lankin for their leadership on this bill. I also want to thank Senator Loffreda for his detailed, thoughtful and comprehensive comments about the bill. I will speak in a somewhat more environmental way about dentistry and this bill.

At second reading of this bill in early November, I heard one of the most remarkable things I have ever heard in the Senate. Speaking about her acquisition of dental benefits, Senator Simons said:

> As soon as I was hired on by the *Edmonton Journal*, I rushed to the dentist to make up for all those years when I had no cleaning or checkups. . . .

I am 72 years old. This is the first time in my life I have heard anyone express breathless enthusiasm about "rushing to see the dentist." Senator Simons, with that one sentence, you could become the poster person for all the dentists and dental hygienists in the country.

When it comes to dentistry — and I say this sort of humbly — I know whereof I speak. I come from a family inundated with dental professionals. My sister is qualified as a dental nurse and dental hygienist. She studied with Senator McCallum many years ago in Regina. For years, my sister was president of the Saskatchewan Dental Hygienists' Association. My brother-in-law is a dentist. My nieces are a dental hygienist and dental therapist, respectively. My daughter-in-law is a dentist in Germany, and my father was a dentist and professor of dentistry. They are everywhere.

Some of you have watched the "Ted Lasso" series. There is a little chant about somebody named Roy Kent in it. I'm going to leave out a word that I think we are not allowed to say here, but the phrase is: "Roy Kent! He's here, he's there, he's [everywhere]." Well, the dentists in my life are everywhere.

My father was the finest person I have known in my life, with this one exception: When I was a kid, every now and then on a Saturday morning — when I wanted to be almost anywhere else — he would drag me off to his dental office for some painful treatment.

Working on your own children is probably not allowed anymore, but this was a long time ago — I believe shortly after dentistry had been invented. He used interesting — and now antiquated — pain-management techniques. One I recall is that he used to tug sharply on my cheek, so painfully that I didn't notice the freezing needle going in. It was an interesting technique — to cause pain to distract from pain. I feel that I come by my aversion to dentistry and the dental profession honestly.

To moderate these somewhat uncharitable perspectives, I will add this comment and one story. Every dentistry professional I know has been deeply committed to their work and loved their work, knowing they were making things better for their patients. This is true for many occupations and professions — not just dentistry but carpenters, counsellors, painters, plumbers — the greatness of doing something honourable to help your customer, client or patient.

I want to share with you one example of this — a dentistry story. It is a bit gruesome, but also beautiful.

Late in his career, my father acquired a specialty in prosthodontics and maxillofacial surgery. They are big words, but the first one basically means false teeth, and the other is jaw and facial reconstruction. At the time, he was perhaps the only specialist in that area in Saskatchewan.

He was asked on one occasion to help a patient who had experienced a severe facial cancer and had to have part of his jaw and all of his nose removed to defeat the cancer. My dad was asked to do the jaw and nose reconstruction, which he did. What remained was both to rebuild the jaw and then to build the patient a new nose. It sounds gruesome, I admit.

He created that nose out of material, shaped it, firmed it up by whatever techniques, and got it in the right shape and skin tone for the patient, corresponding with the patient's original nose. He noted in the picture he had of the patient that it wasn't quite right.

I started laughing when I wrote this out. I apologize.

The man, it seemed, had a close relationship with alcohol and had had a very veiny nose. My father went to the art store and bought paint and a paintbrush with only one bristle and brought them home. At the kitchen table, with this man's new nose on the table, he carefully painted veins onto the new nose. Then, to get it just right — I'm sorry to be sharing this — he pulled nose hairs from his own nose and glued them, one by one, to the man's new nose.

That surgery saved the man's life, but this reconstruction — nose and all — gave him back his life. It is pretty gruesome, but also pretty great.

Returning to my main point: Whether I wanted to go to the dentist or not, I got dental care — as did Senator Simons eventually, as do all of us here and our families, and as do millions of Canadians across the country, as Senator Loffreda pointed out. However, many do not.

As Senator Yussuff noted in his second-reading speech, perhaps 25% of our population does not have access to dental care. There are consequences to that lack of care. We all know what it is like to have a toothache and how pain of this sort, in such a small part of our bodies, can overwhelm us and be debilitating. But there is more to it than that. Longer term health care for all of us is closely tied to dental care.

Let me give you an example. I was visiting my dentist recently — not enthusiastically — and he started to tell me about the importance of the health of my gums and that, if you don't take good care of them, it can lead to heart disease and death. This sounded a bit extreme, kind of like a car salesman telling you that you have to buy the most expensive car on the lot or you will die in a car accident. So I looked it up and, sure enough, my dentist was right. Good dental care is fundamentally important to overall health.

Then the question is posed: Why are dental services not available to more Canadians? Access is an issue in rural and remote parts of the country, as Senator Loffreda and others have pointed out. However, the largest reason is because dental services are expensive. They are expensive to provide. For dentists, at least, the education is long, arduous and expensive. At the University of Saskatchewan, the tuition for the dentistry college is among the highest of any university program in Canada. Dentistry professionals, to be fair, earn a good living. Indeed, my father, when he was teaching dentistry, probably inadvertently contributed to this. When he was helping students in the clinic make false teeth — upper and lower sets of dentures — he used to think he was giving advice to them in terms of how to be a dentist in practice. What he used to say to them was, "After you have made the dentures, the patient is sure to ask, 'So doc, how much?'" And he would continue, "What you say then is '$700,' and then you pause, and if there is no reaction, you would say, 'for the uppers.'"

• (1430)

The reality is that even now the demand for dental professionals is overwhelming. Most dentistry services operate at full capacity, and dentists can hardly find dental hygienists to support full-service dental practices. So market forces alone will not solve the problem of access. Into this context comes this bill. It's the beginning of a regime of dental coverage that will make meaningful differences in dental care for some millions of lower- and modest-income Canadians who, mostly due to cost, are simply unable to access basic dental services. Too many families, whether in these somewhat more inflationary times or otherwise, have to choose to use their limited resources on food, rent, clothing or other needs for their families, and children's needed dental care goes wanting. The dental insurance program, of which this bill is a start, will address the beginnings of that gap in services.

This bill is focused on dental care for children only — more coverage will follow, as we've heard — but for kids' dental health and to address the cost burdens for lower- and modest--income Canadians, it's a good start. All of this is great, and I support the initiative. However, as Senator Loffreda noted, there's more to be done, and I want to highlight one aspect of it.

I would call this a knock-on consequence of the program that is unfolding, beginning with this bill. As leaders of the profession and particularly dental educators have told the finance committee, the program will require a significant increase in the supply of dental professionals in order to ensure that caregivers are available at affordable prices to meet a significant increase in demand for dental services. Indeed, that's what we hope. At committee, Dr. Siqueira, the Dean of the College of Dentistry at the University of Saskatchewan, noted this and the way in which, for example, the University of Saskatchewan is well positioned to take on this challenge, having brought a full range of dental professionals' education — dentists, dentistry specialists, dental hygienists and dental therapists — under one umbrella within his faculty. But it should be noted — and this is, I think, an important future point — that nearly all the educational programs that will be looked to in order to meet the needed and significant increase of dental professionals fall within provincial jurisdiction over education. It will be critical for the Government of Canada in the coming years to have a plan to work with the provinces and territories in partnered, respectful and potentially financially supportive ways to get us to that goal of affordable, good-quality dental health for all Canadians.

In the spirit of cooperative federalism that has been the way forward for most of the life of our country, I'm hopeful that such partnerships will develop and prosper and Canadians will benefit. Thank you.

Hon. Pat Duncan: Honourable senators, I rise to speak to third reading of Bill C-31, An Act respecting cost of living relief measures related to dental care and rental housing.

You may have heard the phrase, "Sometimes, the hurrier I go, the behinder I get." Anyone who has tried to make a hand-crafted gift with a deadline — Christmas is coming — or tried to assemble a bed intending to sleep in it that night will in all likelihood agree with that statement. In other words, sometimes we need to take things a little slower or at least obey the speed limit to get to our destination.

Honourable senators, we've heard several times in this chamber, and will likely hear several more times, that the goal should be the good rather than the perfect. I've also heard legislation compared to sausage making: You really don't want to be aware of all the ingredients and effort it takes to make a tasty end product.

Legislators are also likely familiar with Miscellaneous Statute Law Amendment bills. These are bills that need to be introduced when renumbering is required, the French translation is not quite correct, the English translation is not right or there's a minor name change, and are sometimes referred to as housekeeping bills. These are not popular with either the opposition or the government.

Bill C-31 has clearly been prepared fairly quickly as there are a number of details yet to be ironed out. We've been advised that it's an interim measure. Although Bill C-31 is not as finely tuned as we in this chamber might like, if approved in the chamber, it will provide relief to Canadians paying a substantial portion of their limited income on rent and provide money for dental care for young Canadians without a family dental plan. The intent of this bill is absolutely necessary, and in these challenging times, it is absolutely essential that this money be provided as soon as possible. I support this bill and its immediate passage. My remarks will be brief and focused on the dental provisions of this legislation only.

Honourable senators, I cannot in all good conscience vote in favour of Bill C-31 without ensuring that a serious concern is placed on the record — to use the words of another political adage, to "hang a lantern on the problem."

Repeatedly, through the media and at the Senate's National Finance Committee, we've been made aware that the details of the dental health program will be modelled after the Non-Insured Health Benefits program — or NIHB, as it is called. Allow me a few moments to provide some background.

In the words of Manitoba's then-premier Gary Doer back in 2000, when the Western premiers were discussing — oh, surprise — more money for health care, Canada is the fourteenth province or territory at the federal-provincial-territorial health care table. Canada has a fiduciary responsibility for the health of First Nations, Métis and Inuit Canadians. There are other federal responsibilities, like that of the Canadian Armed Forces. I'm focusing my remarks today on the Indigenous recipients of health care services that are provided through the NIHB program. At the very practical level, let me explain the Yukon situation.

If you're over 65, your Yukon health care card entitles you to several services that are beyond the usual publicly funded services — for example, prescription glasses, dentures and certain pharmaceuticals. These are all approved and paid for at the territorial level through the Government of Yukon's health care services — unless you're a status member of a First Nation. For these Yukoners, the drugs are approved and paid for through NIHB, as are glasses and dental services. This presents the first very serious concern with this bill. Dental services are already provided to Yukon First Nations children. The bill does not apply to Indigenous children in Canada except that, in the administration of this temporary program, any services over and above those provided by NIHB and paid for by parents might be reimbursed up to $650 or according to any other program adjustments that are made by the government. I'm compelled to raise serious red flags with the government's intent to model the NIHB system or to use something similar, even temporarily, to provide these necessary dental services.

Honourable senators, allow me to share another example that I shared with my colleagues at the National Finance Committee. In British Columbia, the provincial fee schedule sets out a dental primary complete exam at $87.30; the Non-Insured Health Benefits program covers $65.94. In Alberta, the fee is $77.18, and the NIHB program covers $74. The fees in the Yukon are $118, and NIHB covers $95.97. This means that under the Non-Insured Health Benefits program, there's 76% coverage in B.C., 96% in Alberta and 81% in Yukon. That's two provinces and one in three territories. There are different coverages by NIHB throughout the country.

• (1440)

Rather than simply accepting my entry of this issue into the record of this debate, I invite senators to review the Canadian Dental Hygienists Association's submission to the National Finance Committee. Their letter, dated November 1, stated that the NIHB platform does come with challenges that governments should — and I would say must — address to ensure a seamless and less cumbersome process for the authorized oral health professionals working with the program.

Senator Colin Deacon, in his question a few moments ago, made a very reasonable suggestion that I do hope the officials working on this program will take into account.

Honourable senators, I'm not the first senator to raise concerns regarding NIHB in this chamber. As recently as May 17, 2022, speaking to Bill S-242, our colleague Senator Yonah Martin, at page 1427 of the *Debates of the Senate*, said:

> According to the Indigenous Services Canada website, mental health providers ". . . must be enrolled with Express Scripts Canada . . ." an online health management tool ". . . in order to bill the [Non-Insured Insurance Health Benefits] program for services provided to eligible First Nations and Inuit clients. Please note that providers who are not enrolled with Express Scripts Canada **will no longer be able to submit claims** for the NIHB program."

Colleagues, I appreciate this is delving deeply into the administrative details of the legislation. It is where the rubber hits the road. We want to ensure that these benefits are paid to those who need them and that the government's intentions with this legislation are realized.

Ministers' mandate letters contain the phrase "a whole-of-government" approach. This benefit program needs to take a whole-of-government lens to examine what works in some areas and what does not, to ensure that the benefits intended in Bill C-31 will use the information that is available and develop the very best program. I, for one — and I believe I can count on my colleagues at the National Finance Committee, as well as all of you, in our efforts of transparency and accountability — will be watching. We will be observing the results.

Honourable senators, I commend the government's intention with the dental program and the rental program in Bill C-31 and I look forward to the performance results. I hope that with these comments, drawing your attention to the challenges of the NIHB program, and with the current attention to health care in Canada, perhaps with some semblance of federal, provincial and territorial cooperation, we will see a closer look being taken at services like Non-Insured Health Benefits and that First Nations, Métis and Inuit Canadians — all Canadians — can look forward to improved services that all Canadians deserve.

I'd like to express my sincere thanks to Senator Yussuff for his sponsorship of the bill and all my colleagues for their speeches. I certainly commend it to the House, to this chamber. Thank you very much for listening to my remarks today. *Mahsi'cho. Gùnáłchîsh*.

[*Translation*]

Hon. Clément Gignac: Honourable senators, I rise today at third reading to speak to Bill C-31, An Act respecting cost of living relief measures related to dental care and rental housing, which was passed by the House of Commons on October 27, 2022. I would like to acknowledge all of my colleagues who have spoken so far and thank them for their thoughts. In particular, I would like to recognize the work of Senator Hassan Yussuff who so ably sponsored this bill in the Senate.

[*English*]

As a member of the National Finance Committee, I feel privileged to have had the opportunity to study this bill. While some have pointed out to me that this bill, with over 35 pages, had been approved in clause-by-clause consideration at the National Finance Committee in just 15 minutes, without any amendments or observations, I would like to point out that this does not reflect all of the upstream work they had done on this bill under the leadership of our chair, Senator Mockler.

Indeed, we had five special meetings dedicated to this bill and heard from nearly 25 witnesses, including 3 federal ministers who were present at the same time before the Senate committee, probably a first in our recent history.

[*Translation*]

As stated previously, the purpose of Bill C-31 is to relieve the pressure that low-income individuals and families in Canada are experiencing. Unfortunately, they are the ones hit hardest by rising inflation. To be precise, where household income is below a set limit, this bill will provide up to $650 per year for two years to help pay for dental care for children under the age of 12 and up to $500 in a single lump-sum housing benefit for Canadians in need. Although the housing and dental benefits in Bill C-31 are temporary, they will still help those in greatest need.

I will now get into detail about each of the two measures in the bill.

Regarding the temporary dental benefit, the Parliamentary Budget Officer estimates that the program will cost approximately $700 million until a permanent Canadian dental plan is established in 2025. During meetings of the Senate Committee on National Finance, I raised three concerns, which I would like to share with you.

[*English*]

As our colleague Senator Seidman demonstrated during the second reading of the bill, all the provinces have already implemented dental care programs, even if the coverage of these programs is very different from one province to another.

In Quebec, there is already a universal dental care program for young children under 10 years of age. This is partly why the Parliamentary Budget Officer, or PBO, estimates that Quebec would represent only 13% of the total cost of this new temporary federal program, despite representing a quarter of the Canadian population.

[*Translation*]

Given the federal government's intention to extend this plan on an ongoing basis over the coming years to young people 18 and under, seniors and persons with disabilities, in a provincial jurisdiction no less, it is incumbent on the government to be flexible and consider that the provinces may use provisions to opt out with financial compensation, which is obviously conditional on meeting certain conditions.

At the same time, this pragmatic approach would be more respectful of a decentralized federalism, especially since the dental and dental hygiene professions are regulated by the provinces. What is more, the recommended fee structure for dental care delivery varies from one province to the next. In short, while supporting the federal objective to ensure universal dental care coverage from coast to coast to coast, in particular for young people, I hope the federal government — a bit like Senator Mockler was saying — is receptive to the demands of the provinces — including Quebec — that may want to administer their own dental care system with full compensation, if the conditions are met, obviously.

As I previously said in committee, there is already tension in federal-provincial relations in the area of health, as we saw in Vancouver, and there is no need to add another layer of tension by establishing a national dental care plan without consulting the provinces.

My second concern relates to the ability of dental clinics and all associated practitioners to suddenly accept all these new clients without imposing generalized fee hikes or increased wait times for current clients, who often find it difficult to get appointments.

We learned at committee hearings that there is a shortage of dental hygienists in Canada and that people have trouble accessing a qualified dentist across the country, especially in our more remote areas.

Let's hope that the Canadian Dental Association and the Canadian Dental Hygienists Association will be able to work with educational institutions across Canada to address this challenge and provide these necessary services to all eligible young Canadians.

Let's also hope that dental clinics will strictly abide by the fee schedule proposed by their professional association and will not take advantage by imposing a small surcharge, given the immediate increase in demand that may occur.

My third concern is the total annual amount that Canadian taxpayers will have to shoulder when the dental care plan is implemented in 2025. For now, the government expects that the annual recurring cost of the future dental insurance plan would reach $1.7 billion effective in 2025.

• (1450)

That does not take into account the fact that some employers might take advantage and decrease the dental coverage in their own dental insurance plan in order to save money. On that point I have the same concern as my colleague, the honourable Senator Loffreda. What monitoring mechanism will be in place to prevent a considerable increase in the bill to Canadian taxpayers and to ensure that employers do not opt out to leave the government on the hook instead?

So far, no one has really been able to give us any answers. With rising inflation and the uncertainty surrounding the behaviour of employers toward this national dental plan, you will allow me, dear colleagues, to express some concern and a bit of skepticism about the estimated cost of $1.7 billion a year for this future plan, starting in 2025.

[*English*]

As we say in English, "Stay tuned."

[*Translation*]

My next comments will focus on the second component of Bill C-31, the creation of a $500 one-time benefit for low-income Canadian renters. If this bill is passed, this benefit would be available to those who spend at least 30% of their income on rent in 2022, and whose income is less than $20,000 for a single person or less than $35,000 for a family. The Parliamentary Budget Officer estimates that the cost of this one-time measure will be close to $1 billion.

Just as we did during the study of Bill C-30, in committee we raised the fact that, on average, 10% of Canadians, especially the poorest, do not file income tax returns for a variety of reasons. That percentage is even higher in Nunavut, as Senator Patterson has already mentioned. Consequently, these people will not receive the $500 one-time benefit unless they finally file their previous year's return. The Minister of Revenue, in her testimony before the committee, tried to reassure us that she was doing everything in her power to encourage low-income Canadians to file their tax returns so they could access this program.

[*English*]

In conclusion, honourable senators, these targeted programs provided in Bill C-31, and contained in the recent Bill C-30, to help low-income Canadians are great initiatives that deserve our support.

However, as pointed out by Senator Cotter, the federal government needs to, and should, consult the provinces to find out — in good faith — which level of government is best placed to provide those dental services, given the fact that this is regulated by the provinces.

For now, the federal government has been able to launch many new initiatives over the last 12 months while significantly reducing deficits at the same time — thanks to inflation because inflation helps the government in terms of revenue.

One day, and, perhaps, not far away, the source of federal revenue will be less prolific and dry up due to a potential recession or geopolitical risk. We should avoid repeating the experience of the 1990s when it was the provinces that took the hit from the consolidation of federal finances, with massive cuts made to transfer payments to the provinces from Ottawa, due to the spending spree that had been put in place in the previous years.

[*Translation*]

In closing, I would like to thank all of my colleagues on the Standing Senate Committee on National Finance for their analyses and their commitment. I am already looking forward to examining the next bill with them, Bill C-32, which concerns the November 3 economic statement and promises to be rather substantial, since it is 172 pages long. At that time, I will have a lot of things to say about the various federal government initiatives in the wake of this pandemic and especially about the threat that the potential deterioration of the economy could pose to our public finances.

In the meantime, honourable senators, I will support Bill C-31.

Thank you.

Some Hon. Senators: Hear, hear!

[*English*]

Hon. Elizabeth Marshall: Honourable senators, I also rise to speak to Bill C-31, and, before I make my comments, I would like to thank Senator Yussuff, the sponsor of the bill; Senator Seidman, the critic of the bill; and all my colleagues who have spoken to the bill.

This bill will provide financial assistance for two unrelated programs. The first is to provide a dental program for children under the age of 12 years old if their families meet the criteria defined by the act. The second is a rental program to provide financial assistance to individuals and families who rent if they meet the criteria defined by the act.

Since the two programs are unrelated, I will begin by commenting on the dental program for children under the age of 12 years old. The dental program outlined in Bill C-31 is phase

one of a national dental program, which was announced in Budget 2022. That budget proposed to provide funding of $5.3 billion over five years, beginning with $300 million this year, and $1.7 billion annually thereafter to provide dental care for Canadians.

The program will start this year with children under the age of 12 years old, and then expand next year to children up to 18 years of age, seniors and persons living with a disability.

Full implementation of the national dental program will occur in 2025. For this year, the dental program is restricted to families with an income of less than $90,000 annually, with no copays for those with an annual income of less than $70,000.

Health Canada officials told our Finance Committee that this program for children under the age of 12 years old is estimated to provide dental services to half a million children across the country.

Budget 2022 estimated that the cost of this dental program for children under the age of 12 years old during this fiscal year would be $300 million — compared to the estimated cost of $247 million, as disclosed by the Parliamentary Budget Officer.

However, the Parliamentary Budget Officer, in speaking about the estimated cost of the dental program, told us it would be to the advantage of legislators to have much stronger projections than we currently have with respect to not only Bill C-31, but also to the dental program as a whole. He said that Bill C-31 is only a down payment on a program that is supposed to be much larger and permanent. To emphasize this point, he went on to say that, in his opinion, he does not think it is normal that we do not have better information.

Another major issue discussed at committee was the harmonization of the dental program with existing programs — or should I say, the lack of harmonization. During testimony at our National Finance Committee, we could not get a clear description of how the proposed federal dental plan will be harmonized with provincial plans and private insurance plans.

A 2019 study by the Canadian Agency for Drugs and Technologies in Health, or CADTH, identified over 80 different public oral health programs across federal, provincial and territorial jurisdictions with significant variations between these programs in terms of eligibility criteria, services covered and reimbursement rates.

While this indicates that there is public sector funding for dental care in Canada, most dental expenses are either paid using private dental insurance, or paid for out of pocket by individual Canadians or their families.

Mr. Giroux, the Parliamentary Budget Officer, said in his testimony that he did not see any provision in the legislation that seeks to harmonize a new dental program with existing programs. Rather, children whose parents have private dental insurance are not eligible, and those who are covered by a provincial plan are eligible only to the extent that they have out-of-pocket expenses. Provinces and private plans are first payers, and the federal plan comes in after. He said he has not seen any intention to harmonize the plan.

The Canadian Dental Hygienists Association, or CDHA , in their testimony, expressed concern that Canadian employers will repeal private dental plans to offload coverage to the federal plan. Similarly, there's also a concern that provincial plans will be scaled back once the federal plan is implemented. However, Minister Duclos, the Minister of Health, has assured the committee that no displacement or crowding out of existing plans is anticipated.

• (1500)

Dr. Walter Siqueira, Dean of the College of Dentistry at the University of Saskatchewan, told our Finance Committee that dental students at the 10 dental schools across the country provide professional dental services to many patients, including some patients who will benefit from the proposed dental program. These services are provided at a lower cost, and dental students are provided with practical experience before they graduate. Dr. Siqueira indicated that dental students at the dental schools are concerned they may lose some of their patients to the new program, and this would be a big loss to the students and the dental schools.

Several senators were interested in determining the results of the dental program, which would include a comparison of the cost of the program with cost savings in health programs which are left to deal with the problems resulting from poor dental health in children. I have spent a significant amount of time studying Departmental Results Reports in which many government departments and agencies cannot even meet half of their self-imposed performance standards, so I'm doubtful that any cost-versus-savings analysis will be done.

Mr. Giroux, in responding to the question, said the following much more eloquently than I can. He said that it's essential to try to capture the benefits and measure whether they have meaningful results. However, he had not seen or heard anything to indicate the government intends to measure the benefits of the dental program, and if the past is any indication, he said he's not confident it will be done. He concluded that ". . . it's unlikely we'll see the government measuring the impacts of Bill C-31, which is unfortunate."

Incidentally, Health Canada in its 2020-21 Departmental Results Report indicated it had met only 42% of its performance indicators, while the Public Health Agency of Canada indicated it had met only 29%.

Honourable senators, I support a dental program for children, whether it be federal or provincial or a combination of the two. As a former elementary school teacher, I have seen first-hand the results of poor dental hygiene in school children under the age of 12 years. It is not only the poor condition of their teeth but the pain and discomfort the children must endure when they have dental problems but no access to dental services. Dental day surgery for children is not uncommon. In a country such as Canada, all children should have access to a dentist and receive regular dental care.

It is unfortunate that the federal government is not proposing a real dental program. It is a missed opportunity to ensure that the children are actually receiving dental services. What government is proposing in Bill C-31 is financial assistance to low-income families, with no assurance that children will actually receive all the dental care they need. Even the Canada Revenue Agency could not tell us what post-disbursement procedures will be carried out to ensure that a child actually receives dental services as a result of the money paid out.

My final comments on the dental program relate to the adequacy of the funding to be provided. There are two benefit periods: October 1, 2022, to June 30 of next year, and then from July 1 of next year to June 30, 2024. Benefits would be $650 per child if the family's adjusted net income is less than $70,000; for higher-income households, $390 for each child if the family's adjusted net income is between $70,000 and $80,000; and $260 for each child if the family's adjusted net income is between $80,000 and $90,000.

There was some discussion regarding the adequacy of the funding and what recourse the family would have if the amount approved were not sufficient.

The Canadian Dental Association informed us that based on a representative sample of more than 109,000 electronic claims submitted in March of this year across all provinces and territories, the median claim per visit for a patient under age 12 years was $150. The association said that, overall, 95.6% of all claims submitted for children under age 12 were for less than $650. This was consistent across jurisdictions, ranging from a low of 91% to a high of 99%. So while it looks like the amount might be sufficient for most children, it still does not resolve the issue if a child's dental services require more than the amount that's stipulated in the legislation.

The dental program defined in Bill C-31 is not a dental program but rather a financial assistance program administered by the Canada Revenue Agency, an agency whose primary function is to administer tax laws for Canada and most of the provinces and territories to collect taxes. The dental program does not even reside in the Department of Health or the Department of Social Development.

Honourable senators, Bill C-31 is also proposing to provide a rental program of $500 to individuals who rent and meet the criteria stipulated in the legislation. Rental rates across Canada continue to increase, and the Bank of Canada's increase in interest rates will impact the country's rental market. According to the Toronto Regional Real Estate Board, rent in just Toronto has increased 20% compared to last year. The objective of the government's rental program is to assist low-income renters by providing $500 in financial assistance. The government estimates that this program will provide financial assistance to 1.8 million renters.

To qualify, renters must meet several criteria, although officials from the Canada Revenue Agency told us that compliance with all of the criteria will not be confirmed prior to issuance of the cheques. They told us that the adjusted net income ceilings of $20,000 for individuals and $35,000 for families can be verified through the tax system, and the applicant will have to provide information that the rent paid during 2022 was at least 30% of their adjusted net income. So, as they put it, there will be validation up front of that calculation; however, there will be no confirmation of rent paid. Rather, the Canada Revenue Agency intends to set up audit and compliance checks subsequent to payment of the cheques, but officials could not provide us with any information regarding post-payment audit and compliance checks.

Budget 2022 estimated that this $500 benefit would cost $475 million. The government has since increased that estimated cost of $475 million to $1.2 billion, or more than twice the original estimate. I mention this because this is quite a significant increase, and I question how the government could be so wrong. The Parliamentary Budget Officer estimated a cost of $940 million for this program but could not reconcile his estimated cost of $940 million with the government's original estimate of $475 million or the government's revised estimate of $1.2 billion.

The Maytree Foundation, a private charity, in its brief to the committee, recommended that the requirement for applicants to pay at least 30% of their income be dropped, since the ceiling on adjusted net income for both a single person, at $20,000, and a family, at $35,000, is so low that any proportion spent on rent would be a financial burden. They also said that the section of the act which allows applicants living in multi-tenant dwellings to use only 90% of their income to determine whether they pay at least 30% of their income on rent is unfair. It is possible that by using 90%, it would just barely prevent people from accessing the benefit.

While government committed in Budget 2022 to provide financial assistance to renters, it is not addressing the issue of rising interest rates and the increasing cost to homeowners of paying their mortgages. Budget 2022 contained a number of initiatives to encourage people to buy their homes. This was accompanied by assurances from the Bank of Canada that interest rates would not increase. In fact, in June of 2020, the Bank of Canada dismissed concerns regarding interest rate hikes.

In closing, I'd like to make a general comment on the financial assistance provided to individuals and families. We have recently seen a bill providing additional GST rebates. This bill provides a dental program and rental assistance. I'm confident there will be additional assistance in the future, including those in the *Fall Economic Statement 2022.* Each program has its own criteria, its own income ceilings and, in some cases, staggered levels of assistance within the programming.

Has the government determined who benefits not only from each individual program but from all the programs as a group? Are the same individuals and families being assisted by each of the programs, and, if so, why not have just one program or two programs? Or is each program assisting a different group of individuals and families? If so, are these the families most in need? Finally, are any individuals and families whom the government should be helping being left behind because of the criteria being used in the various programs? Thank you, honourable senators.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Ovide Mercredi, Gerry Daly, Danielle Mercredi and Jason Taylor. They are the guests of the Honourable Senator Pate.

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

Hon. Senators: Hear, hear!

• (1510)

COST OF LIVING RELIEF BILL, NO. 2 (TARGETED SUPPORT FOR HOUSEHOLDS)

THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Yussuff, seconded by the Honourable Senator Kutcher, for the third reading of Bill C-31, An Act respecting cost of living relief measures related to dental care and rental housing.

Hon. Kim Pate: Honourable senators, please note that I am delivering this speech today on behalf of our colleague Senator Mary Jane McCallum. What follows are her words:

> Honourable senators, unfortunately, I have tested positive for COVID-19 so I am unable to be in the chamber at this time. Without having the ability to participate virtually as was previously afforded to senators in this situation, it is regrettable that I cannot give these remarks myself.
>
> I find this fact particularly perplexing, as we have seen committee witnesses exercise their privilege of appearing before committees virtually, yet this same possibility is not afforded to senators. While I do not want to spend more time than necessary on this matter, I feel it prudent to mention that I am proof that the current pandemic is still ongoing. The Senate has gone to great pains to establish the infrastructure for senators to participate virtually, should they be physically unable to attend in person. I remain disappointed that we continue to not be afforded that option.
>
> I would like to begin with the unfair and arbitrary deadlines for having Bill C-31 come to its third reading vote in the Senate. As some of you may remember, I highlighted my concern over the climate and intent in which this bill is being passed. I have seen first-hand how critical oral health is to our overall well-being. But allowing for its swift passage will not do it justice, as it does not meaningfully address dental disease.
>
> Countless health professionals in the dental field have long awaited such a program. Dental professionals have always been aware, however, that when the opportunity arose, we would only get one proverbial kick at this can. We have one chance to do our best to get it right. The benefit that such a program could yield is immeasurable. However, handing cheques to people who attest to their intent to seek dental services cannot reasonably be called a program.
>
> One concern I have with this bill is with regard to an omitted dental care service provider. Within the definitions section of this bill, it explicitly names dentists, denturists and dental hygienists as being lawfully entitled to provide a suite of dental services. However, a critical group that has been left out is dental therapists, who are registered and licensed dental professionals in their own right. They are trained to perform basic clinical dental treatment, including preventive and restorative treatments, as well as general disease prevention and oral health promotion. Moreover, much of the work that they do is targeted to youth, who are explicitly the intended benefactors off Bill C-31. Neglecting to name dental therapists as dental care service providers under this bill is a serious oversight, as this means they will be unable to provide these services to specific groups of children, thereby creating a patchwork of provincial dental programs directed at these very youth.
>
> While we explored the idea of an amendment to include dental therapists, it was deemed not feasible within the scope of the bill.
>
> Colleagues, another concern I have with the bill is that the benefit flows directly to the applicant as opposed to the service provider. It is not infrequent that dentists end up taking a loss on many of the services they provide by not receiving direct payment and have no recourse to recovering those expenses. That is why many offices have the policy of prepayment.
>
> When looking at lower-income families, we must not lose sight of the fact that many of them face choices that may be unimaginable to us in our collectively held positions of privilege. For many Canadians, receiving $650 is quite substantial.
>
> Although the money may very well be claimed with the right intent and purpose, life happens. It is not unthinkable that some may be in a position where they must decide if the pot of money sitting in their account is really better served for dentistry or for food, rent or clothing. These challenging decisions are a reality for far too many in our country.
>
> This, colleagues, is what we refer to as the social determinants of health. For too many Canadians, there will always be more pressing concerns surrounding basic necessities. It is these determinants that act as indicators of why some of our more vulnerable populations have higher morbidities and worse health outcomes than other populations across Canada. I had also considered an amendment on this matter, but it would have necessitated a thorough rewrite of the bill.
>
> Honourable senators, another issue I would like to raise is the fundamental lack of oversight when it comes to the appropriation of such a vast amount of public monies. If you search the bill, you will note that no reporting mechanism exists in this legislation. There is no onus on the minister to report to Parliament and give parliamentarians and

Canadians a sense of how the money is actually spent: if it was spent efficiently, if it was spent effectively, if there were concerning trends with invalid claims and, thus, unintentional misappropriation of taxpayer dollars.

Given the nature, spirit and intent of the program, I feel parliamentarians should be given the ability to know if the program is working as intended. And if it is not working as intended, parliamentarians deserve the right to know that, too.

As such, honourable senators, I bring forward an amendment to remedy this oversight. It is not changing the scope, substance or action of the bill; merely, it is adding a reporting requirement on the minister so that we, as parliamentarians, can be assured that the legislation we pass — which, again, appropriates a considerable amount of taxpayer dollars — is delivering on what it is intended to.

MOTION IN AMENDMENT NEGATIVED

Hon. Kim Pate: Therefore, honourable senators, in amendment, I move:

That Bill C-31 be not now read a third time, but that it be amended in clause 2, on page 15, by adding the following after line 17:

"**Report**

31 The Minister must cause to be tabled in each House of Parliament, no later than 90 days after the end of each fiscal year from 2022-2023 through 2027-2028 inclusive, the following information in respect of this Act for the immediately preceding fiscal year:

(a) the number of applications received for a dental benefit;

(b) the amount of total dental benefits paid, and the amount of dental benefits paid broken down by applicants' federal income tax bracket;

(c) the total amount of dental benefit paid out to applicants broken down by eligibility of the applicant under each provision of subsection 9(1);

(d) the number of applicants from whom information and documents were requested under subsection 16(1);

(e) the number of applicants found ineligible for a dental benefit under subsection 16(2);

(f) the number of reconsiderations of applications that occurred under subsection 18(1);

(g) the number of applicants who were found under subsection 18(2) to have received a dental benefit to which they were not entitled;

(h) the total amount that was paid to persons who were not entitled to receive money by way of a dental benefit;

(i) the total amount that was recovered from persons who were not entitled to receive money by way of a dental benefit;

(j) the number of instances a liability was acknowledged in accordance with subsection 21(5); and

(k) the number persons in respect of whom the Minister is of the opinion that the person has committed a violation within the meaning of subsection 23(1) and the total amount of penalties imposed under subsection 23(2).".

Thank you, *meegwetch*.

Hon. Hassan Yussuff: Honourable senators, I would first like to thank Senator Pate for delivering Senator McCallum's concerns with regard to this bill. I want to thank Senator McCallum for her efforts in attending the National Finance Committee to raise some of these same issues directly with the minister — and others — when he was there with regard to the application of the benefit and how we might deal with some of these concerns.

Let me start by dealing with the issue of fraud. As is stated in the legislation, applicants' income eligibility, presence of children and their age will be verified, of course, at the time an application is made — and through the CRA's existing information system — before payment is made.

When applying, an eligible parent will be asked to provide the following information to confirm eligibility: the contact information of a dental professional who did or will provide a dental service; the contact information of their employer, if they have one, for the purpose of verifying access to employer dental care; and any other information requested to verify their eligibility.

Applicants will be made aware that they will need to be able to demonstrate that they meet the required eligibility conditions. This includes demonstrating that they had out-of-pocket costs that they used the benefit to pay for, as intended, for example, by showing receipts.

• (1520)

In addition, after the fact of verification and audits, a process will be used according to CRA's standard practices and using the powers set out in the bill.

The CRA continues to enhance the security of its digital services to protect Canadians from fraudulent activities. These include security features such as multifactor authentication and making email addresses mandatory for those who use CRA's My Account.

In cases of deliberate and serious misuse, like for other government programs run by the CRA, CRA will have a range of tools at its disposal as set out in the draft legislation to maintain

the integrity of the program. The dental benefit act defines violations and criminal offences in relation to the benefits provided under the act, such as using false identity information, as well as punishments, including fines and possible imprisonment.

There is no question — I think the point that Senator McCallum is raising that families struggling with many issues that in terms of trying to manage a family and providing for their children, they might misuse the benefits. I know many working families are honest and well-intentioned in regard to what this money is provided for. I cannot say for certain that fraud may not occur, but should fraud occur, the legislation clearly provides remedy under CRA's authority to go after those families. I'm hoping this will not be the case to a large extent.

Honourable colleagues, I believe on that point the legislation meets some of the points Senator McCallum was raising.

It is true that dentists would prefer to have upfront payment. I know this for a fact. When I go to my dentist, I have to pay upfront. Again, as the legislation stipulates, a family can apply to CRA before they receive treatment and get the money before they will get the treatment so they can pay the dentist before their children's needs are provided through that dentist.

On the last point, in regard to dental therapists, this is an important issue raised by Senator McCallum, but I think it's been raised by others. Dental therapists provide an important service in regard to prevention and care for children, as it is for adults. The reality is the bill is not clear on this issue. I think the minister heard Senator McCallum's point loudly when she was before the committee. It is my hope as the government rolls out this legislation — should it get the support of senators here today and receive Royal Assent — they will clarify this point because I think that they provide an important service. I would simply ask senators to vote against this amendment because I believe it will delay the passage of the bill, but equally many of the points have been heard to a large extent. Most importantly, there are provisions within the bill to deal with most of them.

On the therapist issue, I hope the government will reflect and provide guidance as to how this can be accomplished in a way that will satisfy the needs of families seeking treatment and have an opportunity to access dental therapists where they are available to provide service to children. Thank you.

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

Hon. Senators: Question.

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

Hon. Senators: No.

The Hon. the Speaker: I hear a "no." The amendment is defeated. Sorry?

Senator Plett: We said "yes."

The Hon. the Speaker: I'm sorry, I didn't hear you. All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

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

An Hon. Senator: Fifteen minutes.

The Hon. the Speaker: The vote will take place at 3:38. Call in the senators.

• (1540)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Martin
Batters	Pate
Carignan	Patterson
Housakos	Plett
MacDonald	Richards
Manning	Seidman
Marshall	Wells—14

NAYS
THE HONOURABLE SENATORS

Bellemare	Jaffer
Black	Klyne
Boehm	Kutcher
Busson	LaBoucane-Benson
Clement	Loffreda
Cormier	Marwah
Cotter	Massicotte
Dalphond	Mégie
Dasko	Miville-Dechêne

Deacon (*Nova Scotia*)
Deacon (*Ontario*)
Dean
Duncan
Dupuis
Francis
Gagné
Gerba
Gignac
Gold
Harder
Hartling
Moncion
Omidvar
Petitclerc
Quinn
Ringuette
Saint-Germain
Simons
Smith
Sorensen
Woo
Yussuff—41

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Yussuff, seconded by the Honourable Senator Kutcher, for the third reading of Bill C-31, An Act respecting cost of living relief measures related to dental care and rental housing.

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

Hon. Senators: Question.

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

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

Some Hon. Senators: Yea.

Some Hon. Senators: Nay.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

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

Hon. Senators: Now.

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

YEAS
THE HONOURABLE SENATORS

Bellemare
Black
Boehm
Busson
Clement
Cormier
Cotter
Dalphond
Dasko
Deacon (*Nova Scotia*)
Deacon (*Ontario*)
Dean
Duncan
Dupuis
Francis
Furey
Gagné
Gerba
Gignac
Gold
Harder
Hartling
Jaffer
Klyne
Kutcher
LaBoucane-Benson
Loffreda
Marwah
Massicotte
Mégie
Miville-Dechêne
Moncion
Omidvar
Pate
Patterson
Petitclerc
Quinn
Richards
Ringuette
Saint-Germain
Simons
Smith
Sorensen
Tannas
Woo
Yussuff—46

NAYS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Carignan
Housakos
MacDonald
Manning
Marshall
Martin
Plett
Seidman
Wells—11

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1550)

CRIMINAL CODE
CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT NEGATIVED

On the Order:

> Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator Gagné, for the third reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.
>
> And on the motion in amendment of the Honourable Senator Clement, seconded by the Honourable Senator Duncan:
>
> That Bill C-5 be not now read a third time, but that it be amended on page 3 by adding the following after line 10:
>
> "**13.1 The Act is amended by adding the following after section 718.3:**
>
> **718.4 (1)** The court that sentences an accused may impose a sentence other than the prescribed minimum punishment for the offence if, after having considered the fundamental purpose and principles of sentencing as set out in sections 718 to 718.2, it is satisfied that doing so is justified by exceptional circumstances.
>
> **(2)** The court shall give reasons for imposing a sentence other than the prescribed minimum punishment for an offence and shall state those reasons in the record.".

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak to Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act. I would like, first of all, to thank Prime Minister Trudeau and Minister Lametti, who had the courage to introduce Bill C-5. As Minister Lametti remarked in committee, Bill C-5 is a solid first step. I also want to thank the sponsor of Bill C-5, Senator Gold. Senator Gold, I have seen how hard you worked on this bill; thank you very much. I want to thank the Legal and Constitutional Affairs Committee members, who have spent a considerable amount of time and effort studying this important bill. Senators, we had more than 45 witnesses, and many, many meetings. The clerk of the committee, Mark Palmer, and analysts Julian Walker and Michaela Keenan-Pelletier have also worked very hard. Thank you.

Honourable senators, my speech on Bill C-5 today will focus on the amendment introduced by Senator Clement. Many have spoken articulately about the amendment. I adopt their remarks, and will support the amendment and Bill C-5.

Historically, we know that judges apply sentencing principles from the Criminal Code by following precedents. In the mid-1990s, this changed. The liberal government introduced mandatory minimum sentences and snatched away the discretionary powers of the judges under the pretense that they were tough on crime. Throughout various governments, policy-makers added more mandatory minimums such that today over 70 mandatory minimum sentences are enshrined into law. In fact, my office has found that in counting subsections, as courts tend to do, the number of mandatory minimums rose to 135.

In 2008, in *R. v. Ferguson*, the court maintained a strict threshold to strike down mandatory minimums and close the door to constitutional exemptions. From then on, the only way to repeal a mandatory minimum was to strike it down under section 52 of the Constitution Act, 1982, rather than using section 24(1) of the Canadian Charter. A crucial step, *Ferguson*, which was recently confirmed in *Bissonnette*, would lead the way to the dysfunctional patchwork of mandatory minimums that we witness today in Canada.

In 2015, in *R. v. Nur*, the Supreme Court struck down its second and third mandatory minimums in almost 30 years. This decision was critical in initiating the shift that's been happening across the entire landscape of mandatory minimums in the country. In *R. v. Nur*, the court reminded us there are two facets to the application of section 12 of the Canadian Charter.

Essentially, the Supreme Court explained that a judge may strike down a mandatory minimum if it's grossly disproportionate, either when applied to the case at hand or when applied in fictional and hypothetical cases. This was confirmed in *R. v. Lloyd* in 2016, but not without a warning. In *R. v. Lloyd*, the Supreme Court explained that if Parliament didn't act, mandatory minimums would soon disappear. At the decision's third paragraph, the court wrote:

> Another option to preserve the constitutionality of offences that cast a wide net is to provide for residual judicial discretion to impose a fit and constitutional sentence in exceptional cases. This approach, widely adopted in other countries, provides a way of resolving the tension between Parliament's right to choose the appropriate range of sentences for an offence, and the constitutional right to be free from cruel and unusual punishment.

Senators, that is what Senator Clement's amendment is asking for — exceptional circumstances.

The court called upon us parliamentarians to act to provide judges with more judicial discretion to ensure the stability of our current criminal justice framework. Honourable senators, we didn't listen; we did not act.

Since *R. v. Lloyd*, we know that the courts have been very active in striking down mandatory minimum penalties across all jurisdictions in Canada. We have heard of this national patchwork of mandatory minimum penalties. Beyond the four

mandatory minimums struck down by the Supreme Court, different provinces and territories have different mandatory minimum penalties in force, some having struck down more mandatory minimums than others.

Honourable senators, mandatory minimum sentencing is in a mess, and we are expecting many more Charter challenges to come. For instance, as of December 2021, a third of approximately 650 constitutional challenges to the Criminal Code were aimed at mandatory minimum penalties. There's no reason to think that courts will change course. The courts will continue to strike down mandatory minimums.

The Canadian courts keep urging us politicians to fix the patchwork we have created. Forty-three mandatory minimums, honourable senators — 43 — of the 72 mandatory minimums have been struck down in at least one province. Certainly, of the 20 mandatory minimums that are being repealed in Bill C-5, many of them have never been contested before the court, and the patchwork I mentioned will remain. The mess that we parliamentarians made will remain.

As it stands, Bill C-5 won't fix these problems. Although Bill C-5 takes a step towards cleaning up the patchwork, Minister Lametti claimed many times that he would have liked to have done more. When I asked him why he could not do more, he explained — and I understand his position — that we can't shoot for the moon. Bill C-5 is a solid first step, in his words.

Honourable senators, our courts will likely continue to strike down mandatory minimums to avoid applying disproportionate sentences, and the patchwork will only get more confusing. In its recent decision in *R. v. Sharma*, the Supreme Court reiterated its warning at paragraph 244. The majority wrote:

> Parliament's enactment of harsher sanctions in general is not the problem; the issue lies in its manner of doing so.

Honourable senators, our manner of doing so hasn't been compliant with the Charter. Rather, we have been deaf to the courts and blind to the protections of the Canadian Constitution. The courts have been sending us a very strong signal to address the patchwork of mandatory minimum penalties across Canada, but we haven't listened. Let us not allow their request to once again fall on deaf ears. Let's listen.

Senator Clement's amendment answers the plea of the judges to amend the Criminal Code while addressing the government's concerns that the remaining mandatory minimums will be struck down. With this amendment, judges will be able to apply proportionate sentences that diverge from mandatory minimum penalties without having to declare mandatory minimum penalties as unconstitutional. This way, offenders also won't have to pursue costly constitutional challenges to assert their rights.

With this amendment of Senator Clement, judges will be able to give full consideration to the sentencing principles, to the *Gladue* principles — which consider the special circumstances of Indigenous peoples — and the relevant circumstances when appropriate.

• (1600)

Honourable senators, we shouldn't be forcing judges to strike down mandatory minimum penalties when they violate section 12 of the Charter. It is up to the judges to assess the circumstances of the accused and determine a suitable sentence for their rehabilitation. This has been our criminal system for hundreds of years. All the while, offenders who commit serious crimes will be given serious sentences.

Honourable senators, when I first came to the Senate, I was taught one of the tasks of the Senate is to protect the rights of the vulnerable people and minorities. In every bill that was presented by the House of Commons to the Senate, we had to study the bill and see if minority rights and rights of vulnerable people are protected. This bill is essential to protecting fundamental rights. It is an opportunity to stand true to our role.

In 2015 many of us moved away from our party affiliations and became senators who are independent. We are now in a position to think independently and to be bold. Let us do just that.

When you vote for the amendment, I respectfully ask that you consider your role as senators. As Mahatma Gandhi once claimed, the true measure of any society can be found in how it treats its most vulnerable members.

Thank you.

Hon. Kim Pate: Thank you, Your Honour, and thank you, Senator Jaffer. Thank you to all who have contributed to this, and a special thank you to Senator Clement for moving an important and necessary amendment.

Honourable senators, as we know, the government's goals for Bill C-5 are to deal with issues of systemic racism and discrimination in our criminal legal system and to reduce incarceration rates for Indigenous and Black people in Canada. I support these laudable goals. But without this amendment, Bill C-5, although promisingly aspirational, does not go far enough and does not allow for the government's own objectives to be met.

When introducing this bill, Minister Lametti was clear that:

> . . . too many lower-risk and first-time offenders, including a disproportionate number of Indigenous peoples and Black Canadians, are being sent to prison because of laws that do not deter crime or help keep our communities safe. Along with other efforts across government, these reforms represent an important step forward in the fight to root out systemic racism and ensure a more effective justice system for all.

Unfortunately, this bill, without this amendment, will not actually result in the promised reforms. It will only scratch the surface. We cannot promote a fairer, more just legal system while mandatory minimum penalties, or MMPs, remain. At the very least, we must restore judicial discretion and allow judges to consider circumstances that warrant departure from mandatory minimum penalty frameworks.

The amendment Senator Clement introduced would allow judges to do their job and bring us closer to rooting out systemic racism.

As you have already heard, the majority of witnesses, especially those representing communities most impacted by systemic racism in the legal system, advocated for this amendment to fix Bill C-5.

Since we studied the bill in committee, the Supreme Court of Canada, as Senator Jaffer just raised, sent a clear message to Parliament via its decision in the *R. v. Sharma* case.

As Jonathan Rudin of Aboriginal Legal Services explained:

> The decision makes it all the more important that C-5 gets . . . amended to address as many of the flaws in it as possible. The Court has made it clear that criminal law policy rests almost solely now with Parliament and so it's up to Parliament to find the courage to do what the TRC asked it to do in respect of criminal justice reform.

Call to Action number 32 of the Truth and Reconciliation Commission, or TRC, urged the repeal of all mandatory minimum penalties, or at least to allow judges to not impose any mandatory minimum penalty not repealed.

As the former chief commissioners of the TRC and the National Inquiry into Missing and Murdered Indigenous Women and Girls also pointed out, without this amendment, Bill C-5 prevents judges from doing their jobs by prohibiting them from applying section 718.2(e) of the Criminal Code, otherwise known as *Gladue* sentencing principles, when sentencing Indigenous and other racialized people.

Honourable senators, it is imperative that we support Senator Clement's amendment; it offers an opportunity to counteract the crisis of overrepresentation and over-incarceration of Black and Indigenous people.

The next chance to amend mandatory minimums may not happen for many years and, during that time, too many more of the most marginalized and discriminated against will continue to face disproportionate and unfair sentences.

We must heed the advice of our former colleague The Honourable Murray Sinclair, as well as those of Justice Marion Buller, National Chief Archibald and many other Indigenous and Black experts who have urged us to be courageous and address the fundamental flaws in Bill C-5.

This amendment meets the government's commitment to the TRC Calls to Action and criminal justice reform. The time to fix this bill with this amendment is now.

Jonathan Rudin clearly and eloquently spelled out why waiting for some future action should not even be considered an option:

> "Wait." What are they supposed to wait for? . . . We already have mass incarceration. We can't wait. . . . We have to stop waiting and we have to stop pretending that waiting doesn't carry its toll, because there is a toll. The reason that we, as a broad society, can say we can wait is because we're not bearing that toll. Indigenous communities bear that toll. Indigenous children bear that toll. It's time to stop. It's time to just do what we said we were going to do when the TRC made their recommendations. This government and many people agreed to adopt the recommendations of the TRC. Let's finally do it. For goodness' sake, there is no reason to wait any longer.

Contrary to the rather isolated opinion of the outgoing criminal law section chair of the Canadian Bar Association, based on his years of experience on the ground, Mr. Rudin agrees with Senator Sinclair and so many others about the many advantages of judicial discretion, telling us,"First, it is quicker than having to challenge the constitutionality of a mandatory minimum" for each person on a case-by-case individual basis while leaving the legislation in place for everyone else. And second:

> . . . decisions of trial judges are . . . subject to appellate review. Within a few years, we would have a robust set of jurisprudence on what sort of cases merit the use of a safety valve. Introducing an amendment to permit judges to rely on a safety valve for other mandatory minimums —

— not otherwise repealed by Bill C-5 —

> — is a necessary and positive step forward.

Thank you to Senators Clement, Jaffer and Simons for such cogent and clear explanations as to how and why mandatory minimum penalties result in discriminatory sentences that disproportionately affect Indigenous and other racialized groups.

For those of you still wondering about this, though, allow me to share the testimony Alain Bartleman from the Indigenous Bar Association shared with us when he advised us that:

> Mandatory minimum sentences contribute to this crisis by placing individuals, especially vulnerable individuals, into positions where they either feel obliged to plead down to lesser offences in order to avoid the spectre of mandatory minimums or, alternatively, to stare down the prospect of running a gauntlet of section 12-related challenges.

The Native Women's Association of Canada spoke about the impact this bill will have on the lives of Indigenous women and their families:

> . . . when a sentencing judge gets to look at an Indigenous woman before them as a whole person and consider all of the relevant factors that have shaped this offender's story right up until the moment they stand before them, that's the kind of crafting they are legislatively enabled to do when mandatory minimums are repealed. They can take a wholesome and holistic approach to crafting a sentence that meaningfully considers Parliament's goals under 718.2(e) to reduce overincarceration by considering those factors and seeking alternatives to incarceration.

They went on to say the immediate impact of this amendment "will be fewer Indigenous women incarcerated" if it immediately empowers sentencing judges to avoid incarceration.

• (1610)

NWAC supports providing more mechanisms for judges to be able to consider the holistic background of Indigenous women. Furthermore, NWAC encouraged us to pass the proposed amendment — to advance reconciliation — because it:

> . . . allows judges to be judges, to do the job that we trust them to do and advance reconciliation in the courtroom after Parliament and the Senate have advanced reconciliation through amendment here.

In her submission to the Legal and Constitutional Affairs Committee, the Honourable Judge Marion Buller, the first First Nations woman judge in British Columbia and Chief Commissioner of the National Inquiry into Missing and Murdered Indigenous Women and Girls, discussed the effect of Bill C-5 on judges as preventing them from carrying out the sentencing provisions prescribed by the Criminal Code and effectively forcing them to obviate — to not apply — those sentencing provisions according to their legal obligations.

In addition, she described the impact on Indigenous families and:

> The incarceration of women resulting in the separation of the mother and child is a violation of the child's rights under the *Convention on the Rights of the Child* . . . .

Indigenous women, children, families and communities can no longer wait — and neither can any other marginalized group — nor should they be expected to sacrifice so much because we lack the courage to do what is necessary, and what is right.

Finally, when the Honourable Murray Sinclair spoke in support of this amendment at committee, he further helped us understand how mandatory minimum penalties have particularly negative impacts on Indigenous communities, and why this amendment is necessary to answer the Truth and Reconciliation Commission, or TRC, Call to Action 32. He reminded us the TRC:

> . . . called upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences. . . . This recommendation has been widely supported by Indigenous and Black organizations, women's groups and other expert bodies. Mandatory minimum sentences and the restrictions on conditional sentences are used more frequently and egregiously against Indigenous and racialized peoples, and have a much harsher impact on these groups. . . .

He added:

> I urge the government to reconsider and fully implement Call to Action 32. We need to move away from a simplistic, punitive, one-size-fits-all response, and we need to trust and allow our judges to do the job they have been appointed to do.

Also, he specifically explained why, at the minimum, this amendment is necessary by saying:

> I think short of repealing every one of the mandatory minimum provisions that are in the Criminal Code right now, another suitable amendment would be to give sentencing judges the jurisdiction and authority to ignore mandatory minimum sentences if they provide written reasons . . . . I would prefer that approach rather than looking for an amendment or looking to reject the bill because I think the bill is amendable and salvageable, based upon that kind of amendment being included.

Colleagues, this is not the perspective of a naïve, or unsavvy, individual. This is sage advice from the author of the very report that the government claims it acknowledges by offering up Bill C-5 as its response. Who am I — indeed, who are we — to challenge Senator Sinclair's expertise and experience by essentially responding, "You may be right, but we lack the courage to go there"?

This is the root of our insistence: We reject the foil of fear to take bold action at this time. Let's not make the same mistakes of our forebears when they ignored the realities of residential schools. Let's, at least, take this step to try to address the mass incarceration legacy of residential schools.

Dear colleagues, the choice today is simple. Do we listen to the majority of witnesses and experts, or do we give in to fear? Do we demonstrate the courage requested of us to take responsibility and try to fix this bill, or will we leave the burden on those who will bear the toll of consequences we could avoid? Today, colleagues, that is our choice.

I hope you will join us as we individually, and collectively, try to remedy this wrong, and make this bill fit for purpose by supporting this small step in the right direction. I hope you will join us and vote in favour of this vital amendment.

Meegwetch. Thank you.

Hon. Dennis Glen Patterson: Thank you, Senator Pate and Senator Jaffer, for your compelling speeches.

There is a concern that this amendment will mark the end of mandatory minimums, and, frankly, I'm not sure I'm willing to go that far, although I suspect that may be an outcome you would welcome, Senator Pate.

The amendment has two qualifications: There must be exceptional circumstances, and reasons must be given. My questions are as follows: Is this a vehicle to eliminate mandatory minimums? Or, for anyone who is concerned that there is still some place for appropriate mandatory minimums, will they be comforted that the two conditions will retain some balance?

Senator Pate: Thank you for those very important questions. This will not repeal any mandatory minimum penalties that are not already repealed by the bill. They will stay intact. It merely allows for a judge, after weighing all of the circumstances, to apply the sentencing principles and determine if, in exceptional circumstances, it is appropriate to impose something other than the mandatory minimum penalty. So, no, it does not remove any that are not already repealed by the bill. It leaves them in place. As Minister Lametti said, and as Senator Gold said — my view is similar — you will likely still see judges imposing penalties more severe when the circumstances call for it. Thank you.

Senator Patterson: Thank you.

[*Translation*]

Hon. Pierre J. Dalphond: Honourable senators, I'd like to begin by thanking Senator Clement for taking over from Senator Jaffer and Senator Pate, who have been advocating for the elimination of mandatory minimum sentences for years now. They are not the only ones campaigning for this.

For example, in 2015, the Truth and Reconciliation Commission, which was chaired by our former colleague, the Honourable Murray Sinclair, recommended an option similar to what Senator Clement proposed because mandatory minimum sentences resulted in the overrepresentation of Indigenous individuals in provincial and federal prisons.

The National Inquiry into Missing and Murdered Indigenous Women and Girls, which our colleague, Senator Audette, was part of, called for it too, asking federal, provincial and territorial governments to, and I quote:

> . . . thoroughly evaluate the impact of mandatory minimum sentences as it relates to the sentencing and over-incarceration of Indigenous women, girls, and . . . people and to take appropriate action to address their over-incarceration.

The Parliamentary Black Caucus, which senators Bernard, Clement, Gerba, Mégie and Moodie belong to, also recommends the elimination of mandatory minimum sentences because it finds that they result in the overrepresentation of racialized groups in prisons and penitentiaries. The Canadian Association of Black Lawyers concurs.

These are important messages from credible people. It would be a mistake for any government to ignore them.

The government chose to respond not by repealing all mandatory minimum sentences, but by proposing three targeted measures.

I would point out, incidentally, that nowhere in the Prime Minister's mandate letter to the Minister of Justice does it say that he must work to repeal all minimum sentences, but rather that he must reduce reliance on mandatory minimum penalties and develop an Indigenous justice strategy as well as a Black Canadians justice strategy.

Here are the targeted measures the government included in Bill C-5. First, the abolition of all mandatory minimum sentences under the Controlled Drugs and Substances Act, which were one year, eighteen months, two years or three years, depending on the nature of the offence, many of which have been declared unconstitutional, either by the Supreme Court of Canada in *Nur* or by decisions of the Alberta, British Columbia and Quebec courts of appeal.

However, the jurisprudence is rather confusing when it comes to superior courts and provincial courts, which do not have the authority to declare provisions unconstitutional.

• (1620)

Second, the bill proposes to do away with about 15 minimum sentences set out in the Criminal Code for offences that, according to the government's analyses, are associated with an overrepresentation of Indigenous and Black people in prisons and penitentiaries.

Third, the bill proposes to repeal most of the exclusions in the regime for accessing sentences served in the community, also known as conditional sentences.

Clearly, all of these measures will expand the options available to judges when it comes to sentencing, including the possibility of imposing shorter prison sentences and more conditional sentences. According to the Department of Justice's analyses, that should significantly reduce the rate of incarceration of Indigenous and Black people who are found guilty of an offence. However, only time will tell whether that is indeed the case.

[*English*]

Instead of proposing to eliminate all mandatory minimum penalties, also called MMPs, the amendment now before us would maintain the majority of MMPs and add a provision authorizing judges not to apply them on a case-by-case basis. Such a provision is called a "safety valve" by some, and an "escape clause" by others.

At the Standing Senate Committee on Legal and Constitutional Affairs, Senator Pate proposed an escape clause that would have allowed judges not to apply any remaining MMPs, including in cases of first- and second-degree murder, if the judge were satisfied that doing so would be in the interests of justice. A debate followed, and this amendment was defeated by a vote of 9 to 4.

The escape clause now before us is different. It will be applicable only in exceptional circumstances — a higher standard to meet. As mentioned by Senator Clement, this is the threshold applied by judges in England and Wales to justify the imposition of an imprisonment term lesser than the applicable MMP.

At committee, a leading expert in sentencing — a Canadian, incidentally — Professor Julian Roberts of the University of Oxford described this threshold as the highest one. With that context in mind, let me add that the Supreme Court of Canada considers that it is not only legal, but legitimate for Parliament, in considering sentencing policy options, to enact MMPs in order to send a powerful message of deterrence and denunciation.

Previous governments have all enacted some MMPs going back, incidentally, to Prime Minister Pierre Trudeau. However, the court said that when Parliament decides to enact an MMP, it should act carefully to avoid casting too wide of a net that could result in a breach of section 12 of the Canadian Charter of Rights and Freedoms that protects all Canadians against cruel punishment.

In the recent unanimous decision of the Supreme Court in the *Bissonnette* case, which was released in May 2022, the Supreme Court stated that an MMP is cruel only if it results, in some cases, in a punishment that is grossly disproportionate in effect to what would have been appropriate otherwise. That said, for the Supreme Court, an MMP of 25 years further to a conviction for a first-degree murder is not a cruel punishment.

Incidentally, in *Lloyd*, another judgment of the Supreme Court released in 2016, Chief Justice Beverley McLachlin said that to avoid constitutional challenges to MMPs that cast a wide net, Parliament should consider narrowing their reach so that they only catch offenders that merit the mandatory minimum sentences. She added that another option would be for Parliament to establish a safety valve that would allow judges to exempt outliers for whom the MMP will constitute a cruel punishment. She went on to say that this residual discretion is usually confined in other countries to exceptional cases, and may require the judge to give reasons justifying departing from MMPs prescribed by the law. This is what Senator Clement is now proposing.

With all this in mind, let me explain why I cannot support this new attempt to introduce an escape clause into Bill C-5.

First, the proposed escape clause is drafted to apply to all remaining MMPs, including first- and second-degree murders, high treason, crimes against humanity, impaired driving causing death and child sexual offences. To me, MMPs are fully justified in such cases to send a powerful message of deterrence and denunciation.

Incidentally, in the U.K., the escape clause does not apply to all kinds of murders.

Here in Canada, in 2013, the Criminal Section of the Uniform Law Conference of Canada, a working group that includes prosecutors, defence lawyers, academics and others, did not recommend removing MMPs for murders, nor did the Canadian Bar Association, which appeared before our Senate committee. By adopting the proposed amendment — assuming it is within the scope of the bill, which I also doubt for the reasons mentioned by Senator Cotter on Tuesday — we will go further than any country in the world. I am not prepared to do that, and I do not think such a change would reflect Canadian society's values.

Second, the opportunity of adding such an escape clause at third reading and thus returning Bill C-5 to the House of Commons instead of sending it to Rideau Hall for Royal Assent relies on the assumption that it will significantly reduce the frequency of the imposition of MMPs by Canadian judges. However, the evidence before the Senate committee is to the contrary. In a written answer to my questions at the committee, Professor Roberts wrote that such an escape clause in England, because of its very high threshold, has been narrowly interpreted by the courts in England and Wales and used by sentencing judges in only a very small number of cases. Therefore, this is not a change that would bring a lot of significant changes.

Third, many witnesses have argued against the adoption of an escape provision — whatever its content — because they fear that the systemic discrimination that exists toward racialized, Indigenous and vulnerable people will not result in fewer MMPs being imposed on these groups by the justice system. In fact, they fear that such an escape clause will tend to benefit White offenders and those with privileged access to legal representation, resulting in new inequalities.

This concern makes sense if you assume that the overrepresentation of Indigenous and racialized people in our jails is due to overpolicing, overcharging, poor access to adequate defence counsels and bias in the court system.

Fourth, some witnesses pointed out that, contrary to the U.K. where there is no constitutional authority for judges to declare a cruel sentence to be unconstitutional, in Canada, we have section 12 of the Charter. In cases where an MMP may result in a breach of section 12 or section 15 — the equality right — Canadian judges can declare it unconstitutional and thus invalid. Such invalidity will apply to all persons exposed to that MMP, and will not be on a case-by-case basis.

As indicated previously, to avoid constitutional challenges, Parliament has two options: to draft individual offences and penalties properly or to add an escape clause applicable in exceptional circumstances. In other words, the adoption of the proposed escape clause would provide a shield against attack pursuant to section 12 of the Charter of Rights and may encourage future parliaments to adopt more MMPs, with the possible safety valve, contrary to the very goal that is pursued by the proponents of the amendment.

• (1630)

Finally, I want to mention that the Minister of Justice and the NDP justice critic, MP Randall Garrison, are publicly urging the Senate to adopt Bill C-5 as soon as possible, since it will immediately broaden the ability of judges to render conditional sentences when more appropriate than imprisonment in provincial jail. Most witnesses before our committee support the broadening of that judicial discretion.

Further, as to the recent *Sharma* decision, the Criminal Lawyers' Association, the Canadian Bar Association and the Canadian Association of Black Lawyers, many scholars and other stakeholders have written to us, and on social media, urging us to adopt Bill C-5 without any further delay. I don't see, in the reasons being exposed to justify the amendment, a justification to remain deaf to these calls.

For all these reasons, colleagues, I invite you to vote against this amendment. Thank you, *meegwetch*.

The Hon. the Speaker pro tempore: Senator Pate wishes to ask a question. We only have one minute left. Senator Dalphond, will you take a quick question and answer?

Senator Dalphond: Yes.

Senator Pate: I'll make a number of statements, and you can indicate whether you agree.

In the case of *Luxton*, the Supreme Court of Canada ruled the life sentence was constitutional because there was a safety valve of a 15-year review available. In the *Bissonnette* case, the Supreme Court of Canada said:

> In any event . . . the existence of a discretion cannot save a provision that authorizes the imposition of punishment that is cruel and unusual by nature.

It also talked about the need to inject humanity into sentencing and left the suggestion that even a life sentence may be problematic. We know that the overwhelming majority of Indigenous women, who now form one out of two federally sentenced women, are in for violent offences, many of them for murder, as a result of responding to violence first perpetrated against them.

Would you agree those are the facts as well?

[*Translation*]

The Hon. the Speaker pro tempore: Senator Dalphond, you have only 15 seconds left.

Senator Dalphond: It is impossible for me to comment on the Supreme Court jurisprudence and correct any false perceptions of the rulings in 10 seconds.

The Hon. the Speaker pro tempore: Are you asking for more time?

[*English*]

Senator Dalphond: I would ask if the house is ready to allow me five more minutes.

The Hon. the Speaker pro tempore: Honourable senators, do we have agreement on five minutes?

An Hon. Senator: No.

The Hon. the Speaker pro tempore: I heard a no.

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I also rise today to speak to Senator Clement's amendment. I find myself in the strange position where I might vote with the government leader on an amendment, but tonight I will ask for forgiveness for that.

Colleagues, the original version of this amendment was first presented at committee by Senator Pate, and it did not include the expression "exceptional circumstances." Senator Pate's amendment would have, in effect, nullified all mandatory minimum penalties present in the Criminal Code.

This amendment does indeed include the phrase "exceptional circumstances," as is the case in section 311 of the Sentencing Act in Britain. However, I do worry about the application of this clause and fear it risks having the same effect as the original version in practice.

If we are going to use Britain as a model for this clause, we need to consider the context of their legal system. Senator Dalphond already alluded to it, at least in part. England and Wales also have "whole life orders" in the most serious cases of murder. This means, colleagues, that the British Parliament allows for circumstances where both judges or even a cabinet minister — a politician — can direct that any individual never be eligible for release from prison.

That is quite the responsibility for a politician.

This is quite a severe system and a stark deviation from what is considered acceptable practice or even constitutional in Canada. The key point is this: If we are going to reference practices in other democratic legal systems, we need to reference the totality of those practices.

Canada's mandatory minimum penalties were individually studied and considered. The minimum sentence was always put in place with the notion that it would be an appropriate sentence for the least culpable offender or the most exceptional of circumstances.

As the Macdonald-Laurier Institute published in their evaluation of mandatory minimum penalties:

> Mandatory minimums reflect the lowest possible sentence for the least culpable offender. The policy underlying any given sentencing floor is a function of Parliament's answer to an important question: "What sentence would be appropriate for the least morally culpable person whose behaviour still constitutes the elements of the offence?" Answering this question requires Parliament to perform a nuanced, multi-faceted policy analysis of the moral status of the behaviour in question.

Parliament has done precisely that, yet this proposal undoes all of it without the same nuanced, multi-faceted analysis. My concern is that this approach risks having the effect of abolishing mandatory minimums entirely, which is the declared objective of proponents of this amendment.

The inherent supposition is that judicial discretion has been unduly taken away from the courts and that the minimum parameters that have been set by Parliament for certain criminal offences are inappropriate.

Some have cited the number of constitutional challenges to mandatory minimum sentences as if that, in and of itself, constitutes an indictment of these sentences. I think it is useful for us to examine that assumption.

Colleagues, the simple presence of a legal challenge does not mean that a law is illegitimate. Legal challenges are to be anticipated whenever lawyers think that such a challenge might work for their client. However, the mere existence of a challenge does not mean that the courts will support the argument.

Obviously, in the case of mandatory minimum sentences, if lawyers believe that many judges will be sympathetic to such arguments, then such sentences will be challenged. However, it is clear that, while the Supreme Court of Canada has indeed struck down particular provisions relating to mandatory minimum sentences, it has not challenged Parliament's right to impose such penalties. Senator Dalphond already mentioned that in his speech.

In *R. v. Lloyd*, the Supreme Court stated that:

> . . . Parliament is not obliged to create exemptions to mandatory minimums as a matter of constitutional law. Parliament may legislate to limit judges' sentencing discretion. Limiting judicial discretion is one of the key purposes of mandatory minimum sentences, and this purpose may be inconsistent with providing judges a safety valve to avoid the application of the mandatory minimum in some cases. Whether Parliament should enact judicial safety valves to mandatory minimum sentences and if so, what form they should take, are questions of policy that are within the exclusive domain of Parliament. The only limits on Parliament's discretion are provided by the Constitution and in particular, the *Charter* right not to be subjected to cruel and unusual punishment. . . .

The court noted that Parliament could respond to court rulings related to mandatory minimums by potentially narrowing their reach so that they only catch offenders who merit such mandatory minimum sentences. This would be entirely appropriate in that the drafting of legislation to respond to judicial rulings would reflect envisaged dialogue between Parliament and the judiciary on measures that are necessary for the protection of society and obligations that may exist in relation to the Charter.

• (1640)

In the Macdonald-Laurier Institute's publication, the authors point out:

> Opponents of mandatory minimum sentences tend to focus on the restrictions that these laws impose on a sentencing judge's ability to tailor the sentence to an offender's unique circumstances. . . .
>
> Canadians must know what the law is in advance so that they can govern their conduct accordingly.
>
> However, scrutinized in light of the rule of law, it is clear that, at least in the abstract, mandatory minimum sentences should be capable of functioning as effective tools to ensure the even, equal, and proportionate application of sentences to offenders guilty of the same offence. Rather than eliminating a judge's ability to assess a proportionate sentence, mandatory minimums set a stable sentencing range for an offence, permitting citizens to understand in advance the severity of the consequences that attend the commission of that offence, regardless of the individual offender's particular degree of responsibility.

Many have cited the issue of Black and Indigenous overrepresentation as a rationale for abolishing these penalties. We know, however, that overrepresentation is a much more complex societal issue that extends well beyond the matter of sentencing parameters.

Chief Inspector David Bertrand, Inspector Michael Rowe and Rachel Huggins, who testified at the Legal Committee, addressed the issue of overrepresentation in the correctional system. They cited homelessness, substance abuse, addiction and mental health issues among other factors that ultimately lead to a higher rate of contact with the police and the criminal justice system.

Inspector Rowe stated unequivocally that prevention needs to be top of mind, and that:

> The mandatory minimum penalties assigned to these sections of the Criminal Code create a meaningful legal condemnation of the decision to unlawfully pick up a firearm and reflect the important distinction between offences involving firearms and those that do not.

While some witnesses who testified on Bill C-5 at committee were certainly of the view that the government should abolish all mandatory minimum penalties, it must be said that the committee only studied and considered the value of specific offences referenced in this bill. For example, Mothers Against Drunk Driving and law enforcement officials were called upon to speak about very specific concerns associated with impaired driving and firearms offences, respectively.

Likewise, we would need to hear evidence for and against the merits of every other mandatory minimum penalty in the Criminal Code before considering this sweeping proposal.

Colleagues, let's remember what mandatory minimums are at stake with this amendment: first-degree murder; high treason; the crime of living off the avails of child prostitution, which has carried a mere five-year minimum sentence; the crime of hostage taking with a firearm, which has carried a four-year mandatory minimum sentence; and the crime of manslaughter when committed with a firearm, which has also carried a four-year minimum sentence. These are serious crimes, colleagues.

We must also remind ourselves that the minimum sentences in Canada do not mean that the entire period of that sentence will be spent behind bars. Our law provides for a graduated release based on the offender's performance in programs in the institution and their risk to society, among other considerations.

For instance, every offender serving a fixed sentence in Canada will be released on mandatory supervision at the two-thirds mark of their sentence. Offenders serving a fixed sentence are also usually eligible for parole at the one-third mark of their sentence and for day parole six months before that. This means that even those rare offenders who might receive a five-year minimum sentence for living off the avails of child prostitution,

for example, will be released on statutory release in 40 months, will be eligible for parole in 20 months and will be eligible for day parole in only 14 months.

Many Canadians would regard this as actually supremely lenient. Many, in fact, would see it as excessively lenient. I would submit that the appropriateness of automatic release at the two-thirds mark of a sentence, regardless of the offender's performance in an institution, is more in need of a review by Parliament than are our relatively modest minimum sentences.

Proponents of this approach have cited that 90% of Canadians want the government to consider giving judges the flexibility to not impose mandatory minimum sentences. I believe that if we're honest, the reality is much more nuanced in that. In polling, much depends on how a question is asked and what specific information is presented when the question is asked. I dare say that few Canadians would object to stringent mandatory minimum penalties for offences such as sexual assault committed against young children, for example.

In 2012, the *Toronto Star* reported a survey by the Angus Reid Institute that found that 63% of Canadians believed that the death penalty was an appropriate sentence for murder. That was in 2012, colleagues. In 2016, a report done by Kari Glynes Elliott and Kyle Coady of the Research and Statistics Division of the Department of Justice found that:

> . . . if certain types of offences are considered, there is general public support in Canada, Britain, and the USA for harsh penalties/mandatory minimums for homicide . . . .

The same publication also found historic support in Canada for the notion that sentencing is too lenient.

So I think, colleagues, if we were honest, we would admit that the evidence is mixed, but the notion that the public does not support harsh penalties for the most serious of crimes is generally misleading.

While this amendment is an improvement from the version presented at committee, I fear that in practice, it will risk having the exact same effect.

Again, a minimum sentence is just that — a minimum — meaning that it was evaluated and considered with the least culpable offender in mind. While it has been said that the escape clause in Britain is used sparingly, we are operating under an entirely different legal system and have no guarantee that it would be used the same way or in the same types of circumstances.

Who determines what is exceptional? It is entirely subjective. Therefore, in effect, it abolishes the sentencing floor for all sentencing ranges carefully established by Parliament. For that reason, this exact amendment was rejected by the House of Commons Justice Committee, and as Senator Cotter stated, would almost certainly face the same fate if we passed this amendment.

If senators want to bring forward new legislation to study the value of minimum penalties on specific offences, I think it would be a reasonable approach. We could call in witnesses to discuss the benefits and the drawbacks of those specific penalties. However, we have not done that, colleagues. We heard from witnesses who discussed the offences affected by Bill C-5. For that reason, I do not believe we are at a place where we can have an informed debate on this proposal, let alone support it.

• (1650)

Colleagues, I will be voting against this amendment and strongly encourage all of you to do the same. Thank you.

Senator Pate: Would you take a question, Senator Plett?

Senator Plett: Do I have time?

The Hon. the Speaker pro tempore: The million-dollar question.

Senator Pate: I listened carefully to your comments, and I have a couple comments and then a question.

You actually quoted from the minority decision in *Lloyd* when you talked about them suggesting that we're not obliged to create exemptions. In fact, the majority did support the creation of exemptions.

You also mentioned mandatory supervision which hasn't existed for more than a decade, and has been replaced by a statutory provision that allows for application but doesn't guarantee any release.

I think you're probably familiar with the many reports of the Office of the Correctional Investigator showing that, in fact, most people — particularly Indigenous and Black prisoners — don't get out at their dates. In fact, those serving the longest sentences, particularly life sentences, sometimes serve 10 or 20 times what their eligibility periods are.

But my question is this: In the situation of an abused woman — which is the majority of the Indigenous women who are serving life sentences and who are essentially deputized to protect themselves because of the abuse they experienced — because of the many issues you and Senator Dalphond ably raised about the discrimination throughout the system, when they are in the midst of being attacked, they may need to grab a weapon. That will ensure they receive a mandatory minimum penalty, and in most cases, it will ensure the charge laid against them will be a charge of first-degree murder.

The Hon. the Speaker pro tempore: Do you have a question?

Senator Pate: I do. When the Crown discovers there's a history of abuse, they most often will then suggest a guilty plea. In those situations where it's a woman responding to violence, would you have the same view that she should not have the benefit of that exceptional circumstance being considered by a judge?

Senator Plett: Senator Pate, the only way I can properly answer that question is whether the person is Indigenous, Black, White or a different ethnicity, they have the same laws. If they conduct themselves properly in prison, they will get out on their statutory release.

You cannot tell me, Senator Pate, that an Indigenous, incarcerated individual who follows all the rules will be treated differently in staying in prison than somebody else. If you're suggesting, Senator Pate, that we have a law for Indigenous people and for Black people, and a different law for others, then that's what we should be working with. But you cannot say that because this person may fall through the cracks, let's let everybody off in an easy manner. That is not the way to run our justice system.

I'm sorry if that's not answering your question directly. I believe strongly in mandatory minimums. I believe strongly in mandatory minimums for all Canadians, not just certain groups.

Senator Pate: You're right, you didn't answer the question. It's not me saying this, it's the Office of the Correctional Investigator documenting that 64% of those in maximum security are Indigenous women in the women's prison. It's higher also for men and Black folks as well. They have less access to programs and services.

I ask you again, in exceptional circumstances, would you not support that individuals who, but for the day, would have been the victim had they engaged in hand-to-hand combat without a weapon, and they would often end up dead? Do you not believe they deserve the benefit of the exceptional circumstance? And I agree, regardless of the colour, but it's a particular issue where we see the systemic discrimination impacting Indigenous women and Black women — those who have the least advantage and supports in society.

Senator Plett: I guess my answer to your question is I have sympathy for anybody who is in the situation that you're describing. But do I believe that they should be treated differently in law? No, I'm sorry, I do not.

Hon. Denise Batters: Senator Plett, thank you for outlining in your speech a number of different examples of mandatory minimum penalties for certain crimes and the relatively low numbers that those are. Some of the examples you gave are very serious crimes where the mandatory minimum sentences were only about four years.

Another one that I wanted to draw the attention of this chamber to, and ask if you agree with is this: What has scarcely been mentioned in this entire debate on this amendment is the fact that the mandatory minimum in Canada for first-degree murder is only 25 years — that there's a chance for parole after that point — and for second-degree murder, only 10 years.

Given that the mandatory minimums are really quite low when you look at the types of offences that we would look at in the U.S. and other places that many Canadians would perhaps be more familiar with, wouldn't you agree that those mandatory minimums, being at those low levels, are something that really needs to be considered when we're talking about upholding those?

Senator Plett: Yes, I fully agree with that. Thank you.

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: I believe the nays have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: I see two senators rising. Do we have an agreement on a 15-minute bell? Call in the senators for 5:12 p.m.

• (1710)

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

YEAS
THE HONOURABLE SENATORS

Clement	Miville-Dechêne
Cormier	Omidvar
Duncan	Pate
Francis	Patterson
Gerba	Petitclerc
Jaffer	Quinn
Mégie	Simons—14

NAYS
THE HONOURABLE SENATORS

Ataullahjan	Loffreda
Batters	MacDonald
Bellemare	Manning
Boehm	Marshall
Busson	Martin
Carignan	Marwah
Cotter	Massicotte
Dalphond	Moncion
Dasko	Plett
Dean	Richards
Dupuis	Ringuette
Gagné	Saint-Germain
Gignac	Seidman
Gold	Sorensen
Harder	Tannas
Hartling	Wells

Klyne Woo
Kutcher Yussuff—37
LaBoucane-Benson

ABSTENTION
THE HONOURABLE SENATOR

Housakos—1

[*Translation*]

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator Gagné, for the third reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.

Hon. Renée Dupuis: Honourable senators, I rise to speak at third reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act. One of the purposes of this bill is to remove approximately 20 minimum sentences from the Criminal Code, which is about one third of those currently set out in the act. When minimum sentences are included in the Criminal Code, judges are required to sentence a convicted person to a predetermined penalty without taking into account the individual's specific circumstances or the context in which the offence was committed. The principle of judicial discretion is undermined in such cases.

The Standing Senate Committee on Legal and Constitutional Affairs recently completed its study of Bill C-5. At that time, we heard from many witnesses who urged us to support this bill, which, among other things, seeks to eliminate a number of minimum sentences from the Criminal Code. Other witnesses, including women's groups, told us that, first of all, women do not trust the justice system, because it does not serve them well.

• (1720)

Second, women are tired of being revictimized in the criminal justice system because of their sex, gender, ethnicity or national origin, colour or race.

Third, women's groups are not being accepted as stakeholders, making it difficult to support women in this system.

I invite you to read the transcripts of today's meeting of the Standing Senate Committee on Legal and Constitutional Affairs, where we once again heard from a group of women who are victims of domestic violence and who explained to us how badly the entire judicial system needs to be reviewed.

Colleagues, it is incumbent upon us to let these women know that we have listened to them, but more than that, that we have heard them and we want to help flush out the elements of criminal justice that contribute to exacerbating the discrimination already faced by marginalized individuals and groups in our society.

I will not repeat the arguments that my colleagues have already made, whether they are for or against this bill, and I thank them for their contributions. Their reflections, as well as the testimony I heard in committee, lead me to formulate an option that would allow the Senate to provide sober second thought on this fundamental question for our society, namely, the sentence that should be served by those who commit crimes.

I believe that this sober second thought must allow us to move beyond the black-and-white rhetoric that too often prevails in this domain, reducing the discussion to either being "soft on crime" or "tough on crime." The masculine language that continues to permeate the whole domain of criminal justice must cease to be the benchmark for defining how our society views the consequences of criminal acts. Being "soft" or being "tough" can no longer stand as the benchmarks when it comes to discussing the values that underpin, and should underpin, criminal justice.

We come from a world where women were excluded from practising criminal law, both as prosecutors and defence lawyers, on the grounds that crime is a man's world. In that world, women had no other place than as targets of the criminal behaviour that was literally perpetrated on their backs. Do not allow the fact that women became crown attorneys first and defence lawyers later to mislead you.

The Criminal Code was adopted in 1892. The basis for the sentencing principles reflected the society's values in the 19th century. We know that the reality has changed, and that is the reason for a thorough review of the basis for these principles. The Senate is well positioned to undertake this review and adapt the principles to the reality of the 21st century. Not only does the fact that we are appointed safeguard us from electoral defeat, but our role is quite rightly to engage in sober second thought on such matters.

Elected governments have made piecemeal changes over the decades to suit the political agenda of successive governments. Elected governments have other concerns, and their re-election in the short term is not an incentive to undertake work of such scope. Bill C-5 illustrates that.

Therefore, I am of the opinion that it is our responsibility to do this work. I also believe that a comprehensive study should be carried out by the Standing Senate Committee on Legal and Constitutional Affairs to update the values that must underpin sentencing for violations of the Criminal Code. In my view, the Senate should give the Committee on Legal and Constitutional Affairs a mandate to go ahead with a comprehensive study of any pertinent element, in particular the ones following.

First, review sentencing principles in criminal matters and the values underpinning them, as well as guilty pleas on lesser charges. In other words, the ins and outs of plea negotiation. Who benefits from a system in which the Crown prosecutor and the defence counsel agree that an individual can plead guilty to a lesser charge in exchange for a lesser sentence? Who benefits

from maintaining an opaque system at a time when people expect greater transparency in the public sphere, including in public law?

Second, assess whether criminal justice, whose purpose is to enforce the law and maintain social order, is well served by the plea bargaining system.

Third, establish how the values of the criminal justice system, such as the principle of rehabilitation, are reflected in the correctional system.

Fourth, see what can be learned from the last 50 years of forensic psychiatry, especially in the area of criminal behaviour risk assessment.

Fifth, compile comparative disaggregated data, especially on marginalized groups currently convicted, incarcerated, conditionally sentenced or paroled.

Sixth, analyze the detrimental effects of the current criminal justice system on marginalized groups in our society, including the intersectional systemic discrimination that these groups face in the current criminal justice system.

Seventh, and finally, review the principles guiding judicial discretion in criminal matters.

Colleagues, some of you may have known Senator Baker from Newfoundland and Labrador. He often used to point out the importance of Senate committee reports when the courts interpret the intention of Parliament. I cannot overstate the value of the contribution made by Senate committees in that regard.

Furthermore, committee work is of paramount importance in the evolution of legislation in Canada. The framework of a Senate committee study allows for an in-depth examination of some of society's most sensitive issues, such as the one we're discussing today, criminal sentencing. That's why I'm urging the Senate to instruct the Standing Senate Committee on Legal and Constitutional Affairs to study the issue. Thank you.

[*English*]

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I rise again to speak to third reading of Bill C-5. I rise not to debate the proposed amendments to the Criminal Code, but to raise one very specific concern I have with proceeding with the bill at this time.

During the committee's hearings on Bill C-5, several witnesses referred to the *R. v. Sharma* case that was before the Supreme Court of Canada, as well as its significance with respect to this bill, particularly the conditional sentence portion. During his testimony, Minister Lametti even called the *Sharma* case paradigmatic.

When our former colleague Senator Murray Sinclair testified on Bill C-5, he was asked about the proposed conditional sentence expansion and whether the bill should be passed as is. He responded:

> By the time the bill gets to a full hearing or full consideration in the Senate, you may have a decision as in the *Sharma* case that will clarify a number of those issues for you.

Senator Sinclair was correct in saying we might have the decision; we do, indeed, now have a decision that directly addresses the appropriateness and the constitutionality of limiting conditional sentences for various offences.

For those unfamiliar with the *Sharma* case, it involves Cheyenne Sharma, an Indigenous woman who was 20 years old and a single mother at the time of the offence. In 2015, she was said to have been behind on rent, facing eviction and on the verge of homelessness. She had suffered intergenerational trauma and sexual assault, and she lacked adequate support.

• (1730)

After agreeing to transport two kilos of cocaine for her boyfriend, in exchange for $20,000, she was apprehended at the airport by the RCMP. She confessed.

Ms. Sharma pled guilty and sought a conditional sentence. As many will know, conditional sentences are a penalty under section 742.1 of the Criminal Code, which permits offenders who meet statutory criteria to serve their sentences under surveillance in their communities rather than in jail.

In 2012, Parliament amended the conditional sentencing regime to make such sentences unavailable for certain serious offences. There are three prerequisites that must be met before a conditional sentence can be imposed, one of which is that the offender must not have been convicted of one of the offences listed in section 742.1(b) through (f) of the Criminal Code.

Where the prerequisites are met, the court must consider whether a conditional sentence is appropriate, having regard to the fundamental purpose and principles of sentencing, in particular the *Gladue* principle which states that:

> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

The 2012 amendments to the Criminal Code meant that Ms. Sharma could not receive a conditional sentence. In particular, section 742.1(c) made conditional sentences unavailable for any offence with a maximum term of imprisonment of 14 years or life, such as the offence to which Ms. Sharma pled guilty.

Ms. Sharma and her team raised Charter challenges, in particular with sections 7 and 15. The sentencing judge dismissed the challenges and imposed a sentence of 18 months' imprisonment. When she appealed this decision to the Ontario

Court of Appeal, the majority agreed with her that the sections in question were overbroad under section 7 and discriminated against Indigenous offenders under section 15.

The court struck down the provision and sentenced Ms. Sharma to time served. However, the Supreme Court of Canada disagreed with the Ontario Court of Appeal on the sections in question, and the Supreme Court said:

> They do not limit S's s. 15(1) *Charter* rights; S did not demonstrate that the impugned provisions created or contributed to a disproportionate impact on Indigenous offenders, relative to non-Indigenous offenders, as she must show at the first step of the . . . analysis. Nor do they limit S's s. 7 *Charter* rights. Their purpose is to enhance consistency in the conditional sentencing regime by making imprisonment the typical punishment for certain serious offences and categories of offences, and that is what they do. Maximum sentences are a reasonable proxy for the seriousness of an offence and, accordingly, the provisions do not deprive individuals of their liberty in circumstances that bear no connection to their objective.

Minister Lametti has stated his impetus for targeting conditional sentences with this bill, naming the *Sharma* case specifically and frequently using the example of the Indigenous mother trafficking drugs in order to put bread on the table. Yet, the Supreme Court of Canada has ruled that although personal context must be taken into consideration, a sentence still must fit the severity of the crime and ensure consistency in the law. And that the limitations Parliament placed on conditional sentences are indeed constitutional.

Given the genesis of this legislation, the targeted provisions of the Criminal Code and the Supreme Court's recent decision, I am recommending, colleagues, that the bill receive further study at committee — not to rehash arguments on policy, but specifically to examine the impact of this decision on this bill.

My intention is not to, in any way, delay a final vote. I do not anticipate that the committee needs more than two or three meetings to discuss the impact of the *Sharma* case. The committee could call back the minister, officials, jurists and other constitutional experts on whether there's an impact we need to consider and, if so, how we fix it.

As our former colleague The Honourable Murray Sinclair stated, this decision will provide clarity on many of our questions with the conditional sentence expansion. However, for many of us, the *Sharma* decision raises more questions than it answers with respect to this bill.

While it would have been preferable to have this decision prior to the committee's study, I do believe we are fortunate to have received this insight from the Supreme Court before a final vote.

Does this decision have any impact on the constitutionality of the bill? Should we continue to limit conditional sentences on serious offences to reflect the severity and ensure consistency?

Given the weight that the minister put on the paradigmatic *Sharma* case, has the government reconsidered this particular section? These are questions that we as legislators, and indeed Canadians, have the right to know before a final vote.

Colleagues, we would be abandoning our obligation to provide sober second thought to this legislation if we moved forward without answering these questions. This is, in fact, precisely the role of the Senate.

However, honourable senators, given the overlap of subject matter and the importance witnesses placed on the *Sharma* decision during the committee's study, I believe it would be irresponsible to proceed without at least having the opportunity to hear from constitutional experts.

If the committee determines there to be no issue with proceeding with this bill, we will certainly have a third-reading vote before we rise in December.

On the other hand, if the committee identifies an issue, then we will determine how to fix it and we will have done our job in this chamber. This is not a vote against the government and their bill, colleagues. Those of us who claim to be independent, let's bear that in mind when we vote on this with all independents.

I encourage you to consider our role — your role — as a chamber of sober second thought and support the following amendment.

MOTION IN AMENDMENT NEGATIVED

Hon. Donald Neil Plett (Leader of the Opposition): Therefore, honourable senators, in amendment, I move:

> That Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act, be not now read a third time, but that it be referred back to the Standing Senate Committee on Legal and Constitutional Affairs for further study.

[*Translation*]

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs studied Bill C-5 at nine meetings over five weeks. It heard from more than 40 witnesses and received 13 briefs. We don't need to refer it to a committee. This would result in useless delays at a time when legal experts are urging us to pass it as quickly as possible.

It is true that there's been much litigation in recent years concerning the issues that Bill C-5 addresses, in particular conditional sentences and minimum mandatory sentences. Rulings have been handed down in some cases, such as the recent *Sharma* ruling. Others are ongoing.

• (1740)

This considerable jurisprudence provides us with relevant background information. However, Bill C-5 was never designed as a direct response to *Sharma* or any other case. The government

didn't present it as such in the House of Commons. I certainly didn't present it that way when I spoke to it at second reading, and Minister Lametti didn't present it that way when he appeared before the committee.

[*English*]

This bill was never a response to the *Sharma* case. It is simply a policy choice proposed by the government, and I'm urging senators to pass it expeditiously simply on the grounds that it's good policy.

To be clear about the *Sharma* case, Cheyenne Sharma was a 20-year-old Indigenous mother who transported drugs for her boyfriend to avoid being evicted along with her young daughter. She ended up serving a 17-month sentence in custody because the law restricted her access to a conditional or community-based sentence.

As we heard from Senator Plett, in 2020, the Ontario Court of Appeal deemed that restriction unconstitutional, so for the past two years, people convicted of offences in Ontario have had greater access to conditional sentences.

Two weeks ago, as we know, the Supreme Court reversed the Ontario decision, finding — in a narrow 5-4 ruling — that the law restricting Ms. Sharma's access to a conditional sentence was constitutionally acceptable after all. But that doesn't mean that it was constitutionally necessary, or appropriate, and it certainly doesn't mean that it was a good idea.

In fact, the court's decision states, "Parliament has the exclusive authority to legislate in matters of sentencing policy."

In other words, it's up to us. In 2012, Parliament chose to restrict access to conditional sentences. Today, 10 years later, we can choose to expand it, and we should.

[*Translation*]

During the study in committee, many witnesses talked about the benefits of conditional sentencing for people like Cheyenne Sharma who don't pose a risk to public safety. We heard witnesses say that conditional sentences are important because they give judges the discretion to impose appropriate sentences for Indigenous, Black and other marginalized offenders. We also heard that we'd be better off and safer if we held those who break the law accountable without needlessly separating them from their job, education, community and family.

[*English*]

That's why, colleagues, in the hours and days since the Supreme Court's decision, many legal experts and criminal law practitioners have pinned their hopes on the expeditious passage of Bill C-5. According to Queen's University law professor Lisa Kerr, ". . . the passage of Bill C-5 has now become so important . . . ."

Ms. Kerr also stated:

> Conditional sentences are crucial for bringing in Indigenous conceptions & methods of justice. We transfer our hope to Bill C-5 to open this door.

Theresa Donkor, a criminal lawyer with expertise in combating anti-Black racism, said, "We need Bill C-5 to pass more than ever now."

Here's the statement from the Criminal Lawyers' Association:

> Today's [Supreme Court] decision in R. v. Sharma drives home the importance of Bill C-5. We call on [the Senate] to pass C-5 quickly so that judges once again have discretion to craft fit sentences that take into account experiences with #systemicracism.

The Canadian Bar Association's Criminal Justice Section said it:

> . . . urges the Senate to pass Bill C-5, and quickly, to restore judges' discretion to impose a conditional sentence where appropriate.

Chris Rudnicki, a criminal lawyer who teaches at Toronto Metropolitan University, had this to say:

> There is now an urgent need to pass C-5, which will accomplish what we were trying to do in Sharma and more. Let's get it done!

Janani Shanmuganathan, a criminal lawyer we heard from at committee and a board member of the South Asian Bar Association of Toronto, said:

> The result in Sharma is disappointing for many of us today but it only makes the passing of Bill C-5 all the more important.

Ms. Shanmuganathan concluded, ". . . please pass Bill C-5 and please pass it fast."

Honourable senators, far from justifying further delay, the Supreme Court's recent decision only increases the urgency that we should feel to pass this bill. We don't need more study. We need to debate and vote — and turn Bill C-5 into law with all deliberate speed. Thank you, colleagues.

Hon. Denise Batters: Senator Gold, you referenced the number of Legal Committee meetings that we had on Bill C-5. You actually attended several of them, as I recall.

After all of those Legal Committee meetings that we had on Bill C-5, the Supreme Court of Canada released a very significant ruling on a major component of Bill C-5: conditional sentences. It's not something that we often have. I can't recall another situation like this — in the nine years I've been in the Senate, and been on the Legal Committee — where we had a major ruling like this come out right after we've dealt with it at committee, and before we've had the opportunity to pass the bill.

This seems like the perfect opportunity where we could just have a few meetings, and, indeed, Senator Gold, for this bill — Minister Lametti used the exact factual scenario of *Sharma* as one of the reasons why he was bringing Bill C-5 forward when he tried to justify it to our committee.

Given that the government has said that the incidence of overincarceration of Black and Indigenous offenders is a major reason to bring this particular bill forward — you set forth a number of reasons here, but why wouldn't you agree to just two, or three, meetings on this bill so we can actually make sure that our Legal Committee is doing the job that we have been in dealing with the constitutional aspects that the Supreme Court of Canada has so aptly set out?

Senator Gold: Thank you for your question.

The Legal Committee did its job, and did its job in an exemplary fashion, but I repeat: This bill is not a response to *Sharma*. This bill is not a response to the Supreme Court saying, "You have to fix unconstitutional legislation."

This legislation is, as was said by Senator Plett in a different context, an example of Parliament's exclusive jurisdiction to set policy and pass legislation — dealing with criminal law in general, and sentencing in particular.

The *Sharma* case illustrates the problem that the lack of access to conditional sentences poses. The fact that a narrow majority of the Supreme Court, 5-4, upheld its constitutionality is not the same thing as saying that this law is wise, appropriate or fitting for the circumstances in which people accused of crimes find themselves.

It's not a dereliction of our duty as senators to continue with our debate and our vote, and to pass this law expeditiously. That is what the majority of the witnesses, even those who wanted this bill to go further, asked us to do. Post-*Sharma*, they have doubled their exhortations for us to do that. We're acting responsibly to pass this bill, to let it receive Royal Assent and to give effect to the reforms that the elected members of Parliament and we, in the Senate, have properly studied. Thank you.

Senator Batters: Senator Gold, you said twice that this is not a response to *Sharma*. That's because the *Sharma* ruling wasn't released yet by the Supreme Court of Canada at the time that the government brought this legislation forward, and at the time that our Legal Committee was studying it.

Given that this bill has not yet passed — we're nearing the end. However, it's an optimal time for the Legal Committee to be able to take a couple of meetings and look at Bill C-5 with that context.

I also note, Senator Gold, that you have twice referred to the narrow 5-4 ruling of the Supreme Court of Canada. Are you questioning the Supreme Court's ruling in this matter?

Senator Gold: Senator Batters, I'll make just two points: First, as I said, Bill C-5 is a policy choice by this government in the exercise of its plenary jurisdiction over criminal law. The Supreme Court, time and time again, has underlined the role of Parliament in setting sentencing principles and determining appropriate sentences — and that's exactly what Bill C-5 is doing.

Senator Batters, you know, as everyone in this chamber knows, the respect that I have for the Supreme Court of Canada and its judgments. I underline the narrowness of the opinion because, in fact, it was a highly contested opinion in a court, the composition of which has changed. But regardless of whether I prefer the dissent to the majority, that is not the point here.

• (1750)

This was not a response to a finding of constitutionality or unconstitutionality, whether in *Sharma* or any other case. That was never the rationale for this law.

The rationale for this law was that the restrictions that were placed on conditional sentencing by the previous government have proven to be not only unsuccessful in deterring crime, and unsuccessful in reducing violence, but, in fact, have contributed to the overrepresentation of those people, whether Indigenous, Black, marginalized or anyone for whom a more fit sentence in the community would have been appropriate. That is why this is good policy, and that's why we've done our job here.

The Legal Committee, under the able chairmanship of Senator Jaffer and all those who contributed to it, should be proud of the work that we did. We properly vetted this piece of legislation in the way in which it was presented and justified before the committee. There is no need to delay any further.

Hon. Paula Simons: Senator Gold, I'm not a lawyer, but I've been reading the *Sharma* decision, and this line really struck me, where the majority says:

> . . . Ultimately, as this Court has maintained, the call rests not with the preferences of judges, but with those collectively expressed by Parliament as representatives of the electorate. . . .

Might you not say that Bill C-5 is the perfect response to the *Sharma* decision, which says that it should be up to Parliament to decide the sentencing parameters for conditional sentences? Is that not exactly what Bill C-5 does?

Senator Gold: Thank you for your question, but allow me to answer it this way: Bill C-5 is an example of Parliament responding to decades of court jurisprudence underlying the exclusive jurisdiction and role of Parliament to legislate in these matters, and that's what this bill is doing.

Senator Simons: Wouldn't sending it back to committee be, in fact, the obverse of the common sense response to this ruling?

Senator Gold: Thank you, again, for the question. I believe it would be unnecessary and ill-advised to send it back to committee for all the reasons that I expressed.

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

[*Translation*]

Hon. Renée Dupuis: I want to comment briefly on the amendment being debated.

I am against the amendment because of the wording. It was presented as a proposal to refer the matter to the Standing Senate Committee on Legal and Constitutional Affairs so it could study the impact of the *Sharma* decision.

However, I don't know if you received it, but if you read the wording of the amendment carefully, you'll see that it says we should refer Bill C-5 back to the Standing Senate Committee on Legal and Constitutional Affairs "for further study."

If I'm reading this right and if I understand the language well enough, that means the committee can study whatever it wants under the guise of Bill C-5. I don't think that's a good idea because we could end up studying things that have nothing to do with Bill C-5.

We have studied this bill thoroughly. I have colleagues, some of whom spoke today and attended Standing Senate Committee on Legal and Constitutional Affairs meetings, who must remember being there and know we studied this bill thoroughly.

Finally, to be very clear — and this will be my last comment — the proposed amendment has nothing to do with what I proposed a few moments ago here today, namely, to give the committee a mandate to conduct an in-depth study on sentencing principles. Thank you.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: In amendment, it was moved by the Honourable Senator Plett, seconded by the Honourable Senator Batters:

> That Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act, be not now read a third time, but that it be referred back to the Standing Senate Committee on Legal and Constitutional Affairs for further study.

[*English*]

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

Some Hon. Senators: Yea.

Some Hon. Senators: Nay.

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

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

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

An Hon. Senator: Fifteen minutes.

The Hon. the Speaker pro tempore: Call in the senators for 6:11 p.m.

• (1810)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Martin
Batters	Plett
Carignan	Quinn
Housakos	Richards
MacDonald	Seidman
Manning	Wells—13
Marshall	

NAYS
THE HONOURABLE SENATORS

Bellemare	Klyne
Boehm	Kutcher
Busson	LaBoucane-Benson
Clement	Loffreda
Cormier	Marwah
Cotter	Massicotte
Dalphond	Mégie
Dasko	Miville-Dechêne
Deacon (*Ontario*)	Moncion
Dean	Pate
Duncan	Patterson
Dupuis	Petitclerc
Francis	Saint-Germain
Gagné	Simons
Gignac	Sorensen
Gold	Tannas
Harder	Woo
Hartling	Yussuff—37
Jaffer	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator Gagné, for the third reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.

Hon. Denise Batters: Honourable senators, I rise today to speak in opposition to Bill C-5, the Trudeau government's proposed legislation to repeal some mandatory minimum penalties and to offer conditional sentences for certain offences. This bill will not fulfill its intended purpose as established by the Trudeau government: to decrease Black and Indigenous overrepresentation in the prison system. Instead, this legislation will place victims of crime at risk — especially female victims of domestic abuse — by returning abusers through conditional sentences into the very communities where their victims live in fear. Bill C-5 is just one more example of the Trudeau government's propensity for talk over action.

When Justice Minister Lametti appeared before our Senate Legal Affairs Committee, he presented Bill C-5 as a bill meant to address, as an example, ". . . an Indigenous mother who was caught in very low-level trafficking in order to put bread on the table." The idea was, of course, that Bill C-5 would allow conditional sentencing for certain offences and remove mandatory minimum penalties from others so that judges would have more discretion at the lower end of sentencing in cases like these. However, just two weeks ago, the Supreme Court of Canada upheld the constitutionality of Parliament's limitations on conditional sentencing from 2012 and found that while an offender's personal circumstances should be taken into account, they do not reduce the severity of that offender's crime.

It is unfortunate that the Senate Legal Committee didn't have the opportunity to hear from more witnesses representing victims of crime during our study on this issue. We couldn't even hear testimony from the Trudeau government's new Federal Ombudsperson for Victims of Crime, Mr. Benjamin Roebuck. Even though Mr. Roebuck was appointed on October 24, he was not yet officially installed by the time we needed him to appear, so he was not made available to us. Given that the victims ombudperson position had sat vacant for more than one year, this situation speaks volumes about this Trudeau government's utter lack of regard for victims of crime.

This fake feminist Trudeau government betrays Canadian women with this legislation. Its own Gender-based Analysis Plus of Bill C-5 is, frankly, a joke. The government's analysis only mentions women in passing and doesn't mention women who are the victims of intimate-partner violence at all or how this legislation will affect them.

We heard Senator Klyne's speech in this chamber on Tuesday night, extolling the virtues of Gender-based Analysis Plus evaluations. He said they " . . . enhance federal legislation's value for women, including Indigenous women." Well, the GBA Plus analysis for Bill C-5 certainly doesn't. It only even mentions Indigenous women twice, saying that Indigenous women have triple the violent victimization rate of non-Indigenous women. Even at that, the analysis fails to mention violence against Indigenous women in the context of intimate partner violence. For example, we know that almost twice as many Indigenous women experience sexual and physical violence at the hands of an intimate partner or family member than non-Indigenous women do. We know that Indigenous women also more frequently suffer more severe forms of spousal abuse, including sexual abuse, abuse involving a weapon, beating and choking.

And yet, in Bill C-5, the Trudeau government is making conditional sentences available to offenders convicted of offences common in intimate-partner violence scenarios, including sexual assault, criminal harassment and being unlawfully in a dwelling house. If women — especially Indigenous women — are supposedly one of the motivations for this legislation, the Trudeau government's gender-based analysis should examine how this legislation will actually impact that group. Unless, of course, they know it cannot be justified. I suspect that it is the case with Bill C-5.

• (1820)

Removing mandatory minimum sentences and making serious offences eligible for conditional sentences will only create more vulnerable female victims by returning abusers and criminals into the communities where their victims live and work. This bill is absolutely going in the wrong direction.

Conditional sentence orders are not infallible. Offenders can and often do breach these arrangements. In one study of conditional sentencing in B.C., researcher Dawn North found the overall breach rate of three communities was 37.6%.

Professor Isabel Grant of the University of British Columbia's law school has published research showing that male intimate partners who criminally harass their female partners often find ways of getting around non-contact orders with their victims. She said:

> . . . orders are often resorted to in criminal harassment cases, but they often fail to stop the harassment and can be counterproductive in some cases.
>
> Perpetrators become quite skilled at learning how to manipulate the limits of the criminal justice system by finding ways to harass which do not violate the terms of the legislation.

It is noteworthy that Bill C-5 allows for a conditional sentence to be served as the penalty for a conviction of prison breach — ironically, serving house arrest for breaking out of prison. Does this inspire clear confidence that an offender will adhere to the restraints of their conditional sentence? No way. And the devastating result in cases of domestic violence is that the results could be catastrophic and even deadly.

London Abused Women's Centre Executive Director Jennifer Dunn put it this way:

> A conditional sentence does nothing to stop an offender from continuing to commit violence. Women need the courts to see this. Yes, there are strict conditions imposed when it comes to a conditional sentence, but that does not mean that they will be followed and a woman's life could be at risk.

Victims of crime, particularly vulnerable female victims of domestic abuse, already live a life of fear. Bill C-5 would only make that worse, because it will dramatically increase the possibility that a woman's abuser could be returned to her community, or even to her own neighbourhood.

Penny McVicar, Executive Director at Victim Services of Brant, told the House of Commons Justice Committee how women victimized by abuse live in constant fear:

> I see too many victims who are now not reporting to police because of the fact that they feel like it's a revolving door. They report to the police, the suspect is arrested, and then they're back out on the streets before the victim even has time to get a good safety plan in place.
>
> I write priority housing letters on an almost daily basis for victims trying to relocate, hoping to find someplace safe that they can live where their abuser won't be able to find them. The shelters are overflowing because we don't have enough shelter space for women trying to get away from violent offenders.

Removing mandatory minimum penalties from some serious offences and making conditional sentences available for others will further undermine victims' — and Canadians' — trust in the justice system. Bill C-5 will also make victims of intimate partner violence less likely to report abuse if it happens again.

Where Bill C-5 does affect women — especially Indigenous women — it only serves to impact them negatively. The Trudeau government has based this entire legislation on the ideological underpinning that it will reduce the overincarceration of Black and Indigenous offenders.

However, two of the only witnesses at the Senate Legal Committee who actually gave us statistical evidence — University of Ottawa Department of Criminology Professor Cheryl Webster and doctoral candidate Dawn North — testified the measures in Bill C-5 would barely touch overincarceration of indigenous offenders. Professor Webster said:

> . . . Indigenous offenders generally — and especially Indigenous female offenders — are, relatively speaking, left behind. Specifically, the government's own data from the Correctional Service of Canada suggests that a smaller proportion of Indigenous Canadians overall — and an even smaller proportion of Indigenous female Canadians — have the possibility of benefiting from this bill. . . .

Witness Dawn North agreed, stating:

> . . . the populations targeted by Bill C-5 will not experience a proportionate benefit, in part due to concerns around their ability to comply with the onerous conditions of the typical conditional sentence, and partly because appropriate community supports are not consistently available. . . .

Ms. North also testified about the link between breach of conditional sentences and Indigenous offenders:

> The research does suggest that even when conditional sentences were broadly available, Indigenous populations or offenders didn't proportionately benefit from them. There were instances when they were benefiting, but it wasn't in the same proportion as other offenders. There's also data suggesting Indigenous offenders tend to have higher breach rates even when they are granted conditional sentences. This becomes, of course, a problem for overall incarceration rates when they're imprisoned upon breach. . . .

Shockingly, several of the witnesses we heard from at committee opposed all mandatory minimum penalties on ideological grounds, without providing evidence to back up their assertions. Some witnesses wanted to eliminate mandatory minimum penalties completely, regardless of the severity of the crime.

Some witnesses and some senators in this chamber even advocated for the repeal of mandatory minimum penalties in the case of murder convictions as, again, we saw with Senator Clement's amendment this week. Wisely, we voted not to implement that. It would have been a huge mistake, honourable senators.

Because of the influence of American news and American entertainment, a lot of people have the impression that our justice system is much harsher than it actually is. Canadian sentences are already much lower than U.S. sentences. Even the current sentences for murder in Canada do not compare to the heavy sentences we see in the United States.

In Canada, first-degree murder carries a sentence of life with a chance of parole in 25 years, and for second-degree murder the automatic sentence is life with a chance of parole in 10 years.

Another key difference between the Canadian and American systems is that of time actually served in jail. Many Canadian offenders are released after serving only one third of their sentences; because of statutory release, almost all are released from incarceration after serving two thirds of their sentences.

Mandatory minimum penalties offer certainty and predictability in sentencing. At a time when half of Canadians have expressed a lack of faith in the fairness of the criminal justice system, we need to give Canadians more confidence in the sentencing for serious crimes, not less.

We need to give victims of crime the security they need to rebuild their lives, free from fear of encountering their perpetrator who has been released into that victim's community on a conditional sentence.

The Trudeau government has missed the mark on this legislation, as they so often do. They are so caught up in performative virtue signalling that they have completely missed the point.

Minister Lametti says his aim with this bill is to lower the overincarceration of Black and Indigenous offenders. However, the evidence shows Bill C-5 will do little for Black offenders and won't do anything for Indigenous offenders.

This kind of behaviour is a pattern with this Trudeau government. I've seen it when I tried to get the government to keep the peremptory juror challenge process in Bill C-75.

Many defence lawyers told our Senate Legal Committee they used peremptory challenges to weed out potentially racist or biased jurors to assist their racialized defendants. Still, this government stubbornly insisted on removing it.

Similarly, in Bill C-46, the Trudeau government's impaired driving bill, the government allowed the police to conduct random mandatory alcohol tests without any basis of reasonable suspicion. I opposed the measure and moved an amendment to remove the clause, given warnings that mandatory random testing could increase racial profiling by police. My amendment passed at the Senate Legal Committee and in the Senate. Still, the Liberal government forced it back in.

However, just last month, the Quebec Superior Court ruled that police motor vehicle stops without cause are, in fact, a violation of Charter rights.

When it comes to actually acting in the real and best interests of Black, Indigenous and racialized Canadians, this Trudeau government never misses an opportunity to miss an opportunity. The same can be said of its empty, fake feminist platitudes on issues that actually matter to women.

Time after time when this federal government has the chance to make a difference, they opt instead for the superficial solution that might sound good but is, at best, completely ineffective and, at worst, devastatingly harmful. Bill C-5 is a prime example.

This bill will do precious little to address the issue of Black overincarceration. It won't even touch the issue of Indigenous overincarceration and, paradoxically, this bill could very well make it worse.

Bill C-5 puts at risk victims of crime, vulnerable victims of domestic violence — most of them women — and pulls them back into a web of danger. If you care about these issues, honourable senators — if you care about women, if you care about safety, if you care about actual justice — I implore you, please vote against this bill. Thank you.

The Hon. the Speaker pro tempore: Honourable senators, before we move on, we had a vote at 6:11 p.m. There was an understanding not to see the clock. I didn't ask the question. For procedural reasons, I am now asking: Do senators want to see the clock?

An Hon. Senator: No.

The Hon. the Speaker pro tempore: Thank you. We shall resume debate.

[*Translation*]

Hon. Claude Carignan: Honourable senators, I rise today at third reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.

• (1830)

In this speech, I will focus on two measures in the bill. The first is the increase in the number of offences that allow for community-based sentences to be imposed upon conviction. The second is the repeal of several minimum prison sentences, including for firearms and opioid trafficking offences.

Bill C-5 encourages community-based sentencing. If it comes into force, it will allow judges to impose sentences that require people convicted of very serious offences to serve their sentences at home rather than in prison.

One of the things Bill C-5 repeals is the rule set out in section 742.1(c) of the Criminal Code, the provision that prohibits the use of conditional sentences where the offence carries a maximum sentence of 14 years or more of imprisonment, but no minimum term of imprisonment.

Some examples of offences covered by 742.1(c) are aggravated assault of a peace officer, trafficking of fentanyl, sexual assault with intent to endanger the life of an individual 16 years of age or older provided that the assault is not committed with a firearm, arson of a property where the person knows that or is reckless with respect to whether the property is inhabited or occupied, and driving a vehicle in a manner that is dangerous to the public or causes death.

These offences are inherently very serious, so it is very concerning, from a public safety standpoint, that the government is willing to allow imprisonment to be served in the community in these cases.

Take the example of the offence of drug- or alcohol-impaired driving causing death, which is also covered by paragraph 742.1(c). The Supreme Court of Canada has emphasized the danger that this offence poses to society. In the 2015 decision in *R. v. Lacasse*, the court stated the following:

> . . . courts from various parts of the country have held that the objectives of deterrence and denunciation must be emphasized in order to convey society's condemnation . . . .

In that same case, the court also noted the following:

> While it is true that the objectives of deterrence and denunciation apply in most cases, they are particularly relevant to offences that might be committed by ordinarily law-abiding people. It is such people, more than chronic offenders, who will be sensitive to harsh sentences. Impaired driving offences are an obvious example of this type of offence . . . .

In addition, the ruling states:

> Every year, drunk driving leaves a terrible trail of death, injury, heartbreak and destruction. From the point of view of numbers alone, it has a far greater impact on Canadian society than any other crime. In terms of the deaths and serious injuries resulting in hospitalization, drunk driving is clearly the crime which causes the most significant social loss to the country.

I am concerned that by allowing imprisonment to be served in the community for such a serious offence as impaired driving causing death, Bill C-5 sends the opposite message to the one that the Supreme Court has sent to courts across the country. The court's message is that this type of offence must be accompanied by sentences that reflect the need to continue to denounce and strongly deter offences that takes numerous lives in Canada.

As I have explained, Bill C-5 would allow for sentences of imprisonment to be served in the community for many other serious offences. I share the concern that Chief Inspector David Bertrand of the Montreal police service expressed before the Senate committee, and I quote:

> Expanding eligibility for conditional sentences to a wider range of criminal offences may have a negative impact not only on public confidence in the justice system, but particularly on complainants and victims who want to co-operate with the system. By reducing the likelihood of incarceration, the consequences of the offence are less apparent and may reduce a victim's willingness to go through the process when making a complaint.

> When we think that denunciation can sometimes prevent another crime from being committed, we must instead demonstrate to the public our real desire to ensure their safety and our willingness to punish the offender in a manner that takes into account the seriousness of their crime, especially when it comes to offences such as sexual assault and human trafficking, which have serious and permanent consequences for the victims.

For all these reasons, I disagree with the measure in Bill C-5 that allows for imprisonment in the community for numerous serious Criminal Code offences. The purpose of this measure in Bill C-5 was to ensure compliance with the Ontario Court of Appeal's ruling in *R. v. Sharma*. Jonathan Rudin mentioned this to the Standing Committee on Justice and Human Rights while appearing as a representative of Aboriginal Legal Services:

> As the legislative summary makes clear, a major impetus for the introduction of this bill was the case of Sharma.

However, this reason no longer holds true today, since this Court of Appeal ruling was just overturned by the Supreme Court of Canada, as mentioned earlier. In the decision handed down on November 4, the five majority judges ruled that two of the provisions prohibiting conditional sentences that Bill C-5 proposes to repeal are constitutional. The first, to which I referred, is paragraph 742.1(c) of the Criminal Code, which deals with offences punishable by a maximum sentence of 14 years or more. The second is subparagraph 742.1(e)(ii), which prohibits community-based sentences for offences punishable by up to 10 years of imprisonment and involving the import, export, trafficking or production of certain drugs.

In its decision, the Supreme Court noted that both provisions had the same purpose. They were part of a set of conditional sentencing restrictions, which were created by the Safe Streets and Communities Act and would be repealed by Bill C-5, that were intended to bring clarity and consistency to the sentencing regime.

The Supreme Court in *Sharma* found that the courts must defer to Parliament's decision to prohibit community-based sentences for serious offences. I therefore don't see any reason to justify the need to rescind this set of prohibitions involving community-based sentences. In my view, removing these prohibitions definitely wouldn't improve public safety.

These prohibitions have a clear purpose. Indeed, the Supreme Court stated, and I quote:

> Their purpose is to enhance consistency in the conditional sentencing regime by making imprisonment the typical punishment for certain serious offences . . . .

That's precisely what they do. Maximum sentences are reasonable indicators of the seriousness of an offence, and so it follows that the provisions in question don't deprive people of their liberty in any circumstance that isn't related to the intended purpose.

And yet, in a speech he gave on the eve of the Supreme Court handing down its decision, the Government Representative in the Senate said the following about the *Sharma* case, and I quote:

> The Supreme Court of Canada is currently dealing with a case involving an Indigenous woman who helped her husband move drugs under duress, under threats to herself and her daughter. Under current legislation, that woman has to go to prison; she argued that the judge in this case should at least have the option to impose a conditional sentence and that's exactly what Bill C-5 would allow.

However, the Supreme Court ruling gives us another perspective, with which I agree. It found that the Court of Appeal collapsed the concept of seriousness of the offence into the

concepts of circumstances of the offender and particulars of the crime. The Supreme Court believes that the offender in this case, and I quote:

> . . . committed a serious offence in importing cocaine — a reality undisturbed by her personal culpability or mitigating factors.

The majority of judges found the following:

> We accept entirely that the circumstances which led Ms. Sharma to import drugs are tragic and that her moral culpability was thereby attenuated (which was reflected in a sentence of 18 months rather than the six years initially proposed by the Crown).

• (1840)

However, these facts do not make the importation of cocaine any less serious, especially given the quantity she was carrying, as the Supreme Court said.

The Supreme Court added that, while the crisis of Indigenous incarceration is undeniable, it was not demonstrated in *Sharma*:

> . . . that the impugned provisions created or contributed to a disproportionate impact on Indigenous offenders, relative to non-Indigenous offenders.

I am not convinced that this evidence, which the Supreme Court found to be lacking, was produced in the consideration of Bill C-5.

In short, it is my view that the current regime of prohibiting community-based sentences, which is based on the severity of the maximum sentence for the offence, is a legitimate means for Parliament to ensure that offenders convicted of serious crimes do not serve their prison sentences at home.

I therefore do not support Bill C-5, which unnecessarily dismantles a regime of consistent prohibitions put in place to protect Canadians.

Let us now move on to the other measure in Bill C-5 that I would like to talk to you about, in other words the repeal of several minimum prison sentences, including for firearms offences.

I am against this and so are many Canadians, including several police forces. Take, for example, Pierre Brochet, president of the Association des directeurs de police du Québec and chief of the Laval police service.

He testified before the House of Commons standing committee and said the following:

> In conclusion, all the police directors in Quebec want to maintain mandatory minimum sentences for firearms offences.

As I said in my speech at second reading, the Government of Quebec wrote a letter to the federal government on May 4, asking it to remove the repeal of minimum sentences for firearms offences from Bill C-5. This request is entirely justified given the urgent need to act in Quebec to address the devastation wrought by crimes involving illegal firearms.

In *Dallaire v. R.*, a decision it handed down just recently, on October 21, the Quebec Court of Appeal clearly described this context, stating:

> Canadian society strongly condemns the use of illegally owned firearms by criminals who use them illegally, dangerously and often fatally. Recent events in Quebec, such as in the Montreal, Montreal North, Longueuil, Laval and Rivière-des-Prairies areas, confirm this very real danger to peoples' safety and to social peace. The illegal possession of firearms and their use for criminal purposes must be clearly denounced and severely discouraged by tougher penalties.

I share the concerns of Mr. Brian Sauvé, President of the National Police Federation, about Bill C-5 repealing minimum sentences for firearms. He made the following comments before the Senate committee, and I quote:

> Bill C-5 strikes down some mandatory minimum penalties related to weapons trafficking and firearms offences. This is inconsistent with the expressed intent of the government to reduce firearms violence.
>
> The legislation maintains mandatory minimum penalties for offences such as weapons trafficking, the production of automatic firearms and murder or manslaughter involving a firearm. However, tackling criminal activity requires strong measures against criminals that threaten vulnerable communities, especially criminal activity that funds and empowers gangs and organized crime. Bill C-5 unfortunately does not address these problems, notably when considering the increase of firearms offences in Canada.

In closing, I am opposed to the fact that Bill C-5 will diminish the severity of sentences for trafficking of opioids such as fentanyl. Bill C-5 would repeal mandatory minimum sentences for this offence and also authorize serving the sentence in the community.

In my view, allowing judges to hand out more lenient sentences will do nothing to expose and deter offenders from committing this dangerous offence. The tragic loss of human life caused by the scourge of opioids is described in the bill's legislative summary, which states the following, and I quote:

> Between January 2016 and June 2021, approximately 24,626 apparent opioid-toxicity deaths occurred in Canada, and from April to June 2021, there were approximately 19 deaths per day.

I therefore invite you to vote against this bill. Thank you.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Gold, seconded by the Honourable Senator Gagné, that the bill be read the third time.

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

Hon. Senators: Agreed.

[*English*]

Some Hon. Senators: No.

The Hon. the Speaker pro tempore: Those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: I believe the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Do we have agreement on a 30-minute bell?

Call in the senators for a vote at 7:17 p.m.

• (1910)

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

YEAS
THE HONOURABLE SENATORS

Bellemare	Jaffer
Boehm	Klyne
Boniface	Kutcher
Busson	LaBoucane-Benson
Clement	Loffreda
Cormier	Marwah
Cotter	Mégie
Dalphond	Miville-Dechêne
Deacon (*Ontario*)	Moncion
Dean	Pate
Duncan	Petitclerc
Dupuis	Quinn
Francis	Saint-Germain
Gagné	Simons
Gignac	Sorensen
Gold	Tannas
Harder	Woo
Hartling	Yussuff—36

NAYS
THE HONOURABLE SENATORS

Ataullahjan	Marshall
Batters	Martin
Carignan	Plett
Housakos	Seidman
MacDonald	Wells—11
Manning	

ABSTENTIONS
THE HONOURABLE SENATORS

Patterson	Richards—2

• (1920)

[*Translation*]

FALL ECONOMIC STATEMENT IMPLEMENTATION BILL, 2022

CERTAIN COMMITTEES AUTHORIZED TO STUDY SUBJECT MATTER

Hon. Marc Gold (Government Representative in the Senate), pursuant to notice of November 15, 2022, moved:

That, notwithstanding any provision of the Rules, previous order or usual practice:

1. in accordance with rule 10-11(1), the Standing Senate Committee on National Finance be authorized to examine the subject matter of all of Bill C-32, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022, and certain provisions of the budget tabled in Parliament on April 7, 2022, introduced in the House of Commons on November 4, 2022, in advance of the said bill coming before the Senate;

2. in addition, the Standing Senate Committee on Indigenous Peoples be separately authorized to examine the subject matter of those elements contained in Subdivisions A and B of Division 3 of Part 4 of Bill C-32;

3. the Standing Senate Committee on Indigenous Peoples submit its final report to the Senate no later than December 5, 2022, and be authorized to deposit its report with the Clerk of the Senate if the Senate is not then sitting;

4. the aforementioned committees be authorized to meet for the purposes of their study of the subject matter of all or particular elements of Bill C-32, even though the Senate may then be sitting or adjourned, with the application of rules 12-18(1) and 12-18(2) being suspended in relation thereto; and

5. the Standing Senate Committee on National Finance be authorized to take any report tabled under point three into consideration during its study of the subject matter of all of Bill C-32.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

BUSINESS OF THE SENATE

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 the sitting be suspended to await the announcement of Royal Assent, to reassemble at the call of the chair with a ten-minute bell.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

[*Translation*]

(The sitting of the Senate was resumed.)

• (2000)

ROYAL ASSENT

The Hon. the Speaker pro tempore informed the Senate that the following communication had been received:

RIDEAU HALL

November 17, 2022

Mr. Speaker,

I have the honour to inform you that on behalf and at the request of the Right Honourable Mary May Simon, Governor General of Canada, Christine MacIntyre, Deputy to the Governor General, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 17th day of November, 2022, at 7:36 p.m.

Yours sincerely,

Ryan McAdam

Director, Office of the Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bills Assented to Thursday, November 17, 2022:

An Act respecting cost of living relief measures related to dental care and rental housing (*Bill C-31, Chapter 14, 2022*)

An Act to amend the Criminal Code and the Controlled Drugs and Substances Act (*Bill C-5, Chapter 15, 2022*)

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 Tuesday, November 22, 2022, at 2 p.m.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(*At 8:07 p.m., the Senate was continued until Tuesday, November 22, 2022, at 2 p.m.*)

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