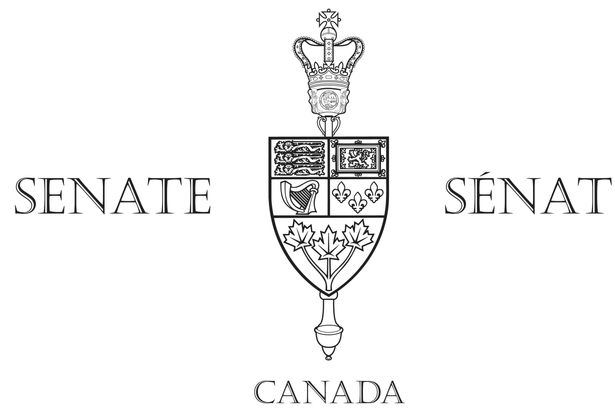

DEBATES OF THE SENATE

1st SESSION 42nd PARLIAMENT VOLUME 150 NUMBER 301

OFFICIAL REPORT
(HANSARD)

Wednesday, June 12, 2019

The Honourable GEORGE J. FUREY,
Speaker

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(Daily index of proceedings appears at back of this issue).

Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 343-550-5002

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

THE SENATE

Wednesday, June 12, 2019

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

Prayers.

TRIBUTES TO DEPARTING PAGES

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

[*Translation*]

Sarah Boukhouali is a proud Franco-Columbian from Victoria who's beginning her third year at the University of Ottawa in conflict studies and human rights. She hopes to continue on that path and eventually get a master's degree in international relations.

She has very much appreciated her experience in the Senate, where her interest in international relations and Canadian politics has only grown and where she's had the opportunity to forge new friendships with her fellow pages.

[*English*]

She would like to thank all senators and Senate staff for making the past two years an amazing experience. To you, Sarah, our very best.

Ceanray Harris-Read represents Winnipeg, Manitoba. She just finished her second year of a joint honours bachelor degree in history and political science. She feels privileged to have represented Winnipeg and wishes to thank all senators and staff for this incredible learning experience. She hopes to pursue a career in academia. To you, Ceanray, our very best.

SENATORS' STATEMENTS

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of His Excellency Vesa Ilmari Lehtonen, Ambassador of the Republic of Finland. He is accompanied by his spouse, Dr. Pirjetta Manninen. They are the guests of the Honourable Senator McPhedran.

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

Hon. Senators: Hear, hear!

FINLAND

HIS EXCELLENCY VESA ILMARI LEHTONEN—DR. PIRJETTA MANNINEN

Hon. Marilou McPhedran: Honourable senators, I rise today to recognize and to thank the Finnish ambassador to Canada, His Excellency Ambassador Vesa Ilmari Lehtonen, and his spouse, Dr. Pirjetta Manninen, for her distinguished career in geriatric medicine and for his many contributions to diplomacy here in our capital and many other parts of Canada.

As they near the end of their time in Canada, they will be welcoming their successor to Ottawa next week. As representatives of Finland, I would like to recognize their work and share some key highlights that, for me, tell us more about their leadership in Canada-Finland relations.

The Arctic is an important field of cooperation for Canada and Finland. We share the objective of sustainable development in the Arctic, with Indigenous people at the centre. Canada and Finland work together closely in the Arctic Council. The priorities of Finland — environment, connectivity, meteorology and education — are good examples of our common goals, which are environmental stewardship and mitigation of climate change, scientific and technological advancement and facilities for the peoples of the Arctic to sustain traditional livelihoods and develop new ones in a sustainable way.

[*Translation*]

Just last week, Canada sent a large delegation to the second Arctic Arts Summit, which was held in Finland. Furthermore, Canada and Finland are actively involved in collaborative efforts with the University of the Arctic. Bilateral cooperation is vital to Canadian-Finnish relations. In fact, we have partnered on some interesting projects for the development of bioenergy solutions that will benefit remote northern and Arctic communities.

[*English*]

The Sami people, with approximately 10,000 residing in Finland, have strong similarities with the Indigenous peoples of Canada. I have seen them working together with our Indigenous leaders at the UN Permanent Forum on Indigenous Issues. Again, we have similarities, such as constitutional recognition, urban living challenges for Indigenous peoples, and language protection. We look forward to continuing to work to make equality for Indigenous people across the globe a reality.

When he returns to Finland, the ambassador will have responsibility for North America, so of course, the new Canada-U.S.-Mexico agreement becomes particularly relevant.

Canada and Finland can be examples of the United Nations Declaration of the Rights of Indigenous Peoples and its effective implementation. In the July 2017 Human Rights Council report of the Expert Mechanism on the Rights of Indigenous Peoples, the report clearly highlights Finland's work and gave them an "A".

In closing, I've been told that Ambassador Lehtonen is hopeful to continue what has become a passion for Canadian hockey, and Dr. Manninen plans to continue her new promising career as a snowboard instructor and perhaps also as a medical doctor when they return.

Wishing you all the best from all of us here in the Senate. *Meegwetch*. Thank you.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of members of the Ottawa Nepean Canadians Sports Club. They are the guests of the Honourable Senator Munson.

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

Hon. Senators: Hear, hear!

OTTAWA NEPEAN CANADIANS SPORTS CLUB

Hon. Jim Munson: Senator Dawson asked if you are the guys I play hockey with. No, they're the guys I have a beer with.

Honourable senators, somewhere someplace in Ottawa, someone is having a cold, refreshing beer on a hot June day. I want to talk about a special organization where having a pint goes hand in hand with giving back to your community. It's called the Ottawa Nepean Canadians Sports Club.

Forty years ago, a group of men had an idea over a few cold ones: They wanted to help the Ottawa sporting community. Playing sports wasn't on a level playing field for everyone. Those of us who live and breathe Parliament Hill are sometimes unaware of what takes place just steps away from politics.

• (1410)

Honourable senators, today I want to salute the Ottawa Nepean Canadians Sports Club and the vision of a few buddies back in 1979. They wanted to do something for amateur sport, especially children and organizations who loved baseball but didn't have enough money to play or operate a team. Bruce Hamilton, Gordon Hamilton, Brian Boston, Fred Whitney, Bob Elliott, Ray Fortier and Ken Neirenhausen were the founding members. Little did they know, in 1979, just what they would accomplish, but they wanted to give back to their community. They did that and more.

In the first 30 years, the club donated $3 million dollars to amateur sports groups and individuals. In the last 10 years, the club continues to give and give and give.

Honourable senators, their generosity goes beyond sports. They know how to fundraise the old-fashioned way of bingos to modern-day golf tournaments. At sports banquets, education bursaries are handed out to male and female sports award recipients.

In recent years, the club has touched my heart by buying hockey and soccer equipment for a Syrian family. The first real English phrase from that Syrian family, one of the boys told me after he learned how to skate on the canal he says, "He shoots, he scores."

Then there is helping out families that need a little extra to help pay medical bills in a time of need, a young aspiring basketball player struck by cancer.

This is what community service is all about. That is why the community sports icons like former Ottawa 67s coach Brian Kilrea, Tim Murray and Jeff Hunt have supported the work of the Ottawa Nepean Canadians Sports Club.

Honourable senators, I believe and I know you believe it is important to acknowledge the volunteer organizations like the Ottawa Nepean Canadians Sports Club. They are the backbone of a community and it's more than sports. It's about lending a helping hand. The names continuing on Rob Clouthier, Derek Barnes, Jack Cloutier, John Goold and Steve Boston. Who would have thought 40 years ago that a conversation over a few pints of beer would have led to was important to every community, giving back. Thank you.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Charles Ferris, former Legal Counsel and Assistant Ombudsman for the Province of New Brunswick. He is the guest of the Honourable Senator McIntyre.

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

Hon. Senators: Hear, hear!

[*Translation*]

ACADIAN WORLD CONGRESS 2019

Hon. Rose-May Poirier: Honourable senators, before we bid each other farewell for the summer, I would like to invite you to the sixth Congrès mondial acadien in Prince Edward Island and New Brunswick from August 10 to 24. This is the event's twenty-fifth anniversary.

First, some history. Back in 1988, some friends were chatting and came up with the idea of organizing a gathering of Acadians. André Boudreau accepted the challenge.

The first congress was held in 1994. The mission of that first congress was to reinforce ties among all Acadians and invite others to discover Acadia. Over 300,000 people attended discussions, concerts and other activities.

On National Acadian Day, August 15, 1994, the Acadian flag was raised in my village, Saint-Louis-de-Kent. To this day, that flag is the largest Acadian flag in the world and a source of tremendous pride to the people of Kent.

People also gathered there for an Acadian culinary experience. Seafood, meat pies, fricot, grated poutine and, of course, delicious cakes were on the menu. From August 12 to 22, 1994, in the host region of Acadie-Beauséjour, Acadia was indeed celebrating. On a more personal note, as a counsellor for one of the host municipalities at the time, I saw first-hand the impact and importance of this gathering.

The congress has always been an inclusive celebration since a different region hosts the event every year in order to reach the Acadian diaspora. Our survival depends on our young people recognizing and being proud of their Acadian roots. From Louisiana to Nova Scotia and from the Acadian Peninsula to Madawaska, Edmundston, Maine and the St. Lawrence region of Quebec, this year, the sixth Congrès mondial acadien will be back in New Brunswick and also in Prince Edward Island.

The congress officially kicks off on August 10 in Abrams Village, P.E.I., and will wrap up on August 24 in Shediac, New Brunswick.

Dear colleagues, I invite you to visit the site of the Congrès mondial Acadien. Come visit us in Acadia or, as we say in Chiac, “V’nez nous ouère en Acadie”.

Thank you.

[*English*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Dr. Joseph Khoury. He is accompanied by his wife, Janet Becigneul and their two children, Juliana and James Khoury. They are the guests of the Honourable Senator Coyle.

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

Hon. Senators: Hear, hear!

D-DAY AND THE BATTLE OF NORMANDY

SEVENTY-FIFTH ANNIVERSARY

Hon. Robert Black: Honourable senators, last week I had the incredible honour and privilege of representing the Senate of Canada at various D-Day ceremonies in Normandy, France. It was especially important to me as my grandfather, Levi Austin Trask, a veteran of World War I, also fought in World War II. His son, my uncle, Raymond Gould Trask participated in the D-Day campaign. He was one of the lucky ones. He came home.

Last Thursday, June 6, was the seventy-fifth anniversary of D-Day, the day in 1944 when Allied forces stormed the beaches of Normandy, beginning the liberation of German-occupied France.

D-Day is an extremely important event in world and Canadian history. It marked a glimmer of hope after years of tragic fighting in Europe and elsewhere. We lost 359 Canadian lives on D-Day itself, and over 5000 by the end of the Battle of Normandy. Canadians’ remarkable efforts, along with the rest of the Allied forces, were a feat and a sacrifice that we will never forget.

I was honoured to attend numerous ceremonies and pay tribute as our soldiers were recognized and remembered. Governor General Julie Payette and Veterans Affairs Minister Lawrence MacAulay delivered heartfelt and moving remarks, passing along the respect and gratitude of all Canadians. New monuments to the sacrifices of Canadian heroes in the Battle of Normandy were unveiled in Chambois and at Point 67, near Caen.

I was especially moved to observe the interment of additional remains in the grave of Sargent John Albert Collis, a member of the Royal Hamilton Light Infantry who died shortly after D-Day at the age of 28. He is buried at the Bretteville-sur-Laize Canadian War Cemetery, but additional remains were found just two years ago and traced to him through a signature ring found with the remains and subsequent DNA analysis. His grandson Danny Gallagher and great-granddaughter Meghan Gallagher were with us as part of the Canadian delegation. They and other family members took part in this very special moment last Friday.

However, the most valuable and unforgettable part of the experience for me was getting to know the 37 amazing D-Day veterans who travelled with us and to hear about their experiences. It was extremely emotional to be with them at Juno Beach, standing where they fought, where they bled, where some of their comrades died.

Ninety-six-year-old Charles Scot-Brown said it best when he spoke at one of the ceremonies about those who died and now rest in France. He said:

> Don’t be sad. They died for a good cause. And they are proud. When you walk out of this hallowed ground, stand tall, walk proud and say, “I am a Canadian.”

To the Canadian veterans still among us: Thank you. To the Canadian veterans who have since passed: Your bravery is not forgotten. And to the many young soldiers who crossed the Atlantic, never to return: We will never be able to repay your sacrifice.

Honourable senators, we will remember them. Thank you.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Susan Glass, Vice-Chair, NAC Board of Trustees, and Arni Thorsteinson. They are the guests of the Honourable Senator Black (*Alberta*).

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

Hon. Senators: Hear, hear!

[*Translation*]

ROBERT CHARLEBOIS, O.C., O.Q.

Hon. Marc Gold: Honourable senators, I rise today to pay tribute to a great Quebecer and national treasure, Robert Charlebois, who will be celebrating his seventy-fifth birthday this month.

This renowned artist has won too many honours and awards over the course of his career to mention them all. What matters is that we acknowledge Mr. Charlebois' impact on an entire generation of Quebecers.

• (1420)

Robert Charlebois was the coolest guy around at the time. It's true. His music was rooted in the great poetic tradition of Quebec singer-songwriters, but it was also electrifying and irreverent with a 1960s psychedelic rock vibe. Whether it was his great duet with Louise Forestier in the classic song *Lindberg* or one of his more poignant pieces like *Ordinaire* or *Je reviendrai à Montréal*, Robert Charlebois' music made its mark on an entire generation of Quebecers.

[*English*]

And not only Quebecers of French origin. More than any other artist, Robert Charlebois turned a generation of English-speaking Quebecers onto the creative richness of the Quebec music scene and, through that, to the Quebec cultural and political revolution through which we were all living together. For many like me, Robert Charlebois was part of our political and cultural existential awakening as Quebecers.

He also blazed a trail for others. His appearances in Paris opened the doors for generations of Quebec artists to find success in France and elsewhere in Europe. The French, or at least the Parisians, used to be somewhat condescending, if not downright dismissive, of the way we spoke French in Quebec. But after Charlebois, all of a sudden, *joual* was cool!

As he approaches his seventy-fifth birthday later this month, is he resting on his laurels? Hardly. Last week, he performed three sold-out shows at Place des Arts in Montreal, and his new album, released just a few months ago — his twenty-fifth — contains all the elements that we have come to love in his music: a hint of Bo Diddley in the opening track, a *soupçon* of doo-wop in *Les Filles de mon âge* and an exquisitely lovely reflection on life and aging in the title track, *Et voilà*.

[*Translation*]

There you have it. In my mind, Robert Charlebois is still the coolest guy in the world. Happy birthday, Robert.

[*English*]

ROUTINE PROCEEDINGS

STUDY ON ISSUES CONCERNING VETERANS' AFFAIRS

TWENTY-SIXTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE TABLED

Hon. Gwen Boniface: Honourable senators, I have the honour to table, in both official languages, the twenty-sixth report (interim) of the Standing Senate Committee on National Security and Defence entitled *Canadian Veterans' Use of Cannabis for Medical Purposes* 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 Boniface, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

[*Translation*]

ADJOURNMENT

NOTICE OF MOTION

Hon. Diane Bellemare (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, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, June 17, 2019, at 6 p.m.;
>
> That committees of the Senate scheduled to meet on that day be authorized to do so for the purpose of considering government business, even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto;
>
> That, notwithstanding any provision of the Rules, if a vote is deferred to that day, the bells for the vote ring at the start of Orders of the Day, for 15 minutes, with the vote to be held thereafter; and
>
> That rule 3-3(1) be suspended on that day.

[*English*]

INTER-PARLIAMENTARY UNION

INTER-PARLIAMENTARY UNION ASSEMBLY AND RELATED MEETINGS, APRIL 4-10, 2019—REPORT TABLED

Hon. Salma Ataullahjan: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Parliamentary Delegation respecting its participation at the 140th Inter-Parliamentary Union Assembly and related meetings held in Doha, Qatar, from April 4 to 10, 2019.

[*Translation*]

L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

MEETING OF THE EUROPE REGIONAL ASSEMBLY, OCTOBER 21-24, 2018—REPORT TABLED

Hon. Dennis Dawson: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Parliamentary Delegation of the *Assemblée parlementaire de la Francophonie* (APF) respecting its participation in the 31st meeting of the Europe Regional Assembly, held in Andorra la Vella, Principality of Andorra, from October 21 to 24, 2018.

BUREAU MEETING, JANUARY 31-FEBRUARY 2, 2019—REPORT TABLED

Hon. Dennis Dawson: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Parliamentary Delegation of the *Assemblée parlementaire de la Francophonie* (APF) respecting its participation in the Bureau Meeting of the APF, held in Brussels, Belgium, from January 31 to February 2, 2019.

NATIONAL FINANCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on National Finance be authorized to meet on Wednesday, June 12, 2019, at 6:45 p.m., for the purpose of its study of Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019, and other measures, even though the Senate may then be sitting, and that the application of rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE AND DEPOSIT REPORTS ON STUDIES OF ISSUES RELATING TO THE HUMAN RIGHTS OF PRISONERS IN THE CORRECTIONAL SYSTEM AND INTERNATIONAL AND NATIONAL HUMAN RIGHTS OBLIGATIONS WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. Wanda Elaine Thomas Bernard: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That, pursuant to rule 12-18(2)(b)(i), the Standing Senate Committee on Human Rights be authorized to meet between July 29 and August 9, 2019, inclusive, even though the Senate may then be adjourned for a period exceeding one week; and
>
> That the committee also be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate before September 3, 2019, the following reports if the Senate is not then sitting, with the reports being deemed to have been tabled in the Senate:
>
> (*a*) final report relating to the human rights of federally-sentenced persons;
>
> (*b*) interim report on issues relating to human rights and the machinery of government dealing with Canada's international and national human rights obligations (forced and coerced sterilization of persons in Canada); and
>
> (*c*) interim report on issues relating to human rights and the machinery of government dealing with Canada's international and national human rights obligations (Passenger Protect Program).

QUESTION PERIOD

INTERGOVERNMENTAL AFFAIRS

PROVINCIAL AND TERRITORIAL CONCERNS ON GOVERNMENT LEGISLATION

Hon. Larry W. Smith (Leader of the Opposition): My question is for the Leader of the Government in the Senate, and it concerns the topic I raised yesterday: the letter to the Prime Minister from six premiers regarding Bill C-48 and Bill C-69.

Yesterday, Senator Harder told us the Government of Canada is always welcoming of views expressed by first ministers. The Prime Minister does not appear to share this opinion.

• (1430)

He told the other place that the letter from the premiers outlining their concerns with these bills was "completely irresponsible."

These six premiers are not alone in their concerns. Every province asked the Senate for amendments to Bill C-69 and, as I said yesterday, nine out of ten provinces asked for significant amendments.

Senator Harder, are all provinces completely irresponsible in the eyes of the Prime Minister simply for seeking changes to a badly flawed bill?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. He will know — and I will repeat my answer of yesterday, that the role of the Government of Canada is not to represent any one province but to represent the national interest while working, as a confederation must, with the provincial premiers that are elected by their own jurisdictions.

Senator Smith: I thank you for the answer. As people have said, I think 60 per cent of the population was represented and over 50 per cent of the GDP in our country.

Now the government has apparently rejected the majority of amendments from CAPP, Canadian Association of Petroleum Producers, the Canadian Energy Pipeline Association and the nuclear industry.

Senator Harder, first, what positive progress has been made? Second, how is this process open and transparent? Third, what does this mean to the future of oil and gas projects, hydroelectric projects and nuclear projects in Canada?

Senator Harder: I thank the honourable senator for his question. Let me simply respond to his preamble, which suggests that there is a legitimacy higher than that accorded to a national government elected by the public at large, if you aggregate provincial elections.

As a resident of Ontario, I do not view the Premier of Ontario as representing the best interests of Canada in the federation.

Some Hon. Senators: Oh, oh!

Senator Harder: Others will dispute that. That is their right, but let's not pretend that it is the provinces that represent the national interest.

With respect to the question being asked about the amendments, which the government has provided careful and considered reflection on, the government's overall focus remains on the overarching objectives of the bill: ensuring projects move ahead in a timely fashion, rebuilding public trust in our assessment processes, protecting Canada's environment and providing added certainty to industry and investors alike.

The government has accepted a wide range of Senate amendments, which build on the objectives. Let me enumerate several of them. First, limiting ministerial discretion by giving added power to the impact assessment agency in project decision-making, such as determining time limits, where appropriate, and appointing individuals to the review panels. Second, enforcing the importance of economic considerations in impact assessments and project decision-making, including the purpose statement of the impact assessment act. Third, added clarity as to what is expected of companies in the initial stages of an impact assessment process — so-called scoping — and how the impact assessment agency and/or review panels can best engage with the public. Fourth, the role of life cycle regulators and offshore boards has been enhanced. Fifth, acknowledging Indigenous concerns and rights, namely of Indigenous women. Sixth, the agency has been empowered to outline how the public participation process would work.

Canada's competitiveness and attractiveness for investment dollars is top of mind and it is why the new assessment system focuses on clear expectations, legislating timelines and an approach based on one project, one review.

The final point I would make, honourable senators, is that what is important to me, institutionally, is that the Senate is neither a rival nor a rubber stamp of the other place.

EMPLOYMENT, WORKFORCE DEVELOPMENT AND LABOUR

SUPPORT FOR WORKERS IN SOFTWOOD LUMBER INDUSTRY

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, my question is also for the Government Leader in the Senate. Senator Harder, a week ago I raised with you the dire situation currently faced by the forestry industry in my province of British Columbia. In addition to the mill closures announced last month, this week has brought more bad news.

On Monday, Canfor announced that it will significantly curtail its operations at almost all of its plants this summer, stating that the current operating conditions in B.C. are uneconomic. As well, yesterday Norbord announced that it will indefinitely curtail production at its mill in 100 Mile House beginning in August, impacting about 160 employees.

Senator Harder, you didn't quite answer part of my question that I asked last week. In light of the disappointing news this week, I will ask it again: What will your government do to support those who have lost their jobs and help them get back to work?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and her ongoing and appropriate concern for not only the industry but for the families that are involved in the dislocations being announced by the industry.

The Government of Canada continues to have this as a high priority in its engagement with the United States, and I note that the Minister of Foreign Affairs was recently in the United States reviewing a broad range of bilateral issues. Lumber issues remain top of mind and the resolution of those, but it takes two to tango in this business, as the honourable senator will know. However, the minister remains vigilant and hopeful.

Let me say that with respect to the dislocation of workers and the industry itself, there are programs available, as the honourable senator knows. Those are programs where the minister responsible is working closely with the industry sector to provide.

Senator Martin: Yes, and it is incumbent upon the minister to do everything she is can, so please convey those concerns to her once again.

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

SOFTWOOD LUMBER

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, both the Prime Minister and President Trump are scheduled to attend G20 meetings in Osaka, Japan later this month. Will the Prime Minister raise the issue of softwood lumber duties with President Trump when they meet?

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, it is not for me to decide or project what the agenda will be, but I cannot imagine that a meeting with the two leaders of our respective countries would not review the list of economic issues that are of high priority to both sides, including the one the honourable senator references.

NATIONAL DEFENCE

OPERATION HONOUR

Hon. Paul E. McIntyre: Honourable senators, my question is for the Leader of the Government in the Senate. A recent study out of Dalhousie University focuses on how Canada's military law system responds to sexual assault. The study found that since 2015, when the Canadian Armed Forces launched Operation HONOUR, only one soldier has been convicted by a military judge of sexually assaulting a female member of the Canadian Armed Forces.

The study also looked at the rate of acquittals for sexual assault charges in the military justice system versus those tried in our civilian courts. It found that since 2015, 9 of the military's 14 sexual assault trials resulted in acquittals on all charges — an acquittal rate of 64 per cent.

The acquittal rate for those charges in civilian courts over the same time period is only 5 per cent. Leader, what is your government's response to the findings of this report? What do these statistics tell Canadians about the success of Operation HONOUR?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. He will know from comments that the minister responsible, and indeed the head of the armed forces has made, that these results are troubling and there is more work to do, absolutely. The senior leadership of the armed forces has recommitted to improving and dealing more effectively than the report would suggest has been the case.

I would also point out that we in this chamber can do something as well and that's pass Bill C-77 to ensure that victims of discrimination, prosecution, assault and otherwise, in the armed forces, are provided victims' rights equal to and parallel with those provided to non-military personnel.

Senator McIntyre: Leader, as you know, our Standing Senate Committee on National Security and Defence has recently examined sexual harassment and violence in the forces. The committee made a number of recommendations to the government, including improving the oversight and accountability of Operation HONOUR, commitments made to the women and men of the Canadian Armed Forces.

Leader, could you just tell us if the Minister of National Defence and the Chief of the Defence Staff are aware of the findings of our Senate committee? If so, what is their initial response to our recommendations?

Senator Harder: I thank the honourable senator for his question. I can confirm that the minister and senior officials are indeed aware and they are reviewing the report, as it is helpful advice to the government. They will be responding in a more formal fashion with respect to the advice given by the Senate as appropriate.

• (1440)

[*Translation*]

HEALTH

ADVERTISING DIRECTED AT CHILDREN

Hon. Chantal Petitclerc: My question is for the Government Representative in the Senate. Senator Harder, studies have clearly shown that food marketing directed at children contributes to excess consumption of sodium, saturated fats and sugar, which is why one in three Canadian children is overweight or obese. I repeat, one in three kids. Restricting this kind of marketing was a campaign promise and a component of the 2016 healthy eating strategy.

That being said, the Government of Canada chose instead to support the efforts of our former colleague, Senator Greene Raine, through Bill S-228. As we know, extensive consultations were held, and on Friday, Health Canada released a new report summarizing the feedback it had received on the draft guide to the application of the bill, which was published in December 2018.

Senator Harder, could you explain the purpose of this publication and tell us what new information the report offers about the ongoing discussions surrounding the draft regulations?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and ongoing advocacy and excessive patience on this matter. I would also compliment Senator Seidman for her leadership on Bill S-228.

The recent report you referred to demonstrates the government's ongoing commitment to consultations. The information contained in this report will help inform the regulatory process, as well as draft 2.0 of the draft guide to the application of the child health protection act. The government received extensive feedback from industry, academia and health professionals.

With respect to Bill S-228 itself, I would repeat the same message I've been stating over the last number of months, that this bill deserves a vote and this chamber should be afforded an opportunity to make a decision on this bill promptly.

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

CANADA-CHINA RELATIONS

Hon. Leo Housakos: Honourable senators, my question is for the Leader of the Government in the Senate.

Senator Harder, Crown corporation Destination Canada is sponsoring a Canada Day gala dinner next week in, of all places, Beijing, China. The invitation for the gala dinner states that more than 200 people will gather to celebrate Canada Day. The party boasts that they will be serving the finest Canadian lobster, beef and wine. No great party would be complete without a draw for some wonderful prizes. All of this is at the expense of a Crown corporation.

My question is: Have Michael Kovrig and Michael Spavor been invited? Will they be attending this party, or have they sent their regrets?

Hon. Peter Harder (Government Representative in the Senate): That is a rather cynical question considering the circumstances the individuals face, and I will not respond.

Senator Housakos: Senator Harder, all we have been getting back is cynical answers from this government on a very serious question. I cannot fathom that you think feasting on Canada's finest lobster and wine, while a few feet away we have Canadian citizens being illegally detained, and have been for a number of months, and have a Crown corporation paying for that party in Beijing — I think that is what is cynical here, and it is cynical on the part of our government.

I will give you the benefit of the doubt, though, because I'm sure that if we are using taxpayer money to lavish galas in China's capital, there must be something to celebrate. I want to point out that this terrible situation is highlighting the ineptitude of this government in dealing with a very serious issue.

Has Prime Minister Trudeau's office secured confirmation of a bilateral meeting with the President of China at the upcoming G20 meeting? If that has not been secured, why not?

Senator Harder: I will take that under advisement.

[*Translation*]

CANADIAN HERITAGE

CANADIAN HONOURS

Hon. Jean-Guy Dagenais: Honourable senators, my question is for the Government Representative in the Senate. Peter Dalglish, a Canadian humanitarian worker who has spent 30 years working with children in disadvantaged countries and has worked at the United Nations, was found guilty in Nepal of assaulting two boys, 11 and 14, who were found with him in his home. If you go to his website, you'll see photos of Mr. Dalglish with Prime Minister Trudeau in 1994 and a recent photo with current Prime Minister Justin Trudeau. It seems that these photos helped raise his profile within the international agencies where he worked.

This sexual assault case brings shame to Canada. Since the RCMP and Interpol seem to have participated in the investigation with the Nepalese police, I would like to know if the Prime Minister was informed that this long-time friend of the Trudeau family was under investigation. I would especially like to know whether your Prime Minister intends to ask the Governor General to initiate the process, with the advisory council, to remove this Peter Dalglish from the Order of Canada to which he was appointed in 2016.

[*English*]

Hon. Peter Harder (Government Representative in the Senate): Let me say in response to the question that there is a well-established process for the removal of such honours, if the honourable senator would wish to participate in that, as I'm sure there would be others that would be of interest in that process as well.

With respect to the other aspects of his question, I will take them under advisement.

[*Translation*]

Senator Dagenais: I would like the Government Representative to know that I will happily participate in the process.

PRIME MINISTER'S OFFICE

SINGLE-USE PLASTICS

Hon. Claude Carignan: My question is for the Government Representative in the Senate. Government Representative, on Monday a journalist asked the Prime Minister what kind of steps his family had taken to cut back on plastic waste, and he replied, and I quote:

> We have recently switched to drinking water bottles out of . . . water out of, uh . . . when we have water bottles out of a plastic, uh . . . sorry, away from plastic, towards paper, uh . . . like drink-box water bottles sort of thing.

I read and reread this answer very carefully, and I'm not sure that I really understand it. Senator, do you have a translation in both official languages of the Prime Minister's nonsensical answer, or can you give us an answer to the question of what practical steps the Trudeau family is taking to cut back on plastics?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his deep interest in the subject. Let me take the question under advisement.

[*Translation*]

Senator Carignan: Since the Prime Minister admitted that he drinks water from drink-boxes, which was probably purchased from the United States, could the Leader of the Government explain why the Prime Minister does not drink City of Ottawa tap water?

[*English*]

Senator Harder: Again, I thank the honourable senator for his question. As a senator from Ottawa, I have a keen interest in the answer and I will look for it.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: consideration of the message from House of Commons on Bill C-59, followed by third reading of bills C-82, C-75, C-83 and C-48, followed by all remaining items in the order that they appear on the Order Paper.

[*English*]

NATIONAL SECURITY BILL, 2017

MESSAGE FROM COMMONS—MOTION FOR NON-INSISTENCE UPON SENATE AMENDMENTS—DEBATE ADJOURNED

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-59, An Act respecting national security matters

Tuesday, June 11, 2019

> *ORDERED*,—That a Message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-59, An Act respecting national security matters, the House:
>
> agrees with amendments 3 and 4 made by the Senate;
>
> respectfully disagrees with amendment 1 made by the Senate because the intent of the legislation is to ensure ministerial responsibility and accountability, and the legislation provides that the Intelligence Commissioner must review whether or not the conclusions of the Minister of National Defence, when issuing a foreign intelligence authorization, are reasonable; additionally, subsection 20(1) already requires the Commissioner to provide the Minister with reasons for authorizing or rejecting a foreign intelligence authorization request;
>
> respectfully disagrees with amendment 2 made by the Senate because it would limit the scope of subsection 83.221(1) and would create inconsistencies with the general counselling provisions contained in section 22 and paragraphs 464(a) and (b) of the Criminal Code.

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

> That the Senate do not insist on its amendments 1 and 2 to Bill C-59, An Act respecting national security matters, to which the House of Commons has disagreed; and

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

He said: Honourable senators, I rise today to speak to the message concerning Bill C-59, An Act respecting national security matters. I would like to thank the Standing Senate Committee on National Security and Defence for their thorough review of this legislation and the amendments brought forward. I also want to acknowledge the leadership of Senator Gold, the bill's sponsor, who helped navigate this complex bill through the Senate.

In its consideration of the message received from this chamber, the government has agreed to accept two of our amendments while respectfully declining two others. I will highlight these amendments briefly, but I would like to reference the work of the Standing Senate Committee on National Security and Defence on this bill.

• (1450)

The committee made a total of 10 observations, which the government has committed to carefully reviewing as it moves forward with important changes to Canada's national security regime. In particular, one of the committee's observations highlighted that a Senate-led study should be undertaken on the unique challenges surrounding terrorism and other national security prosecutions, including converting intelligence to evidence.

Minister Goodale referenced this observation in his speech in the other place on June 7. He said:

> I especially like the idea of the Senate undertaking a study it is proposing on converting intelligence to evidence in a court of law. This is a point that has bedeviled policy-makers for years, as well as Crown prosecutors and security and intelligence operators, and it is a topic that could benefit from detailed Senate examination.

A Senate amendment to require a parliamentary review three years after receiving Royal Assent, rather than the original five, and what must be included as part of the comprehensive review in clause 168, has been agreed to by the government. The government has also accepted an amendment made by the Senate in which a blank schedule was added in relation to Part 1.1 of Bill C-59, which enacts the avoiding complicity in mistreatment of foreign entities act. Adding this schedule corrects an important technical issue by allowing the Governor-in-Council to add departments or agencies in the future that may have to comply with the act.

The government respectfully declined a Senate amendment that sought to broaden the terrorism counselling provisions within the Criminal Code. The government is of the view that the amendment could have unintended consequences by creating inconsistencies in criminal law and that the text is inconsistent with the proposed counselling offence.

The offence is defined as counselling the commission of a terrorism offence where a specific terrorism offence is not identified and whether or not the offence is committed by the person who is counselled. The first paragraph of the amendment is consistent with this offence since it uses the term "terrorist offence."

However, the remaining three paragraphs are inconsistent both with the proposed offence and the first paragraph of the amendment because they refer to "terrorist activity." In fact, "terrorist activity" is narrower in scope than "terrorism offence" under the Criminal Code. As an example, leaving Canada to join a terrorist organization is a terrorist offence. It is not, however, captured in the Criminal Code's definition of terrorist activity.

The result is an inconsistency within the amendment itself, and between the amendment and the proposed counselling offence.

Finally, the government respectfully declined an amendment which could give the intelligence commissioner the authority to direct the minister as to how he or she could exercise their authorities. This would be outside the scope of his or her role as it could shift responsibility and accountability away from the minister and on to the intelligence commissioner.

Ultimately, it could expand the remit of the intelligence commissioner in a way that was not originally intended in Bill C-59. The role of the proposed commissioner would be to review whether the conclusions of the minister in issuing a foreign intelligence authorization are reasonable. The intelligence commissioner would have a role to play in determining whether that standard has been met.

It is important to note that Bill C-59 creates a requirement to provide the commissioner with all of the information that was before the minister while allowing the commissioner to seek clarifications in order to fulfill his or her reviewing role, as long as these clarifications do not change or add new information to the record. Ultimately, the intent of the legislation is to ensure that the intelligence commissioner is empowered to do his or her job effectively, while, at the same time, preserving ministerial accountability.

Honourable senators, many of you in this chamber have heard from the representatives of No Fly List Kids, whose advocacy has been important in raising awareness of a redress system, something that Bill C-59 will implement through its legislative framework. I think it is only fitting that their hard work be recognized in this chamber as we get closer to making these important changes a reality. I know they are listening today.

The Senate has done its due diligence in examining a comprehensive piece of legislation that will put Canada in line with many of its international allies and ensure that our national security agencies have the tools they desperately need.

I would ask that we accept the message from the House of Commons so that this bill can achieve Royal Assent as soon as possible.

Thank you.

(On motion of Senator Martin, debate adjourned.)

MULTILATERAL INSTRUMENT IN RESPECT OF TAX CONVENTIONS BILL

THIRD READING—DEBATE ADJOURNED

Hon. Mary Coyle moved third reading of Bill C-82, An Act to implement a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting.

She said: Honourable senators, I rise today to speak at third reading as sponsor of Bill C- 82, An Act to implement a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting.

Remember this one?

In his second reading speech, my honourable colleague Senator Ngo, the friendly critic of this bill, quoted Sir Winston Churchill, who said:

> For a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle.

Well, honourable senators, I do not believe that Bill C-82 is in any way an attempt to try to tax ourselves into prosperity by lifting ourselves up by the handle of a metaphorical bucket. Rather, it is one of a number of practical and timely initiatives by Canada and our OECD and G20 colleagues to plug the holes in our national buckets so that we retain the taxes that are rightly due our governments.

Last week, we celebrated the seventy-fifth anniversary of the D-Day invasion on the beaches of Normandy that portended the end of the Second World War. Our colleague Senator Rob Black was there.

A little-discussed fact is that the Canadian tax system underwent a significant transformation during wartime under the leadership of the Right Honourable J.L. Ilsley, the federal Minister of Finance from 1940 to 1946. Personal income tax was extended to most of Canada's working population, and corporate income taxes were raised significantly and applied to excess war-related profits at that time. This was critical for financing the war effort and establishing the postwar welfare state we take for granted today in Canada.

Sir Winston Churchill and the people of occupied France might never have had the significant and heroic support of the young Canadians we honoured on Juno Beach last week if our country had not found an effective and fair way to raise the revenues required to mobilize, train and equip those young soldiers, sailors and airmen.

Another significant historical reality with relevance to our bill is the emergence, post-World War II, of new ways for nations to work together to ensure peace and to rebuild and maintain a prosperous and fair world order.

NATO, the modern United Nations and the OECD can all trace their origins to the period of the Second World War and its immediate aftermath.

Bill C-82 embraces the spirit of international cooperation by enacting a multilateral tax convention, known as the MLI, that will allow Canada and its international treaty partners to efficiently — and "efficiently" is the key word here — implement tax treaty-related measures to counter tax avoidance strategies. This bill has its origins in a G20 effort in cooperation with the OECD.

[*Translation*]

Pravin Gordhan, former South African finance minister, said, "Aggressive tax avoidance is a serious cancer eating into the fiscal base of many countries."

[*English*]

Pulitzer Prize-winning investigative journalist, specialist in tax issues and author of *The Making of Donald Trump* — does that word wake you up? — David Cay Johnston, states:

> Tax shelters are to democracy what pollution is to the environment.

Honourable senators, we all know how quickly the world is changing and how interconnected the global financial markets have become. No one country can effectively tackle tax avoidance on its own. A concerted effort is required for nations to come together and agree on minimum standards to prevent the erosion of the tax base and profit shifting that occurs when companies and individuals engage in deliberate tax treaty shopping — shopping for opportunities to exploit loopholes in current tax systems and thus successfully and at this time actually legally avoid paying taxes.

• (1500)

Current gaps in existing domestic laws and tax treaties have allowed for profits to be shifted to lower or even no-tax jurisdictions, causing leakage of potential tax revenues for our country and for other countries who share this concern.

With the global financial crisis of 2008, many countries saw their economies slowed and their tax revenues drastically reduced. Among other concerns, governments became worried about aggressive international tax avoidance and the resulting revenue losses.

In order to address these concerns, the G20/OECD Base Erosion and Profit Shifting program, known affectionately as BEPS, was born in 2013. The passing of Bill C-82 into law will enable Canada to implement that multilateral convention to prevent base erosion and profit shifting — the multilateral instrument, or MLI. The convention has both mandatory and optional provisions.

At the signing of this convention in 2017, Canada indicated that it would implement the mandatory provisions related to treaty abuses and dispute resolution. Provisions related to dual residency and taxation on dividends and capital gains were added by Canada since that initial point of signing.

In time, other articles may be adopted. Canada is taking a cautious incremental approach with its adoption of the various optional MLI provisions. Over 100 jurisdictions participated in the negotiations that led to the conclusion of the multilateral instrument and to date 88 are signatories to the convention, including Canada.

Bill C-82 would bring the MLI into force in Canada and allow us to swiftly modify the application of our bilateral tax treaties without the need for separate bilateral negotiations. This is where that important efficiency aspect comes in. Without the MLI, it is estimated that it would take many years to renegotiate all of our treaties on a bilateral basis.

[*Translation*]

Before I get into the details of the bill, I would like to thank Senator Ngo for his speech at second reading and Senators Bellemare and Downe for the questions they raised at second reading of this bill.

[*English*]

I would also like to acknowledge the hard work of my colleagues on the Standing Senate Committee on Foreign Affairs and International Trade in studying this bill as well as the capable staff who support our committee.

Our expert witnesses from Finance, the Canada Revenue Agency, Queen’s University, Bennett Jones LLP, Gowling WLG and Canadians for Tax Fairness provided well informed, in-depth and balanced testimony.

My parliamentary affairs adviser, Jess Mace, and Nour El-Farouk from the Office of the Government Representative in the Senate, faithfully and studiously accompanied me as we delved into the important substance of this bill and worked together to find the best ways to understand it first ourselves and then to explain it and its impacts to all of you.

Honourable colleagues, we already covered a lot of ground at second reading of Bill C-82, so for the purposes of this third reading, would like to briefly turn to the key questions raised at second reading.

[*Translation*]

Senator Bellemare asked whether the Senate committee members would determine how this tool fits into Canada’s fiscal framework, whether it would have to be amended or whether it was simply a question of seeing how it will work within Canada’s fiscal framework.

[*English*]

In answer to Senator Bellemare’s question, your committee determined to pass the bill unamended. It did, however, examine carefully how the MLI would fit into and work within Canada’s fiscal framework, as the senator had asked.

Although we were focused on the details of this very specific bill, your committee learned that Canada is taking several steps to strengthen its fiscal framework domestically and internationally. The MLI is being implemented internationally in order to restore taxation in a number of instances where income would otherwise go untaxed.

A tax treaty is covered by the MLI if both Canada and the other jurisdiction list the treaty for MLI purposes. Once implemented, the MLI is expected to apply to most of Canada’s tax treaties — not all, but most.

The MLI would go to the very roots that have allowed those loopholes, those holes in the bucket to continue. It will put in place more effective measures to prevent businesses and individuals from taking advantage of treaty loopholes to shift their profits to the lower or no-tax jurisdictions that are happening today.

The anti-abuse rule introduced through the MLI will have the effect of denying a benefit under a tax treaty where one of the principal purposes of any arrangement or transaction was to simply obtain that benefit. Similar to the General Anti-Avoidance Rule, or GAAR, used by the Canada Revenue Agency, the principal purpose test, or PPT, will be a key instrument used under the MLI.

The dispute resolution mechanism — binding arbitration — obligates the parties to submit unresolved cases to an independent and impartial decision maker. This is already included in the Canada-U.S. tax convention and is an efficient and fair method to ensure these cases are managed.

Finally, Senator Bellemare, in answer to your questions, the MLI is expected to strengthen our current fiscal framework by: limiting opportunities for treaty abuse — it will protect Canada’s tax base by introducing rules that reduce those opportunities for taxpayers to engage in aggressive tax avoidance transactions that seek to take advantage of tax treaties; and by providing greater certainty for taxpayers and tax authorities through the more timely and efficient resolution of tax disputes.

Nonetheless, the multilateral instrument is but one initiative of many that Canada is undertaking to strengthen its tax regime. As these new mechanisms are applied, there is no doubt that others will need to be developed.

Senator Ngo foreshadowed a significant area of concern discussed at the committee when he concluded his second reading speech. He said:

> Yes, let’s strive for tax fairness, but let’s not do so to the detriment of our competitiveness and our collective prosperity.

As our committee learned, there are a number of opinions on what constitutes tax fairness and what could happen to Canada’s competitiveness and prosperity when the MLI is implemented.

On the one hand, we have Queen's law professor Dr. Arthur Cockfield who, although he sees the MLI as just one measure needed to reduce international tax avoidance, supports Canada's incremental approach to the adoption of this instrument. He said:

> . . . if you go too far, it will destabilize, make the investment environment uncertain and arguably hurt Canada that way. On the other hand, I think maybe because of the Panama Papers and other recent developments, Canadians actually care about international tax . . . so we do have to do a lot more hard thinking about real changes to the system.

[*Translation*]

We also heard from Toby Sanger, executive director of Canadians for Tax Fairness. He quoted Christine Lagarde from the International Monetary Fund, who recently made the following observations:

> The current international corporate tax architecture is fundamentally out of date. . . . First, the ease with which multinationals seem able to avoid tax . . . undermines faith in the fairness of the overall tax system. . . . So, [she concludes,] we clearly need a fundamental rethink of international taxation.

[*English*]

Mr. Sanger states that:

> Bill C-82 enables Canada and other countries to effectively implement wholesale changes to their numerous bilateral tax treaties. It is, in general, a positive step forward. It is an efficient way of consistently adjusting the thousands of bilateral tax treaties that have been signed between nations. Canada has indicated that 75 of our 93 tax treaties will be covered by this MLI.

Mr. Sanger also expressed his concern about tax fairness as it relates to competitiveness. He stated:

> The largest multinational corporations in the world are most able to avoid taxes through the current system and to consequently gain an unfair tax advantage over smaller and medium-sized businesses. That contributes to greater corporate concentration. We've seen the stories about Google and Apple and other corporations paying very low rates of tax.
>
> It also contributes to less competition . . . .

• (1510)

He concluded by saying:

> . . . while this bill is a positive step and I urge you to support it as it is, we can and must take much bigger steps forward to develop a much more functional international corporate tax system. . . . We need a simple, level playing field around the world so that there are fewer opportunities for loopholes and so that it is fairer for all involved.

On the other hand — you know how this goes at committees — we heard from Laura Gheorghiu, partner at Gowling WLG, and Jared Mackey, partner at Bennett Jones LLP on concerns they had regarding the legislation. Unlike the other witnesses we heard from, their concerns were not about the MLI not going far enough but, rather, about the potential unintended negative consequences of this new instrument.

Mr. Mackey indicated that taxes are an important factor their foreign investor clients take into consideration as they evaluate the viability of an investment in a Canadian energy opportunity. He said:

> With the enactment of Bill C-82 and implementation of the MLI, we are certain that a number of our clients will divert their capital toward more profitable opportunities outside of Canada.

Ms. Gheorghiu said in her testimony:

> As you have already heard from others, certain provisions of the MLI present challenges for Canadian businesses and may discourage foreign investment into Canada, but I want to add that the MLI also applies in the other direction, to subject Canadian enterprises to similar challenges when investing abroad.

Without getting into the fine details of their concerns and the examples they provided, the main issues appear to be around, first of all, whether there will be any grandfathering provisions, a reasonable transitional process for cases where tax structures were put into place prior to the coming into effect of the MLI. That's one very serious request from people.

Second, the uncertainty that comes with new instruments such as the PPT, or principal purpose test, and, in particular, its impact on resource mining, timber and real estate.

Despite these concerns, the witnesses described the MLI as "a pretty elegant instrument in terms of its breadth of application."

These are very real concerns, and your committee took them into consideration in our decisions not to amend the legislation or provide any observations.

Finding a balance that is good for the people of Canada is the concern with everything we examine here in the Senate of Canada. In this case, we felt that Bill C-82 did, in fact, balance the interests of those who gain their incomes through investment and employment in companies we heard about as well as other companies, and those who benefit from the services paid for by the taxes that those companies should pay.

Clause 5 of Bill C-82 states:

> The Minister of National Revenue may make any regulations that are necessary for carrying out the multilateral instrument or for giving effect to any of its provisions.

As with many bills, the devil, of course, will be in the details of the implementation.

Patrick Marley, Co-Chair of the Tax Group at Osler, Hoskins and Harcourt, who spoke at the House Finance Committee in support of some articles in the MLI, emphasized — and this is important — that tax practitioners are in great need of guidance on how the MLI will apply in Canada. One would hope that such guidance would be provided by the government and help address the uncertainties that our committee heard about from Mr. Marley's peers in other law firms.

Finally, Senator Downe expressed significant concerns at second reading — you will remember his concerns — regarding the Canada Revenue Agency raising expectations that they will act on tax evasion and avoidance but that they would actually not deliver on those expectations. That was the gist of his concern. He also accused me of including in my second reading speech a free time political broadcast for the great work of the CRA.

I will first attempt to address Senator Downe's concern with my speech and then briefly address his larger concerns.

I want to assure Senator Downe and all present in this chamber that, as an independent senator, it is absolutely not my job to be a cheerleader for the Government of Canada. In fact, it isn't the job of any of us here in this chamber. It is, however, my job, when I am sponsoring a bill, to present the legislation in its context.

As Bill C-82 is a bill about improving tax fairness, I asked the department to provide me with information on other measures the government is taking to ensure Canada's tax system is fair for everyone. I did provide some highlights of those measures in my second reading speech, and, after noting those, I intentionally said: "We know there is so much more to be done."

Honourable colleagues, I also thought it would be important for you to hear the answer Alexandra MacLean, Director General, International and Large Business Directorate, Canada Revenue Agency, provided when asked in committee about issues related to implementation and enforcement, again, the concerns that were raised by Senator Downe. Ms. MacLean said:

> The Canada Revenue Agency has a number of tools to detect aggressive tax avoidance and tax evasion. In particular, we require fairly detailed reporting regarding cross-border transactions. . . .
>
> . . . Canada implemented country-by-country reporting for multinational entities with revenues over 750 million euros. . . . we receive high-level information, including all the jurisdictions in which a multinational operates, all its legal entities included in the corporate group.
>
> In combination with our other reporting tools, that will give us a good line of sight on which transactions are going through which countries.

She does, however, go on to state:

> There are no panaceas in a world of aggressive tax planning. A lot of money is at stake for governments and multinational enterprises, in particular. We can anticipate that they will attempt to plan around almost any new tool or legislative policy instrument.

So there you have it, colleagues: Preventing tax avoidance is not an easy task. Canada and its OECD-G20 partners on this MLI effort are up against a very sophisticated and well-resourced sector.

Honourable colleagues, as I come to my concluding remarks, just to wake you up, I thought you might enjoy this quote of Jean Baptiste Colbert, who was minister of finance under Louis XIV of France. Minister Colbert once said:

> The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing.

[*Translation*]

> The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing.

[*English*]

Honourable senators, I can assure you that with Bill C-82, we are not trying to build a Canadian version of Versailles, cake or bread to eat, with the proceeds of the measures brought into force with the adoption of the MLI. With any new tax bill, one can expect a certain amount of hissing. This one is designed to actually ensure that the plucking is fairly distributed among all the geese.

Although we have heard some concerns raised regarding this bill, I believe the positive benefits will make it worth pursuing. We know that we need to take practical steps, along with our international partners, to plug the holes in our current tax system and reduce tax avoidance.

We know that the MLI is a good start on this pathway toward tax fairness and the recovery of the tax revenues our government should be capturing for the benefit of all Canadians.

For the MLI to come into force by January 2020, it is critical to pass Bill C-82 in a timely manner.

Colleagues, I hope you will join me in voting in support of this bill once we have had a chance to hear from our colleague Senator Ngo.

Thank you. *Wela'lioq*.

(On motion of Senator Martin, debate adjourned.)

• (1520)

CRIMINAL CODE
YOUTH CRIMINAL JUSTICE ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Hon. Murray Sinclair moved third reading of Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, as amended.

He said: Honourable senators, I'm pleased to have an opportunity to speak to Bill C-75, An Act to Amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, for which I am the sponsor in this place.

This bill advances much-needed reforms to modernize the justice system, improve its efficiency and effectiveness, and reduce criminal-justice-system delays, while ensuring the safety of Canadians. In addition, it proposes a number of amendments that seek to reduce the over-representation of Indigenous persons in the criminal justice system.

I recognize that this bill has been of particular interest to many in this chamber, given the call from the Standing Senate Committee on Legal and Constitutional Affairs for urgent reforms in its thorough and comprehensive report, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada*, which was tabled in June 2017.

The committee acknowledged in that report that the issue of delays is complex and multifaceted, and engages many different professionals, including judges, prosecutors, defence, legal aid lawyers, police, corrections and probation officers. In addition, as the criminal justice system is a shared responsibility in Canada, federal and provincial/territorial governments are jointly engaged and have committed to responding to this issue. All agree that changes have to be systemwide and require action by all actors in the criminal justice system.

Recommendations from the Senate report recognized this by including calls for criminal law reform, operational changes and consideration of strategic policy issues.

In its response tabled in November 2017, the government presented a multi-pronged and comprehensive federal strategy to reduce delays in the criminal justice system, which included federal, provincial and territorial collaboration in the identification of best practices; and the development of innovative approaches, litigation strategies, programmatic measures, judicial appointments and legislative measures.

With regard to judicial appointments, since coming into office, and as of May 31, 2019, the government has made over 300 judicial appointments. When one checks the Department of Justice Canada website, one can see that, at present, the number of judicial vacancies across the country is largely the same as it has ever been.

Members of the Standing Senate Committee on Legal and Constitutional Affairs deserve our thanks for their thorough review and consideration of the bill. The committee heard from over 44 witnesses and reviewed a significant amount of material, including 20 briefs submitted by various stakeholders, in a very short period of time on a highly complex topic. I'd like to personally thank them for their diligence. I think because of those efforts the bill is stronger.

The Senate committee heard from representatives of police, law societies, defence associations, legal aid groups, victims' groups, Indigenous groups and academics. We heard compelling testimony by witnesses on a variety of issues, including preliminary inquiries, the impact of the reclassification of offence on agents, DNA and fingerprinting issues, and intimate partner violence and victimization. Some of the amendments that were adopted were a direct result of those testimonies.

Bill C-75 proposes the most significant reforms to the bail regime since 1972. These reforms will streamline and modernize the bail provisions and make them easier to understand.

Of particular interest is the emphasis on and codification of recent Supreme Court jurisprudence in *R. v. Antic*, decided in 2017, through the enactment of a principle of restraint. The principle directs police and courts to ensure that accused are released at the earliest opportunity, with conditions that are reasonable, relevant and necessary in the circumstances. Bill C-75 also expressly requires that the circumstances of Indigenous accused and accused from vulnerable populations be considered in making bail-related decisions. The bill directs police and courts to impose conditions with which it is reasonably practicable for any accused person to comply.

These amendments have been designed so that police can release accused persons who can safely remain in the community rather than requiring them to appearing before a judge in order to have conditions imposed or approved where the Crown and defence consent. This will cut down on the number of accused waiting in remand for a bail hearing and on the number of matters being scheduled in bail court.

Similarly, since breaches of conditions often lead to the detention of an accused, reforms to limit the conditions imposed to only those that are necessary, relevant and reasonable will also cut down on the number of appearances before the courts and the number of accused being detained as well as the court time related to laying charges for and prosecuting breaches.

As a country, we are regularly reminded of the severity of issues facing Indigenous persons in the criminal justice system. Bill C-75 is a positive step toward taking concrete action to change the laws and practices that have disproportionately impacted Indigenous persons as victims, survivors, accused and offenders. The proposed changes to the bail system seek to ensure there are fewer needless charges and convictions against Indigenous and marginalized Canadians for minor administrative offences.

The bail reforms included in Bill C-75 were generally well received and are entirely consistent with the Senate committee recommendation made in 2017 to make appropriate reforms to the current bail regime. The proposed new process of judicial referral hearing to address administration-of-justice offences when there is no harm to a victim, such as failure to comply with bail conditions or failure to appear in court, has also received positive support.

In recent years, it has become more apparent that the remand population in Canada is growing and that a large number of accused — in fact, in some jurisdictions, the majority of accused — being held in custody are being held because of alleged breaches of bail conditions, some of which may have little to do with maintaining public safety or ensuring attendance in court.

At the same time, accused who are released on bail appear to be under more and more conditions, many of which are improperly based on principles of behaviour modification rather than appropriate goals, such as ensuring public safety and attendance in court. For example, requiring an alcoholic to abstain from alcohol when that had nothing to do with the offence with which he is charged would certainly be setting him up to fail.

The Senate committee's report indicated a concern that a disproportionate amount of criminal court time and resources are being spent on administration-of-justice offences and recommended that the Minister of Justice develop alternative means of dealing with such matters. It is my view that the judicial referral hearing is an excellent example of what the Supreme Court of Canada and the Senate committee were referring to when they called for cultural shifts toward efficiency, cooperation and fairness.

Reforms to preliminary inquiries have long been the subject of debate in the legal community, as demonstrated by the evidence heard before the Senate committee. Stakeholder views remain strongly divided vis-à-vis the value and function of preliminary inquiries and how they can be improved. The Senate committee report stated that preliminary inquiries are of limited utility if the constitutional requirements regarding disclosure of evidence are respected, in that steps should be taken to eliminate preliminary inquiries or limit their use.

Bill C-75 restricts preliminary inquiries for adult accused to offences punishable by life imprisonment, and permits the preliminary inquiry justice to limit the issues to be explored at a preliminary hearing and the number of witnesses to be heard. These changes are the culmination of a great deal of consideration by federal, provincial and territorial ministers of justice who unanimously agreed that the availability of preliminary inquiries needs to be restricted to more serious offences.

While it is true that preliminary inquiries are not held in the majority of cases, they appear to be consuming a disproportionate amount of time in a number of provinces, including in less serious cases. Indeed, a number of very experienced jurists, including those in the Supreme Court of Canada, have raised questions as to the continued necessity of preliminary inquiries. I believe that Bill C-75's reforms to preliminary inquiries represent a balanced approach between the many existing views.

• (1530)

The Senate committee heard from witnesses, including both defence and Crown counsel, who felt that proper use of preliminary inquiries can increase efficiencies in some cases. The committee has thus seen fit to expand the availability of preliminary inquiries from what is set out in Bill C-75 to allow them for all indictable offences punishable with maximum penalties below imprisonment for life in two instances: First, upon the joint requests of the parties and approved by the justice when appropriate measures have been taken to mitigate the impacts on any witness; or, second, upon the request of the accused or the Crown, and approved by the justice, if the justice is satisfied that it is in the best interests of the administration of justice and where the criteria relating to witnesses is met.

The hybridization of offences will modernize the current classification of offences in the Criminal Code, which has become somewhat incoherent and inconsistent after years of piecemeal reforms.

Specifically, Bill C-75 proposes to hybridize all existing indictable offences that carry a maximum penalty of imprisonment of 10 years or less. It will maintain the maximum sentence where the Crown proceeds by indictment and create a uniform maximum penalty for imprisonment for summary conviction offences of two years less a day when the Crown attorney chooses to proceed by way of summary conviction.

Hybridizing straight indictable offences that are currently punishable by maximum penalties of 2, 5 and 10 years of imprisonment is a procedural amendment that would provide additional flexibility to the provinces and territories to best use their resources based on the gravity of each case. It would not, in any way, change the purposes and principles of sentencing.

It should not have an impact, for example, on provincial incarceration rates, as prosecutors will be trained to use summary conviction procedures versus indictment generally when it has decided that the Crown will likely be seeking a penalty of two years or less of incarceration.

The need for such reforms arose from a series of meetings of federal, provincial and territorial ministers of justice, focused on possible legislative reforms to reduce delays.

In taking up the Supreme Court of Canada's call in *R. v. Jordan* for all participants in the criminal justice system to cooperate in achieving reasonably prompt justice, the reclassification reforms seek to eliminate situations where the current criminal procedure provisions require resources that are disproportionate to the severity of the offence as measured by the sentence that the Crown intends to seek.

The Senate committee adopted three amendments relating to reclassification of offences. One amendment, which responds to concerns by police witnesses, would permit DNA orders to continue to be made for 5- and 10-year indictable offences that Bill C-75 proposes to hybridize and for which DNA orders are currently available.

Second, the committee adopted an amendment to the Identification of Criminals Act to clarify that fingerprints can be taken for hybrid offences even when the Crown elects to proceed by summary conviction. This amendment would permit fingerprints to continue to be taken for the 118 newly hybridized offences. It would also resolve an interpretation issue by the courts with respect to whether fingerprints can be taken for hybrid offences even after the Crown elects to proceed summarily.

Last, the Senate committee unanimously adopted a motion to further facilitate agent representation of defendants in summary conviction matters where the maximum penalty exceeds six months. As honourable senators may know, currently agents, including articling law students and paralegals, can only appear on offences that carry penalties over six months' imprisonment where the defendant is a corporation or where they are authorized to do so pursuant to a program approved by the Lieutenant Governor of the province.

As amended by committee in the other place, Bill C-75 would also permit agents to appear under criteria established by the Lieutenant Governor of the province and on all adjournment requests.

The proposed amendment gives the provinces and territories the power to establish criteria governing agent appearances in addition to their current power to approve programs and allows any person to appear for adjournments on any summary conviction matter.

The amendment addresses criticisms that have been raised by witnesses by creating an alternate route for provinces and territories to allow for agent representation and recognizes regional diversity and how legal representation is regulated across Canada.

The amendments from the Senate committee would further allow agents to appear in accordance with the law of the province, which would permit appearance by provincially regulated agents.

In response to concerns regarding intimate partner violence, amendments were adopted by the Senate committee to strengthen the Criminal Code sentencing objectives, principles and aggravated factors.

Honourable senators, I would like to speak to the proposed jury reforms included in Bill C-75. As some may know, laws governing jury selection exist at both the federal and provincial and territorial levels. The federal government is responsible for the rules in the Criminal Code governing jury trials and in-court jury selection, while the provinces and territories are responsible for the legislation that governs the criteria of whom may serve as a juror and the process by which the jury roll is created and compiled.

Abolishing peremptory challenges, amending the stand-aside provision, streamlining and modernization of the challenge-for-cause process, amending the criminal records criteria for minor offences, and allowing a trial to proceed on consent of the parties if the number of jurors falls below 10 would address some long-standing concerns with the jury selection process and would help increase jury diversity, while respecting the rights of the accused and maintaining public safety.

The jury selection process in Canada has long been the subject of concern and debate. Several reports have documented discrimination in the use of peremptory challenges and the underrepresentation of Indigenous persons and other minority groups on juries. Concern over the underrepresentation on juries was also reflected in testimony received by the Senate committee.

The proposed amendments in Bill C-75 demonstrate federal leadership in areas falling within federal responsibility and clearly signal that discrimination of any kind has no meaningful role in promoting fairness and impartiality in the criminal justice process.

Honourable senators, while the Criminal Code and Rules of Court already contain provisions for case management and rules and other practice directives enacted by courts, the Senate committee, in its report on delays, was concerned that case management in Canada may be the single biggest contributing factor to court delays.

In order to address this concern, Bill C-75 aims to improve the overall benefits of case management through amendments that allow for earlier appointments of case management judges and by expanding the list of existing powers of the case management judge to include the ability to make change-of-venue orders.

Amendments will also make admissible at trial the transcript of earlier testimony given by police officers in the proceedings, either at the preliminary inquiry or on a voir dire. These changes recognize the unique and vital role of judges in ensuring that the momentum of cases is maintained and that they are completed in an efficient, effective, just and timely manner.

No major concern was raised at committee regarding these measures. I am pleased to report they directly respond to the Senate committee's recommendation that amendments to the Criminal Code be made to support better case management as necessary.

I was also pleased with the general support in committee for the more technical amendments included in Bill C-75 that facilitate the use of technology in more cases and expand the possibility of remote appearances to promote greater access to justice. These changes will be helpful for courts across Canada and will be particularly important in remote communities. Such measures will respond to the Senate committee recommendation on video conferencing technology.

• (1540)

In addition to the amendments mentioned earlier, the Senate committee also adopted amendments with regard to the federal victim surcharge. As a result of the December 14, 2018, Supreme Court of Canada decision in *R v. Boudreault*, the victims surcharge which assists provinces and territories to partially fund their victim services can no longer be imposed at sentencing.

The Senate committee adopted an amendment to re-enact a new, revised victim surcharge regime that requires the imposition of the surcharge but provides greater judicial discretion to depart from imposing the surcharge in appropriate cases to address the Supreme Court of Canada's concerns. Specifically, Bill C-75 will allow a sentencing court to waive payment of the victim surcharge in two circumstances: One where payment would cause undue hardship to the offender, given their precarious financial circumstances; and two, where it would otherwise be disproportionate to the degree of responsibility of the offender or the gravity of the offence. I believe the victim surcharge amendments directly respond to the Supreme Court's ruling in *Boudreault* and restore the necessary judicial discretion to ensure that the sentence imposed in each case is fit and proportionate.

In conclusion, I am pleased to see that this legislation not only addresses delays but also takes innovative steps forward in supporting the culture change that is so sorely needed. This important legislation will also make our system more fair, efficient and effective. It will take important steps forward in modernizing the criminal justice system, both in the procedural structures needed to reduce delays and also in not losing sight of the impact it will have on some of the most vulnerable and marginalized members of society.

The government has moved forward with an ambitious and important piece of legislation to address criminal justice system delays. I hope you will join me in supporting Bill C-75 to make urgently needed changes to the criminal justice system. Thank you.

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

Hon. Ratna Omidvar: Yes.

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

Senator Sinclair: Certainly.

Senator Omidvar: Senator Sinclair, this is the third bill that has come before the Senate which has serious consequences on permanent residents who are not yet Canadian citizens. Changes in hybridizing in sentencing will impact maximum potential sentences from six months to more than six months, and that is having a knock-on effect on permanent residents, leading to potential deportations. Bill C-45, Bill C-46 and now Bill C-75.

In each of these instances, I have asked the sponsor and the minister responsible as to when the Immigration and Refugee Protection Act will be amended so that it is in harmony with all these changes to the Criminal Code.

I want to ask you whether you sought and got assurances that, in fact, this will happen. You have talked a lot about the most vulnerable people in society. I would say, in many ways, permanent residents who are not yet Canadian citizens who risk deportation fall into that category.

Senator Sinclair: Thank you, honourable senator, for your question. The issue of deportation and the impact of increasing the maximum penalty for summary conviction matters from six months to two years, in many cases, was raised with the minister when the minister made presentations to the committee.

The issue was not resolved through discussions with the minister. At the committee level, it was pointed out that, generally, most sentencing judges, when they are dealing with people who are not permanent residents, will take into account the impact that a sentence will have upon a deportation question for a particular accused, but that dealing with it through legislation at this particular point in time, particularly in the Criminal Code, would tend to undermine the thrust of the amendments being considered by the committee insofar as the intention to ensure that those who were charged with serious offences would still continue to be considered in an appropriate way.

All I can tell you is that no assurance was given to the committee by the minister and in the same way that the minister responded in the chamber.

[*Translation*]

Hon. Pierre J. Dalphond: Honourable senators, I hope you won't mind my speaking after my colleague, Justice Sinclair. Senator Andreychuk or Senator Wetston may speak after me. I don't know.

[*English*]

In his speech on the report of the Standing Committee on Legal and Constitutional Affairs, Senator Joyal very ably summarized the objective of Bill C-75 and the 14 proposed amendments. So did Senator Sinclair a few minutes ago. Senator Dupuis also eloquently spoke about the seven observations made by the committee, especially those on the systematic discrimination against women in criminal proceedings.

Today I want to speak about three specific amendments, starting with preliminary inquiries. The holding of a preliminary inquiry in criminal proceedings has a long history, dating back to the 16th century in England. Preliminary inquiries were integrated into the Canadian Criminal Code in 1892. A preliminary inquiry is a step before committing the accused person to the actual trial. During this step, the accused can force the Crown to expose its case, examine the witnesses under oath and respond to the charges.

At the end, a judge rules on whether there is sufficient evidence to conclude that a jury, properly instructed, could conclude that the accused is guilty of a specific offence. As the Supreme Court explains in the *R v. Barbeau*:

> Prior to the establishment of permanent police forces it was as much a process for the investigation of crime as it was for determining the probable guilt of the accused.

The idea is to spare the accused and the criminal justice system from a useless trial.

Preliminary inquiries are reserved for cases where the accused is charged by indictment and not available for charges punishable on summary conviction. In other words, for summary conviction offences, typically lesser offences, accused persons are not offered the option of a preliminary inquiry.

In 1991, in the *Stinchcombe* case, the Supreme Court of Canada ruled that the Crown has a duty under the Charter of Rights and Freedoms to disclose all relevant information in its possession to the defence. Initial disclosure should occur before the accused is required to elect a mode of trial or to plea on the charge.

This communication allows the accused to assess the evidence of the Crown, to better understand the nature of the criminal proceedings ahead and to make full answer in defence.

Ten years after *Stinchcombe*, in 2001, amendments were made to the Criminal Code to make preliminary inquiries available only upon request and not automatic.

Since these changes, the numbers of preliminary inquiries requested by an accused person has drastically fallen over the years. According to the Integrated Criminal Court Survey, the number of preliminary inquiries that were scheduled or held has decreased by 37 per cent between 2005 and 2015.

In 2014-15, preliminary inquiries were scheduled or held in less than 3 per cent of adult criminal court cases completed across the country.

In 2016, in *Jordan*, the Supreme Court ruled that criminal proceedings before provincial courts should be dealt with within 18 months, and cases in superior courts or cases involving preliminary inquiries should be held within 30 months.

• (1550)

Further to that decision, courts across Canada have sought ways to better manage files and ensure completion of trials within these new time limits. These measures included streamlining preliminary inquiries and providing for examination of witnesses out of court, instead of through a formal hearing — called a preliminary inquiry — before a judge.

Provincial governments and the federal government have also engaged in discussions about ways to amend the Criminal Code to achieve speedier trials. These led to a proposal found in Bill C-75 that will abolish preliminary inquiries in all cases, except for offences punishable by life imprisonment.

Under the proposal, preliminary inquiries would be restricted to the most serious cases, such as murder, but will not be available for an accused person facing to 10 or 15 years of imprisonment.

The sole rationale behind this dividing line was essentially the desire to shorten the length of criminal proceedings, since statistics show that proceedings with a preliminary inquiry last longer.

[*Translation*]

A desire to streamline criminal proceedings and reduce delays may have motivated the proposal to eliminate preliminary inquiries in virtually all cases, but many stakeholders opposed the proposal. They noted that, in many cases, preliminary inquiries result in admissions of guilt without the need for a full trial or in dropping certain charges, which saves court time.

I was particularly impressed by the Alberta Crown Attorneys' Association's brief on the usefulness of preliminary inquiries. Other witnesses noted the rather arbitrary distinction between life imprisonment and offences of 10 or 15 years in prison, which is still a substantial sentence. Department of Justice representatives acknowledged that the proposed distinction would dramatically reduce the number of offences requiring a preliminary inquiry from 800 to 70. However, the Department of Justice acknowledged that it did not know how many cases that would actually represent.

Under the circumstances, several committee members came to the conclusion that the proposal would represent a drastic change, with no evidence to prove that abolishing the historic right to a preliminary inquiry was fully justified. However, the committee members were well aware that holding a preliminary inquiry often forces the complainant to testify twice, first at the preliminary inquiry and again at the trial. This means the victim has to face the accused and undergo cross-examination by the accused's lawyer twice rather than once.

For complainants, like female victims of sexual assault, this means they will have to relive the trauma twice instead of once.

Lastly, I want to note that the various changes proposed in Bill C-75 grant a lot more authority to the judge, especially over all the procedures held during a criminal trial. That, colleagues, is what led me to propose maintaining the option of preliminary inquiries while providing a more robust framework for them, and the committee agreed.

The amendment that is now part of the bill states that preliminary inquiries can only be held on the joint request of the Crown and the accused before a judge or, if the two parties are not in agreement, on the request of either the accused or the prosecutor. In that scenario, the judge would have to be satisfied that holding a preliminary inquiry is in the best interests of the administration of justice.

Furthermore, in both cases, whether by consent or because the judge decides that holding a preliminary inquiry serves the best interests of the administration of justice, before authorizing said inquiry, the judge must ensure that steps have been taken to mitigate the impact of the inquiry on witnesses, particularly on the complainant. It will therefore be up to judges, when they find that holding a preliminary inquiry serves the best interests of the administration of justice, such as in sexual assault cases, to ensure that appropriate measures have been taken to mitigate the impact that testifying during the inquiry will have on the victim, specifically by limiting the duration of the victim's testimony or ordering that the victim give testimony from another room via video conference, for example, to avoid having to face the accused.

In other words, the measures to be taken must ensure that a preliminary inquiry is not used as a tactic to intimidate or further traumatize victims.

Honourable senators, I believe that preliminary inquiries, when properly monitored and controlled by judges, will eliminate misuse and will be held only in circumstances where it really does serve the best interests of the administration of justice.

Two other changes are also worth highlighting, namely, the fingerprinting of the accused and the fact that those found guilty will have to submit a sample to the National DNA Data Bank. My colleague, Senator Sinclair, mentioned that a few minutes ago.

[*English*]

Before the committee, we heard representatives of police forces who underlined the fact that the hybridization of 118 offences will have the unintended consequence of limiting the ability of the police to fingerprint and photograph a person charged with these criminal offences. For offences that were previously indictable only, the Identification of Criminals Act allowed police to obtain fingerprints and photographs but, under the new system, where these 118 offences will be hybridized, it was not clear that the police would still have that authority.

There is a controversy among the judges about the application of fingerprinting in hybrid offences for which the Crown proceeds summarily. The amendment that was made before the committee, which I proposed with the support of Senator McIntyre, will put an end to that controversy and make it clear that the police can fingerprint people who are charged under the new hybridized offences.

The same will be true for those who are declared guilty. They will have to contribute to the DNA bank, providing opportunity for police to more easily identify suspects, exonerate innocents, to link crime scenes and help to determine whether serial offenders are involved or not.

These amendments, proposed jointly by Senator McIntyre and myself, address the unintended consequences of the hybridization.

I would like to mention the collaborative work done at the Legal Committee between all the members of the committee. Working together, we have achieved a very interesting and good rapport.

Finally, I would like to state that I support the hybridization of the 118 offences because it will not reduce the sentences that the Crown can ask for — these offences — by reducing what is called the "sentencing ladder" in the system. The Crown will still be able to proceed by indictment in order to ask for the maximum penalty or to ask for penalties similar to those found under the current system. However, hybridization also expands the net of those who can be charged and prosecuted by allowing for summary proceedings. For example, the lesser participant, who cannot be charged summarily under existing rules is simply not charged because it would be too expensive to proceed by indictment.

For all of these reasons, I invite you to support the bill as amended.

Hon. Senators: Hear, hear!

(On motion of Senator Martin, debate adjourned.)

CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—THIRD READING—
DEBATE

Hon. Marty Klyne moved third reading of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, as amended.

He said: Honourable senators, I begin by acknowledging that we are on the unceded Algonquin Anishinabek territory. As the sponsor, I am pleased to speak at the third reading of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act. I want to thank the members and chair of the Standing Senate Committee on Social Affairs, Science and Technology for their focus and efficiency in providing a thorough examination of the legislation. The main thrust of the bill addresses the way the Correctional Service deals with prisoners who must be separated from the general population for reasons of safety. The current system used by the Correctional Service of Canada in such cases is referred to as administrative segregation.

Bill C-83 will replace administrative segregation with an advanced approach, mainly structured intervention units, or SIUs.

• (1600)

The new SIU system allows for inmates to be separated from the general population for safety reasons, ensuring that they engage in meaningful social interactions with others and participate in correctional programs, mental health care and rehabilitative interventions — all aimed at safe reintegration as soon as possible.

The Social Affairs Committee heard a good deal of testimony about problems and tragedy with the current system, administrative segregation, going back several years. The committee heard that the current system has been overused and misused, and that inmates in administrative segregation generally do not receive the programs, interventions and mental health care that could otherwise improve their situations and help them rehabilitate and safely reintegrate. Everything we heard at committee about the problems of the past and the present substantiates the need for change. Some would declare that, had SIUs been in full effect, the number of problems and issues heard would have been dramatically mitigated, if not prevented.

When compared to administrative segregation, Bill C-83 is far advanced in its approach to separating prisoners from the general population. Prisoners receive a health care assessment — and now the health care provider will have autonomy and independence in that regard — and the inmate will have access to a health care advocate with a reasonable level of privacy. It provides prisoners in SIUs with at least four hours out of their cell every day, double that which is currently provided while in segregation. Two of these hours will be reserved for meaningful social interaction, compared to the current regime, which offers none at all.

The bill is clear that an inmate may only be in an SIU if there is no alternative. The moment that a reasonable alternative is identified or the inmate no longer poses a safety risk, Bill C-83 requires that they be moved out.

Bill C-83 also includes a new provision that aims to substantially minimize, if not eliminate, the use of strip-searches being conducted as a matter of routine versus requiring a valid reason to search. The committee heard compelling testimony about the impact of strip-searches on prisoners, generally, and specifically about prisoners who have histories of sexual abuse. We also heard that inmates sometimes choose not to leave and participate in visits or programs for fear of being subjected to a strip-search when they return.

Honourable colleagues, I'm sure we all understand the importance of ensuring that people in federal prisons are prevented from smuggling drugs or weapons into a penitentiary. However, efforts must be found or made to find other ways to prevent this from happening. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules, call for the development of alternatives to strip-searches. Bill C-83 does just that and will give CSC the legal authority it needs to start using body scanners, the same technology used at airports. The impact of introducing body scanners to assist with searches will not only deter attempts to smuggle and be impactful in that regard, but it will also dramatically reduce the number of strip-searches.

Bill C-83 also strengthens the review process. In addition to the ongoing access to the ombudsman for federal offenders, the Office the Correctional Investigator, Bill C-83 adds a review process that provides the binding decisions of an independent external decision-maker, including the right of an appeal to the Federal Court by the inmate or Correctional Services, by virtue of section 18 of the Federal Courts Act.

Through its perusal and study of Bill C-83, the standing committee made several valued amendments. A key amendment of the committee requires that within 24 hours of being admitted into an SIU, a mental assessment will be conducted by a qualified professional and, if required, the inmate will be removed from the SIU to the appropriate mental health services. A similar amendment of the committee requires mandatory mental health assessments for all inmates within 30 days of placement in a penitentiary.

The committee also clarified the way systemic and background factors must be considered when making decisions regarding Indigenous offenders. These factors stem from the Supreme Court's *Gladue* decision in 1999. One amendment made at the committee adds the specific ideas of family history and adoption history. Another seeks to clarify that factors should not be used to increase someone's level of risk but may be used to decrease it.

These provisions alone will not end the overrepresentation of Indigenous peoples in Canadian prisons, but they are certainly positive steps in the right direction all the same, and they will narrow the gap.

A further positive development from the committee's study includes the amendment to permit social and support organizations for Canadians for minority communities based on religion, age, sex, ethnic origin, sexual orientation, colour, gender identity and expression, or disability to become involved when a prisoner is released and is reintegrating into the community. The importance of these changes broaden the section "Indigenous offenders" to address overrepresentation faced by all minority Canadians, such as prisoners of African descent. As Senator Bernard noted during second reading, this group represents 9.3 per cent of people in federal penitentiaries in Canada, despite representing only 2.9 per cent of Canada's population.

Perhaps the most significant amendment added at committee is a requirement that all SIU placements be authorized by a Superior Court after 48 hours. Correctional Service Canada must file with the court each time an inmate is admitted to an SIU, and the burden of proof will lie with Correctional Services. This would be in addition to the oversight measures already in the bill, including enhanced internal review and, as mentioned previously, binding independent external oversight, appealable to the Federal Court.

While I support the use of judicial oversight in principle, I am aware of the concerns this amendment will have on the workload of Superior Courts. To give some idea of the activity, statistics from Correctional Service Canada show that while the number of inmates separated from a prison's general population at any given time is coming down, there are annually approximately 5,000 placements in administrative segregation lasting more than 48 hours.

Honourable senators, no one wants to cause additional delays in a court system that already has a full slate, especially when the courts and the Correctional Investigator have not ruled or recommended judicial review. But if the government examines this proposal and determines, in consultation with the provinces, that it is doable, then I would recommend it be done.

Some might wonder why we need a system for separating inmates from the general population in the first place. Separation, in any form, is a last resort, and Bill C-83 is clear that SIUs should only be used when there is no safe alternative and for as short a time as possible.

It's important to keep in mind that the potential dangers in correctional institutions are real and that some form of separation as a last resort is necessary in the interests of balance and safety. In the words of the B.C. Court of Appeal:

> Administrative segregation or a more appropriate alternative regime must be in place to protect inmates who would be exposed to risk in the general population and to provide safety for persons who work in penitentiaries.

I agree with the view expressed at committee that greater efforts should be put into successfully developing alternatives and off-ramps to minimize the need for separation. I also concur with Catherine Latimer, Executive Director of the John Howard Society, who told the committee that, in some cases, we're talking about "very active, aggressive, violent people." Some of the alternatives proposed, such as sending people to healing lodges instead of SIUs, would be "a venture of significant risk."

• (1610)

There will always be a need to separate prisoners for reasons of safety. The question is how to do that in a way that is deemed both humane and constitutional.

Regarding humaneness, the new system of SIUs puts heavy emphasis on intervention, meaningful social interaction, programming and rehabilitation all aimed at the inmate's unique needs and ultimately safe reintegration into the general population as soon as possible.

Regarding constitutionality, several court cases have found constitutional defects with the current system of administrative segregation, but those rulings disagree about what fixes are needed and they are all under appeal.

To emphasize, those rulings were about the current system of administrative segregation, not SIUs. No court has ever weighed evidence and rendered a decision about Bill C-83. The Superior Court, in as many words, said that if you:

> . . . change the length of time that prisoners in administrative segregation are locked in their cells and the social contact to which they are exposed, that will affect the maximum time a person should spend in segregated confinement.

In other words, the court told us that by making the kinds of changes proposed by Bill C-83, constitutional concerns should be addressed. The Charter Statement should also give us good reason to believe that Bill C-83 is constitutional.

Honourable senators, Correctional Services Canada is now operating in a situation whereby, as things currently stand, the current system of administrative segregation is due to be invalidated by the courts in B.C. and Ontario on June 18 this year.

The government recently asked the B.C. Supreme Court for an extension on the date to accomplish these goals but was denied.

It's not entirely clear what will happen in those provinces if the current system is eliminated without anything to replace it. I am again reminded of the cautionary comments by the B.C. Supreme Court justice declaring that an alternative system for separating prisoners must be in place to provide safety for inmates and others within a penitentiary. Bill C-83 provides that way forward.

In an op-ed about C-83, Lisa Kerr, a Queen's University law professor with expertise in correctional issues, said:

> For inmates, the worst effects of the social, occupational and sensory deprivation of solitary stand to be alleviated under the new regime.

As the President of the Union of Safety and Justice Employees, Stan Stapleton said:

> Bill C-83 definitely won't solve everything, but it's a worthy next step.

His union represents the interventionists, the people whose job it is to work with people in federal custody and help them rehabilitate.

Senators, this bill was thoroughly studied and amended in the other place and our Social Affairs Committee interviewed a number of witnesses and made several further modifications for the government's serious consideration.

The SIU system in Bill C-83 is unquestionably far better than administrative segregation. It will be accompanied by $450 million in new resources so that the Correctional Service of Canada can safely provide programs, interventions and, importantly, enhanced mental health care.

Bill C-83 certainly won't eliminate the need for prisons, much of which stems from our social ills, nor will it resolve the issues within our corrections system, but it will go a long way to being a model for separating inmates from the general population in our prisons.

A lot more work needs to be done. I look forward to coming back in the fall and joining our other senators in making progress toward eliminating those societal ills and advancing toward a better corrections system with a high vacancy rate.

Bill C-83 is a genuine improvement with separation in a way that addresses how to do it in a way that is humane and constitutional. Honourable senators, I support Bill C-83 and wish to see this legislation passed to allow for the other place to put the Senate's recommendations into action.

Thank you.

Hon. Wanda Elaine Thomas Bernard: Honourable senators, I rise today to speak to Bill C-83, an Act to amend the Corrections and Conditional Release Act and another Act.

I cannot support this bill unless the proposed Senate amendments are accepted. My stance is informed by the extensive study on the human rights of federally sentenced persons conducted by the Standing Senate Committee on Human Rights, of which I am the current chair, and my 40 years of social work experience in Nova Scotia working closely with incarcerated or previously incarcerated women and men.

The Human Rights Committee conducted 30 site visits to federal penitentiaries, healing lodges, a community correctional centre, community-based correctional facilities and two provincial mental health centres. During those visits, the committee met with approximately 200 federally sentenced persons, wardens, social workers, doctors, psychiatrists, psychologists, nurses, teachers, parole officers and correctional officers. The committee held 30 public hearings. Over the course of these meetings, the committee received testimony from 155 witnesses, including former federally sentenced persons, the Correctional Service of Canada, agents of Parliament, academics, unions, professional associations and civil society.

From staff and prisoners alike, we were informed about the decreased programming and service options and increased uses of static security, including segregation, as well as numerous incidents of unlawful behaviour perpetrated against those in isolation. Bill C-83 does not consider the harmful impact on vulnerable members of our communities. It does not create a solution for issues around CSC's segregation and solitary confinement policies despite its claim to do so.

During the Standing Senate Committee on Social Affairs, Science and Technology's study of Bill C-83, witnesses recommended section 81 as a default response to federally sentenced persons with complex needs in order to better provide the support needed for rehabilitative and reintegrative work. This was recommended as an alternative to the use of segregation. This recommendation came in response to Bill C-83's proposed structured intervention units. Our observations were that these are the same segregation units with a different name.

Original sections enacted in 1992 allow both Indigenous and non-Indigenous prisoners to be transferred into the care and custody of Indigenous communities to serve their sentence either, in accordance with section 81, directly in the community or in a prison-like facility such as a healing lodge or, in section 84, for parole.

The Human Rights Committee's interim report, *The Most Basic Human Right is to be Treated as a Human Being*, states that these options are rarely used in practice. CSC policy has limited section 81 agreements only for communities that agree to build prison-like structures and are available for those with minimum-security classifications, with the exception of some women with medium-security classifications. There has been an overall failure to meet requirements to inform prisoners about sections 81 and 84 as an option for release planning.

• (1620)

Honourable senators, making full use of sections 81 and 84 would no longer be an option with Bill C-83. This would act against the findings from the Human Rights Committee which states:

> Using these provisions of the CCRA with their full legislative intent would facilitate the development of community-based, individualized or small group alternatives to prisons that would provide better options for Indigenous prisoners, in particular, and reduce incarceration rates overall.

Additionally, further limiting use of sections 81 and 84 would be despite the fact that the Parliamentary Budget Officer has recently determined that placing an individual in the community under a section 81 agreement represents a fraction of the cost of keeping them in the structured intervention units implemented by Bill C-83. The Parliamentary Budget Officer estimates that section 81 agreements cost approximately $110,000 per person per year whereas the structured intervention units sit at about $58 million per year on top of the pre-existing costs of segregation that can range, for example, up to more than $600,000 for women.

A primary concern is the specific impact an unamended Bill C-83 will have on African Canadians. As we know, the percentage of Black Canadians in our penitentiaries is 8.6 per cent, despite accounting for only 3.5 per cent of the overall population.

In addition to this over-representation within Canadian prisons, according to the *Annual Report of the Office of the Correctional Investigator 2016-2017*, Black Canadians are overrepresented in maximum security, segregation and use-of-force incidents. These numbers in maximum security mean that African Canadians are less likely to be able to access community-based measures under sections 81 and 84.

Sections 81 and 84 transfers to community-based groups can make a significant difference in the lives of federally sentenced Indigenous peoples, African Canadians, other racialized people and transgender people, to name a few. These transfers can be life-altering and life-saving. Bill C-83's original wording risked restricting applications only for Indigenous governing bodies and Indigenous organizations, where language previously included "communities" and "other groups." The committee amendment introduces wording which broadens the eligibility. This is key to allowing for other marginalized people to have access to programming that will facilitate safe and successful community reintegration.

The broadened access to community for particularly marginalized people provides new tools for supporting populations who are overrepresented in the correctional system. This is a needed step toward creating better access to more culturally relevant programming and culturally appropriate mental health care for federally sentenced Black persons in their communities as well as greater access to community spiritual advisers, instructors and teachers.

Honourable senators, I urge you to consider the dangers of Bill C-83. Without the amendments, Bill C-83 could have a harmful impact on vulnerable members of our communities. Simply renaming segregation and rescinding the eligibility of sections 81 and 84 would disproportionately impact Black and Indigenous federally sentenced persons. The consequences of this are detrimental to our communities and would incur much higher costs than the alternative, making use of the already-existing sections 81 and 84. There certainly is a need to establish alternative measures to segregation in our federal penitentiaries. However, Bill C-83 does not provide an adequate alternative financially or for the safety and wellness of our communities. Thank you.

Hon. Frances Lankin: Honourable senators, I'm pleased to have the opportunity to speak to Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act.

I thank Honourable Senators Klyne and Bernard for their remarks today. I will try not to repeat certain areas and to add to the discussion, but some of the key areas that have been raised are matters of concern to me that I spoke to at second reading, and I will take a moment to highlight those.

At second reading, the purpose of my speech was to outline a number of areas of concern and to ask, at the committee stage, that these matters be studied and probed and the committee make a determination as to whether or not any amendment, commentary or observation was warranted.

Of course, I was not the only one to raise these issues. Let me suggest that there are many who have played an important role in surfacing and socializing these concerns. I appreciate the work that the committee did, and I appreciate the work to amend and return the bill to the chamber for us to consider.

At second reading, the areas I concentrated on were the concerns, in segregation, around isolation, duration, indeterminacy, access to health care and touched on the alternatives to segregation.

In each of those areas, as you have heard, the courts have pointed to the dangers of any time spent in isolation, particularly for those with mental health issues.

At committee, Senator Kutcher brought a depth of knowledge and expertise that was very helpful and informed a couple of the amendments, as did Senator Pate's professional career and personal passion for issues of prison reform, and her knowledge was important as well.

Clause 7, page 4, that within 24 hours of an inmate being in an SIU, the person who authorized the transfer shall refer the inmate for a mental health assessment was one of the amendments brought forward.

As you will see in the further amendments, it is critical in terms of ensuring that there is not just a mental health assessment done, but an appropriate type of assessment.

From Senator Pate, there is an amendment — clause 7, page 4 — that requires the transfer of incarcerated persons suffering from disabling mental health issues to psychiatric hospitals.

So there are two steps. There has to be an assessment. I'll talk about the nature of the assessment in a second.

Second, if a person is diagnosed as suffering from a disabling mental health condition, they have to be referred to a psychiatric hospital.

Let me speak about duration. The bill continued to allow for total isolation for at least 20 hours per day and for indefinite periods of time. I'll get to indeterminacy in a moment.

It is true — and, Senator Klyne, I think you spoke to this — that the bill increased the time outside of segregation from two hours to four hours, a step forward, but given the evidence we have heard and know of and we have seen amassed in the court rulings, not only within Canada, but the state of the understanding of the rules and conventions internationally, 20 hours a day is an inappropriate length of time in isolation.

Clause 10, page 5, there was an amendment from Senator Pate that any confinement in an SIU will not be more than 48 hours unless authorized by a Superior Court.

• (1630)

This is really important. It offers the potential improvement to the operation of these important steps forward that were set out in Bill C-83 in a way that is more in keeping with the kind of critical commentary we've heard from the courts, the kinds of observations from people like the Honourable Louise Arbour. There is a history of examining this issue, and it has been a long time that suggestions have been made that there should be some judicial oversight. This amendment, if accepted by the government, would accomplish that.

On indeterminacy, the Court of Appeal decision, one of the decisions I talked about, imposes a minimum requirement of a 15-day limit on segregation. This bill allows for 30 days, plus a potential delay in moving an individual could add five more days, plus a window for commissioner review, and terms such as "as soon as practicable" and the chance of a longer external review. The constraint of those provisions that allow for indeterminacy, and in fact provide for indeterminacy, will be by this referral to the Superior Court and judicial oversight.

It is fully expected by those of us who have followed the issues over the years, with respect to the use of segregation and the kind of reform that many have been calling for, that judicial oversight will look at a number of principles. It will look at the court decisions that are in place and at the international standards

governing segregation in the Mandela and Bangkok Rules. Those international rules set a hard time limit of 15 days in segregation, which is quite different than the indeterminate nature of the bill as it was. We believe that judicial oversight will incorporate some of those principles in terms of how a justice reviews this.

The international rules don't simply deal with the indeterminacy issue and the hard cap of 15 days. They prohibit segregation for those with mental health issues and/or physical disabilities, for people under 18 years of age and for pregnant women. I think those are important principles that have informed court decisions that we have already seen. They will be key to the process of judicial oversight and to other court cases that we know will proceed to the Supreme Court. In due time, we will see those rulings.

If you read those court decisions, the courts have documented that some of the ways the provision of health care services is compromised and undermined in prisons include a tendency to misconstrue mental health issues as misbehaviour issues. I spoke at second reading about the case of Ashley Smith, as have others. I will not repeat that except to say that the response from the correctional officers and officials in that circumstance was to believe that Ashley Smith was crying out for attention. That is a reading of a mental health issue as a behavioural issue. They responded with a behavioural control response, leaving her there. As we know, it tragically led to her tragic death. She won't act out anymore.

There is also a perception that psychologists who are employed in the system are really there to sign off on continued segregation rather than to help prisoners.

Senator Kutcher — again, an expert in this area — helps us through an amendment to clause 1, page 1, that defines mental assessment as meaning an assessment of the mental health of a person. That assessment is conducted by medical professionals with recognized specialty training in mental health diagnoses and treatment. Diagnoses and treatment are very important.

Clause 3, page 2: If an incarcerated individual is being transferred to the SIU, the institutional head "shall" refer the inmate for a mental health assessment by a professional with those qualifications. You can link that back to my earlier remarks around the issues of isolation.

With respect to alternatives to segregation, an amendment to clause 2, page 1, asks the service to give preference to alternatives to carceral isolation and recognize the role of the transfer of incarcerated persons to community-based institutions. We have already talked about someone with a disabling mental health condition being transferred to a psychiatric hospital, in this case community-based institutions. One such example of that is healing lodges. Senator Bernard talked about the importance of this provision.

We should note that the Parliamentary Budget Officer estimates that will cost a fraction of what Bill C-83 will cost per person. Yet those measures exist and are underused in our system today.

Clause 7, page 3 includes mental health facilities and provincial correctional facilities as transfer options for incarcerated individuals as well. Those broaden the breadth of options available.

Honourable senators, I will wrap up. I want to thank Senator Klyne, the sponsor of the bill, for the work that he and his staff put into this.

I want to thank Senator Bernard and the Standing Senate Committee on Human Rights for the important work they did with respect to the study of prisons and how it has enlightened many of us as we look at this bill.

I thank Senator Petitclerc, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, and the committee for their work on this.

The last big star is Senator Pate, who has dedicated her professional life to understanding these issues and to advocacy around the important constellation of things that we are talking about here, and for her fine work in terms of the amendments being brought forward on this bill.

Honourable senators, I support these amendments and I intend to vote for the bill as amended. Thank you very much.

Hon. Mary Jane McCallum: Honourable senators, I rise today to speak to third reading of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act. I admit that I have difficulties with this bill as I am an advocate for ending all forms of segregation or isolation, which this bill simply does not accomplish. However, I feel that our Standing Senate Committee on Social Affairs, Science and Technology did an admirable job in making important amendments that go a long way toward improving this piece of legislation.

Colleagues, in 2018, the British Columbia Supreme Court ruled segregation unconstitutional. In their reasons for judgment, they concluded that the current system:

> . . . places all Canadian federal inmates subject to it at significant risk of serious psychological harm, including mental pain and suffering, and increased incidence of self-harm and suicide. Some of the specific harms include anxiety, withdrawal, hypersensitivity, cognitive dysfunction, hallucinations, loss of control, irritability, aggression, rage, paranoia, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behaviour. The risks of these harms are intensified in the case of mentally ill inmates. However, all inmates subject to segregation are subject to the risk of harm to some degree.

The men and women subjected to these torturous conditions are often not in segregation because they pose the greatest risk to public safety, but rather because they have complex needs, including mental health needs, that were previously unmet in the community and that cannot be adequately responded to in a prison setting.

Honourable senators, as was noted by the B.C. Supreme Court, the Office of the Correctional Investigator has documented that half of all women in conditions of segregation in federal prisons are Indigenous. The majority reported that they or a family member had attended residential schools. Two thirds of their parents had substance abuse issues. Half had been removed from their family home. Almost all had experienced traumatic experiences, including sexual and physical abuse, and addictions issues.

• (1640)

The B.C. Superior Court further ruled that segregation violates the equality rights of Indigenous peoples and those with mental health issues. They found segregation to be discriminatory against these vulnerable population subsets. Expert witnesses at the Social Affairs Committee reiterated their concerns that Bill C-83 would do nothing to address the systemic discrimination problem. They told the committee that structured intervention units represent a continued reliance on isolation as a default to try to manage complex needs.

Honourable senators, while Bill C-83 changes the name of segregation, it does not do away with the torturous conditions that are at the root of this harm and whose constitutionality the courts have questioned. Prisoners in so-called structured intervention units, or SIUs, will still continue to spend most of their day in isolation. Contrary to court-established requirements for hard-time limits on segregation, isolation under Bill C-83 can continue indefinitely.

Expert witnesses testified at committee that Bill C-83 represented a missed opportunity to move away from the same regressive patterns of responding to mental health and other needs with measures focused on security restriction and force. I was pleased to note that the committee responded with a series of amendments aimed at fostering credible, effective and humane alternatives to isolation that experts have been recommending for decades and that are increasingly recognized as a constitutional necessity.

First, the committee implemented a requirement that prisoners cannot be kept in a structured intervention unit for more than 48 hours without authorization by a Superior Court. This amendment reflects former Supreme Court Justice Louise Arbour's recommendation that judicial oversight of segregation is the best way to uphold the human rights of prisoners and prevent human rights abuses. The requirement to make an application to court will also act as an incentive to Corrections Service to find alternatives to isolation is reinforced by other committee amendments that seek to ensure access to existing but underused alternative measures.

Honourable senators, courts have recently made clear that while those with disabling mental health issues should never be isolated, they are too often precisely the ones who end up in such conditions. This often results in devastating consequences. The committee heard that those with disabling mental health issues require care and treatment in a hospital or mental health facility, not isolation in the very conditions known to create and exacerbate mental health issues.

The measures necessary to eliminate segregation for those with mental health concerns already exist in clause 29 of Bill C-83. Clause 29 allows for the transfer of federal prisoners to community health services, including mental health services, for treatment. The Parliamentary Budget Officer estimates that these transfers would cost a fraction of what the cost per person would be for Bill C-83. Despite this, these transfers are discretionary and, in practice, underused and curtailed by regressive CSC policies.

Through an amendment by our Social Affairs Committee, they have added a specific reference to mental health services to encourage use of clause 29 for this purpose. Where an individual is found to have "disabling mental health issues," the amendment would require that they be transferred to a psychiatric hospital. In a similar vein, the Corrections and Conditional Release Act currently allows CSC to enter into agreements with Indigenous communities to transfer both Indigenous and non-Indigenous prisoners to Indigenous communities to serve their sentence through section 81 or for conditional release through section 84.

The purpose of this legislation was to address the over-representation of Indigenous peoples in federal prisons and the historical circumstances surrounding the incarceration of Indigenous peoples, the need for culturally relevant support, reintegration and the need for Indigenous peoples who have greater control over matters that affect them. These provisions are also, however, rarely used in practice.

Honourable senators, given the Correctional Service of Canada's stated support for section 81 agreements and the provision's current reference to non-Indigenous prisoners, the committee's amendments to sections 81 and 84 seek to facilitate access to these measures. Where Bill C-83 would have restricted sections 81 and 84 to only Indigenous governing bodies and Indigenous organizations, the committee's amendments expand them to ensure that both Indigenous and non-Indigenous community groups can also enter into agreements to support Indigenous prisoners as well as prisoners from other marginalized groups in the community.

Honourable senators, when prisons rely on isolation, whether that's called segregation, structured intervention units or some arbitrary term, those who suffer the most are women with mental health issues and those who are racialized, including Indigenous and Black prisoners. The committee's amendments aim to put in place credible alternatives to isolation and requirements to use them as first steps toward an end to isolation by any name for all.

I would like to thank all members of the Social Affairs Committee, especially our colleague Senator Pate, for their good and necessary work on this bill.

Hon. Senators: Hear, hear!

Hon. Victor Oh: Honourable senators, I rise today to speak on Bill C-83, an Act to amend the Corrections and Conditional Release Act and another Act.

I believe that the segregation of some inmates from the general population is necessary, either for their own safety, the safety of other inmates or staff. What concerns me is that we are ignoring the real-life consequences of what Bill C-83 will mean for inmates and staff.

A little over two months ago, on March 28, Mr. Jason Godin, representing the Union of Canadian Correctional Officers, testified about the impact to two commissioner's directives on segregation policies, specifically CD-709 and CD-843. He said:

> Many of the inmates currently managed within segregation units are highly vulnerable and are segregated for their own protection. In order to provide them with the amount of interaction prescribed within the new bill, they will require direct and constant supervision from an already limited number of correctional officers and health-care staff.

Conversely, the inability and inequality of management of inmates will lead to consequences like those seen in Archambault and Millhaven institutions, where inmates were murdered in separate incidents in early 2018.

My colleague Senator Poirier raised this matter with Minister Goodale at the Social Affairs Committee on May 8. She asked the minister:

> Are you familiar with the situation and have inmates' lives been lost as a result of the changes that have been made to segregation policies? Have you been briefed on the issue? Are you aware of it? Do you expect that this will become worse once Bill C-83 comes into force?

• (1650)

Honourable senators, unfortunately, the minister did not clearly answer these questions. We therefore have no confirmation of whether inmates are already dying as a result of the change in segregation policy. This is where I believe that we may have a point of agreement among senators with respect to a reasonable amendment.

I ask: Should Members of Parliament, senators and the public not at least be aware of how many inmates have died or been seriously injured as a result of being transferred into or out of structured intervention units?

I believe that the answer should be obvious. It is very important that we know how many inmates or staff have died or have been injured in a given year as a result of being transferred into structured intervention units.

Therefore, I propose a simple amendment. I propose that the minister be required to report to Parliament annually about any death or serious bodily injury that, in the opinion of the minister, may be related to the transfer of the inmate in or out of a structured intervention unit.

I also propose that such a report should include the circumstances in which this may have occurred and reasons for the transfer of the inmate.

Honourable senators, I believe that this is the least we should expect if we believe in transparency. The minister is already obligated to report to the Parliament in section 95 of the Corrections and Conditional Release Act on the operations of the correctional service. This amendment would add a specific requirement to report on deaths and serious injuries in custody.

MOTION IN AMENDMENT NEGATIVED

Hon. Victor Oh: Therefore, honourable senators, in amendment, I move:

> That Bill C-83, as amended, be not now read a third time, but that it be further amended on page 21, by adding the following after line 32:
>
> > "**30.1 Section 95 of the Act is renumbered as subsection 95(1) and is amended by adding the following:**
> >
> > **(2)** The report referred to in subsection (1) shall include an account of any death or serious bodily injury of an inmate or a staff member if, in the opinion of the Minister, the death or serious bodily injury may be related to the transfer of an inmate into or out of a structured intervention unit.
> >
> > **(3)** The account referred to in subsection (2) shall include the circumstances of the death or serious bodily injury, the grounds for confining the inmate in a structured intervention unit and, if applicable, the grounds for transferring the inmate out of the unit.".

Thank you, honourable senators.

Hon. Senators: Hear, hear!

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

An Hon. Senator: The nays? Come on. Oh, the nays. Sorry, I agree with you.

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

(Motion in amendment of the Honourable Senator Oh negatived, on division.)

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Klyne, seconded by the Honourable Senator Bernard, for the third reading of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, as amended.

Hon. Thanh Hai Ngo: Honourable senators, I rise today to speak at third reading of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, as amended.

Bill C-83 proposes a small change to the Corrections and Conditional Release Act in favour of victims. It proposes to amend this Act to give victims access to an audio recording of this hearing even if they already attended a hearing of the Parole Board of Canada.

Even though this is a positive step for victims, in a November 2018 brief, the Federal Ombudsman for Victims of Crime has called for major improvements to this bill.

The Ombudsman was very clear: the sole change currently proposed in Bill C-83 would give victims the right to listen to audio recordings of a Parole Board hearing if they attended the hearing. This is quite narrow and limited.

Victims are often traumatized when they attend a hearing involving the attacker who has harmed them and is standing a few metres away.

Some victims will want to listen once again to the hearing which they attended.

However, what victims want, first and foremost, is to have access to audio recordings of not only the most recent hearing, but all the archives.

They want to be able to allow a trusted person to listen to it for them. They want access to the audio for day parole. Also, they would like to access the transcripts.

Given the importance that must be given to the question of the rights of victims of crime, I would like to comment on this crucial issue raised by the Ombudsman.

As you know, the Corrections and Conditional Release Act was passed in 1992. Under the Conservative government, major changes concerning victim rights were made to this Act.

However, victims are now justified in calling for a new generation of rights through the Ombudsman: the right to access transcripts, the right to listen to archived audio recordings a few years after the hearing, the right to allow a third party, the right to the audio when there are day parole hearings.

It can be traumatic for victims to be present at the hearing a few metres away from their attackers. It can be just as hard to come face to face again with a person who has committed a crime against them, or to hear the voice of their aggressor.

The Ombudsman is asking for victims to have improved access to audio recordings of Parole Board hearings.

In her brief, the Ombudsman states the following about this bill:

> I am concerned that the sole change being proposed for victims is quite narrow and limited and does not offer real progress in terms of addressing what has been heard from victims and their advocates for the past 20 years.

The Ombudsman adds the following:

> While I support providing victims the right to access audio recordings of parole hearings, irrespective of whether or not they attend a hearing, I believe that the proposed legislative amendments should go further.

In her brief, the Ombudsman also states that many victims have indicated that in addition to accessing the audio recording, they would like to have access to a transcript of the hearing.

She said that victims indicated there should be no time limit on when they can access the tapes.

The federal Ombudsman's recommendations include the following amendment to Bill C-83, that access to audio recordings of Parole Board of Canada hearings be improved to allow victims to access archived recordings of the hearings.

The Ombudsman indicated that, currently, when victims access an audio recording, they can access the recording by phone via a toll-free number, but the pass code they are required to use has an expiry date.

• (1700)

They only have access to the audio recording of the most recent hearing. In addition, when requesting to listen to an audio recording, only the most recent hearing of the offender's sentence is available to the victim.

However, victims should not be subject to a time limit to access an audio recording. Some victims may not be able to access the audio recording within the imposed time frame. They might not be psychologically ready to hear the recording. They might want to wait a few months or even a few years.

Furthermore, says the ombudsman, some victims may want to review previously parole hearings to help prepare for a victim statement. Having access to archived audio recordings and not only the most recent one would ensure that victims receive full and consistent access to the hearing proceedings. The ombudsman also recommends including Parole Board of Canada hearings regarding temporary absences as part of the applicable hearings for audio recordings. Victims may have an interest in hearings on temporary absences.

They have the right to know what was said, as well to know the commissioners' reasoning. There are few hearings taking place for temporary absences, but victims should have the right to the audio recordings if they need it. After all, these decisions can have an impact on their life.

Under the current act, victims can only listen to an audio recording of a Parole Board hearing regarding day or full parole. However, under the Corrections and Conditional Release Act, an application for an escorted temporary absence or unescorted temporary absence — family contact, community service, medical reasons, and personal development for rehabilitative purposes — cannot be the subject of an audio recording request. The ombudsman believes that victims should have access to audio recordings of these types of hearings.

In addition, the ombudsman recommends amending Bill C-83 to allow victims to listen to an audio recording with the support person and/or allow a victim representative to listen to the recording on the victim's behalf.

The ombudsman also states:

> For some victims listening to an audio recording of a parole hearing can be a traumatic experience. Being able to listen to the recording with a support person or having a named representative do so on their behalf can help ease victims' stress and provide them with some enhanced explanation of the recording to improve their understanding.

[*Translation*]

Honourable senators, we must further accommodate victims who want to know what transpired during their attacker's parole hearings. Victims need greater flexibility from the system. They must be able to access the audio recording when they feel ready to do so. Some victims want to know what was said at the hearing without listening to the voice of their attacker and would like a transcript of the hearing. Others want to hear the recording, but several months later. Other victims still prefer to ask a friend or family member to take on the difficult task of listening to the recording. The system must serve the victims. Victims have the right to be informed about the hearings that concern them. It should be up to them to decide if they prefer to listen to the recording rather than attending the hearing. It should also be up to them to decide if they wish to obtain the transcript rather than the recording of the hearing.

MOTION IN AMENDMENT NEGATIVED

Hon. Thanh Hai Ngo: Therefore, honourable senators, in amendment, I move:

> That Bill C-83, as amended, be not now read a third time, but that it be further amended:
>
> (*a*) in clause 34, on page 23, by adding the following after line 27:
>
> "**(13.1)** If a hearing is held in respect of a review of the decision of the Parole Board of Canada to authorize the escorted temporary absence of an offender under subsection 17.1(1), or the unescorted temporary absence of an offender under paragraph 107(1)(e), a victim or a person referred to in subsection 142(3) is entitled, on request, to listen to an audio recording of the hearing, other than portions of the hearing that the Board considers
>
> **(a)** could reasonably be expected to jeopardize the safety of any person or reveal a source of information obtained in confidence; or
>
> **(b)** should not be heard by the victim or a person referred to in subsection 142(3) because the privacy interests of any person clearly outweigh the interest of the victim or person referred to in that subsection.
>
> **(13.2)** Any person who is entitled to listen to an audio recording of a hearing under subsection (13) or (13.1) may
>
> **(a)** listen to the recording in the presence of a support person of their own choosing; or
>
> **(b)** designate a person to listen to the recording on their behalf.
>
> **(13.3)** The audio recordings referred to in subsections (13) and (13.1) shall remain accessible to victims and persons referred to in subsection 142(3) for a period of not less than 10 years after the date of the hearing in question.
>
> **(13.4)** Any person who is unable to listen to an audio recording of a hearing because of a hearing impairment is entitled, on request, to be provided with a written transcript of the hearing."; and
>
> (*b*) in clause 41, on page 25, by adding the following after line 16:
>
> "**(4) Subsections 34(13) to (13.4) come into force on a day or days to be fixed by order of the Governor in Council.**".

[*English*]

Some Hon. Senators: Question.

Hon. Patricia Bovey (The Hon. the Acting Speaker): It is moved by the Honourable Senator Ngo seconded by Honourable Senator Marshall that Bill C-83 — shall I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Yea.

The Hon. the Acting Speaker: All those opposed to the motion will please say “nay.”

Some Hon. Senators: Nay.

The Hon. the Acting Speaker: I hear the “nays” have it. I see two senators rising.

And two honourable senators having risen:

Senator Plett: Thirty-five minutes.

The Hon. the Acting Speaker: Is it agreed, honourable senators, that the vote will take place in 35 minutes?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: The vote will be at 5:42 p.m.

Call in the senators.

• (1740)

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

YEAS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Carignan
Dagenais
Doyle
Eaton
Housakos
MacDonald
Manning
Marshall
Martin
McInnis
McIntyre
Mockler
Ngo
Oh
Patterson
Plett
Poirier
Richards
Seidman
Smith
Stewart Olsen
Tannas
Tkachuk
Wells—27

NAYS
THE HONOURABLE SENATORS

Bellemare
Bernard
Black (*Ontario*)
Boehm
Boniface
Bovey
Boyer
Busson
Campbell
Christmas
Cormier
Coyle
Dalphond
Dasko
Dawson
Deacon (*Ontario*)
Dean
Duncan
Dupuis
Dyck
Forest
Francis
Gagné
Gold
Greene
Griffin
Harder
Joyal
Klyne
Kutcher
LaBoucane-Benson
Lankin
Lovelace Nicholas
Marwah
McCallum
Mégie
Mercer
Mitchell
Miville-Dechêne
Moncion
Munson
Omidvar
Pate
Petitclerc
Pratte
Ravalia
Saint-Germain
Simons
Sinclair
Wallin
Wetston
Woo—52

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Klyne, seconded by the Honourable Senator Bernard, for the third reading of Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, as amended.

Hon. Kim Pate: Honourable senators, our duties with respect to Bill C-38 are twofold. First, we have a duty to represent marginalized groups.

At second reading, I shared my expectation that senators visit segregation units before voting on Bill C-83. I thank those honourable senators who exercised our right of access pursuant to section 72 of the Corrections and Conditional Release Act to meet with Canadians isolated in segregation cells.

The relative ease with which senators can enter prisons belies the general lack of scrutiny, oversight and transparency of Correctional Services and how completely the Correctional Service of Canada can control of lives of those inside.

Our right of access brings a corresponding obligation to take into account the consequences of isolation, by any name, and to be aware of how laws passed with best intentions can break down in a culture that has routinely failed to uphold these laws.

While supporters of Bill C-83 tout new legislative obligations and reporting requirements for CSC, witnesses at committee made clear that the culture of disregarding human rights and prisoners' well-being is deeply rooted in CSC, and Bill C-83's measures will not prevent human rights abuses unless there is a fundamental culture shift toward upholding human rights and the rule of law.

• (1750)

For a practical example of this, we need look no further than the evolving revelations of CSC's failure to notify police despite having known for some six months and perhaps as many as seven years that a male staff member was sexually abusing women prisoners at the Nova prison for women. This failure to report has resulted in the loss and possible destruction of evidence and could well mean that no one is held responsible for the abuse perpetrated against these women.

Recent constitutional cases have found that rules on segregation are more honoured in the breach than in the observance and that existing guarantees of meaningful human contact for those in segregation too often amount to cursory words exchanged through a meal slot.

Second, we also have a duty to scrutinize the constitutionality of legislation. Court decisions have raised serious concerns about the constitutionality of Bill C-83 since our colleagues in the other place last voted on it.

In recent months, the Ontario Court of Appeal has stated that the government failed to ". . . adequately explain how Bill C-83 would address the constitutional infirmity" associated with segregation and that it remains unclear how Bill C-83 will remedy this constitutional breach. This is despite amendments to the bill in the other place to attempt to strengthen its review provisions.

Constitutional experts at the Social Affairs Committee as well as 100 legal academics and experts in a joint letter to this chamber have reiterated these concerns. They issued a clarion call to address one of the bill's major constitutional flaws — the lack of independent review of CSC decisions to segregate prisoners — by implementing judicial oversight.

Witnesses identified judicial oversight as the only reliable way to shift the oppressive culture at CSC and prevent the continued violation of Charter and human rights. For instance, Dr. Ivan Zinger, Canada's Correctional Investigator, described CSC as "an organization that is known for its limited openness, transparency and accountability" and urged us to amend Bill C-83 to ensure oversight of CSC in order to change its culture, identifying this as the single most important amendment the committee could make to uphold human rights.

Reflecting research that the harms of segregation can begin after only a few hours in isolation, the committee established a requirement for CSC to apply to seek judicial authorization to keep someone in a structured invention unit for more than 48 hours.

Contrary to CSC's assertions that judicial oversight would be ineffective and place too great a burden on the court system, the process could be expeditious, and the decision maker would be competent to address relevant questions of law and have the authority to make any orders required to remedy improper decisions about continued confinement.

Furthermore, the Supreme Court of Canada recently underscored that judges have obligations to make sure detention is justified. In the *Myers* case, the court confirmed the requirement that judges conduct bail reviews on a timely basis. That case affected an estimated 23,000 individuals. CSC claims that while there are currently approximately 300 men and no women in segregation, last year they segregated prisoners approximately 5,000 times.

When we requested a breakdown of these numbers by region, gender, race and reasons, we were advised that no such disaggregated data was available or that it would be difficult to obtain. The Correctional Investigator, on the other hand, provided the requested data broken down by region, race and gender — data that demonstrates segregation placement numbers that Superior Court judges across the country would be more than capable of reviewing.

Colleagues, the claim that judicial oversight will impose too great a burden on CSC is reminiscent of similar concerns raised when the Charter first came into effect, namely that it would impede the ability of police to react quickly by requiring them to read people their rights or apply to courts for warrants. We now know that this is not the case.

There is no reliable evidence that judicial oversight of segregation will impede corrections or clog up the court system. Corrections routinely calls in the system when it wishes to further penalize prisoners. Ashley Smith was taken to outside court multiple times to face charges, many of which we subsequently learned were likely unfounded. Not once during the year she was segregated in federal prisons were the current — inadequate as they are — procedural safeguards followed to review her segregation. The mental health issues generated and amplified by her isolation and punitive treatment were labelled as her bad and criminal behaviour.

The requirement to apply to court to authorize this extraordinary and harmful treatment will encourage CSC to find alternatives to isolation. It will also place the decision of whether to prolong isolation in the hands of the institution we rely on to uphold Charter rights for all.

In past years, the courts have taken steps to curb the use and limit the harms of segregation. They have recognized Canada's international obligations and interpreted Canada's constitutional imperatives by reference to internationally recognized minimum standards, including those established by the Mandela and Bangkok Rules. They have drawn attention to the current system's discrimination against Indigenous peoples and those with mental health issues and developed constitutional requirements related to time limits on the use of segregation.

Bill C-83 does not reflect these bare minimum constitutional requirements, let alone make strides to end the harms of isolation. The committee's amendment will allow courts to ensure Charter rights are upheld, both as they review any individual cases CSC may provide before them and in future assessments of the constitutionality of structured intervention units.

Courts must be allowed to play their crucial constitutional role of safeguarding the rule of law and the rights of all individuals, particularly those who are most vulnerable and marginalized in prisons such as women, youth, Indigenous peoples, other racialized individuals and those with disabling physical or mental health issues.

If these amendments do not remain as an integral part of Bill C-83, we leave the task of upholding human rights to CSC. Courts have already exposed various examples of what such a system looks like. Prisoners like Ashley Smith have been observed, assessed and denied meaningful human contact as they suffer sometimes devastating and irreversible harms associated with isolation.

Without the Senate amendments, prisoners will continue to be isolated for most of the day under provisions that do not guarantee meaningful human contact, without outside scrutiny or evidence that providing slightly more time out of a cell per day will prevent the harms associated with solitary confinement. The minister acknowledged that Bill C-83 could allow conditions amounting to solitary confinement. Without the committee's amendments, Bill C-83 would rely on CSC's own employees to recognize when prisoners are suffering, something they have consistently not done in the past.

Such reliance on Corrections is certainly not in keeping with the strict limits on segregation required by the Ontario Court of Appeal to prevent harm before it occurs. Without this amendment, the first review by someone outside of CSC — though still appointed by the minister, and therefore not fully independent — is only guaranteed to occur after 90 days of isolation. Ninety days, when 15 days is recognized internationally as amounting to torture and when courts have found that irreversible harms begin almost as soon as the cell door closes.

Unamended, the decision maker does not have an obligation to visit or even hear from a prisoner during that review, and there is no clear path for a prisoner to bring forward a complaint. How would Ashley or any other prisoner locked in an isolation cell with not even a crayon or a piece of paper, with no access to a telephone unless authorized by the very individuals whose behaviour may be questioned, hope to access such a body?

I firmly believe that, like lashings or bread and water diets, we will soon look back on the isolation of prisoners by any name or means as such an abhorrently dangerous practice that it will seem unthinkable it was ever permitted.

Experts at committee made clear we need a more robust approach to meeting Bill C-83's stated objective of ending the use and harms of segregation for all. Bill C-83, as amended by the Social Affairs Committee, is a step in this direction.

The committee's amendments seek to ensure that existing measures in the Corrections and Conditional Release Act intended to provide alternatives to isolation are able to fulfill this role in practice. Segregation is too often the default response to prisoners with complex needs, particularly mental health issues, that could instead be addressed in appropriate alternative settings.

Section 29 of the act currently allows transfers of prisoners to community-based health services. The committee added an explicit reference to transfers to mental health services and created an obligation to transfer anyone found to have disabling mental health issues out of prisons to psychiatric hospitals. Not only can such issues be more safely, productively and humanely addressed in health care settings, but the Parliamentary Budget Officer determined that transferring a prisoner to a psychiatric hospital costs a fraction of the cost of keeping them in an SIU.

• (1800)

The committee also amended sections 81 and 84, which currently permit transfers of Indigenous and non-Indigenous prisoners to Indigenous communities to serve custodial and conditional release —

The Hon. the Speaker: Sorry, Senator Pate, but pursuant to rule 3-3(1), it is now six o'clock. I apologize, but I have to interrupt you and ask honourable senators if it is agreed that we not see the clock.

Is it agreed?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

The sitting is suspended until 8 p.m., at which time, Senator Pate, you will be given the balance of your time.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (2000)

The Hon. the Speaker: Honourable senators, resuming debate on Bill C-83 for the balance of Senator Pate's time.

Senator Pate: Honourable senators, please cast your minds back two hours and we will continue.

The committee also amended sections 81 and 84, which currently permit transfers of Indigenous and non-Indigenous prisoners to Indigenous communities to serve the custodial and conditional release portions of their sentences, respectively. These provisions seek to remedy the over-representation and over-classification of Indigenous peoples in prisons that are part of the ongoing legacy of racism and colonialism. The committee's amendments aim to encourage the use of these provisions and to ensure their accessibility not just to Indigenous governing bodies and Indigenous organizations but also to community groups serving marginalized communities. The goal is to provide access to culturally appropriate community supports for Indigenous prisoners and those from other marginalized groups.

These amendments offer much less than what all is needed to end the use of segregation, but they provide a way forward toward that goal. They put in place conditions by which, under the careful eye of the courts, a culture of human rights may be encouraged.

Believing the promises of CSC may help supporters of Bill C-83 sleep at night, but let us remember that this is the organization that fought to suppress the video evidence that contradicted their narrative of what happened to Ashley Smith, the incidents at the prison for women as well as many other reports of human and Charter violations, including the most recent failure to report multiple sexual assault allegations at the Nova prison for women. Such abuses of power, breaches of the law and unconstitutional behaviour must be corrected and, more important, prevented.

At committee, legal and human rights exports, members of civil society and those who have been subjected to isolation were unanimous in identifying serious flaws with the original legislation, denouncing the anti-human rights culture within CSC and emphasizing the need for fundamental reform of the correctional system. Let us would be together in support of these changes to Bill C-83, while continuing to work to ensure that this legislation can one day achieve its laudable goal of ending the use of segregation altogether.

I want to end with a thank you to all of the senators who have done incredible work to ensure these amendments come forward. I particularly want to thank all of our staff and law clerks who assisted us. *Meegwetch*. Thank you.

Hon. Larry W. Campbell: I have a question for Senator Pate. Would she take a question?

The Hon. the Speaker: Senator Pate's time has expired.

Are you asking for five more minutes to answer questions?

Senator Pate: If I may.

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

Hon. Senators: Agreed.

Senator Campbell: Senator Pate, you were talking about gathering information, analytics and statistics on the population this bill addresses. I didn't quite understand it. You said that you asked for these but couldn't get them. Whom did you ask, and did you ever get any reply?

Senator Pate: Are you referring to the numbers in segregation in response to how many would have to go to court? I asked the minister's office for that information and received an overall number. Senator Klyne also received the same number, I believe, which was about 5,000.

I asked for a breakdown of that. At first, my staff were told that it didn't exist. When I asked for more details, I was advised it would be too difficult to find.

Then I approached the Correctional Investigator to see if they had the same information. They did, so I was able to receive it less than 10 minutes later from the Office of the Correctional Investigator.

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

Senator Dean has a question.

Hon. Tony Dean: Senator Pate, I have before me a letter sent to all senators on June 10, 2019, that was signed by over 100 lawyers and academics. The key message in the letter is that the bill, as amended, has the potential to make positive changes and uphold Canada's international human rights obligations. There were a number of legal and constitutional supporting arguments.

I would assume you are aware of the letter. If you are, do the arguments they made support the amendments being proposed here?

Senator Pate: Thank you for that question. Yes, I received the letter as well as — from the looks of it — everybody. Yes, I think the arguments are well made. If the bill, as amended, is passed in the other place, I think we would then have a bill that could withstand constitutional review.

If we don't, however — if not all the amendments come through — I think we may not have a bill that's constitutional. Thank you.

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

An Hon. Senator: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Klyne, seconded by the Honourable Senator Bernard, that Bill C-83, as amended, be read the third time.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

(Motion agreed to and bill, as amended, read third time and passed, on division.)

OIL TANKER MORATORIUM BILL

THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Woo, seconded by the Honourable Senator Gold, for the third reading of Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast.

Hon. Murray Sinclair: Honourable senators, I rise today to speak to third reading of Bill C-48 and to indicate my support for the principles of the bill. I also rise, in particular, to speak in support of an amendment to the bill that I believe represents a meaningful balance of interests.

Senator Harder has already spoken eloquently in favour of the ban itself, which the bill talks about, and why it is needed. Others, of course, have spoken otherwise.

For centuries, I want to tell you that the Haudenosaunee and Anishinaabe people lived by a principle known as "one dish, one spoon." This concept was memorialized in the wampum belt known as the dish belt, which resulted from a treaty between these two nations after the French and Indian War. The "one dish, one spoon" treaty was an acknowledgment that all peoples must eat out of this one dish. In other words, we all share this territory with only one spoon. That means we not only have to share the food equally, but we also have to share the responsibility of ensuring that the dish is never empty. This includes taking care of the land and the creatures we share it with.

Importantly, according to the belt, there are no knives at the table, representing that we must live together in peace.

The treaty symbolized by this belt accurately reflects the views of the many Indigenous witnesses we've heard both here and in the other place. The West Coast of Canada belongs to all, and we must be mindful that our evaluation of Bill C-48, including the Indigenous concerns, is not simply a matter of counting the opinions for and the opinions against. It is, in my view, a matter of balancing the interests of the Indigenous peoples in their livelihoods, be it fisheries, the tourism industry or whatever; their rights to make decisions on their own lands and regarding their resources; as well as the economic interests of First Nations all over Canada, and all of Canada.

A careful balancing of interests must take place to ensure this bill has the desired effect of protecting Canada's beautiful western coast line; upholding the rights of the Indigenous peoples in that region; and ensuring that Canada's national economic interests are respected, including the economies of resource provinces and of Coastal First Nations.

While these competing interests may appear to be incompatible, I am not so convinced. I believe, simply, that we have not taken the time to find a mutually acceptable way forward.

• (2010)

In the spirit of the "One Dish, One Spoon" treaty, and after careful consideration, I now speak in support of an amendment to this bill which I believe represents the best compromise for all stakeholders. The decision to support these amendments was not taken lightly, but ultimately I believe this is the best way to protect the rights and interests of our Indigenous brothers and sisters, and also the rights and interests of all Canadians.

MOTION IN AMENDMENT—VOTE DEFERRED

Hon. Murray Sinclair: Therefore, honourable senators, in amendment, I move:

> That Bill C-48 be not now read a third time, but that it be amended,
>
> (*a*) on page 2, by adding the following after line 18:
>
> "Rights of Indigenous Peoples of Canada
>
> **3.1** For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of the Indigenous peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.
>
> Duty of Minister
>
> **3.2** When making a decision under this Act, the Minister must consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*."; and

(*b*) on page 16, by adding the following after line 16:

"Review and Report

32 (1) At the start of the fifth year after the day on which this section comes into force, a comprehensive review of the provisions of this Act must be undertaken by the committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

(2) The review undertaken under this section must take into account any report of a regional assessment conducted under section 33.

(3) The committee referred to in subsection (1) must, within one year after the review is undertaken under that subsection, submit a report to the House or Houses of Parliament of which it is a committee.

Regional Assessment

33 (1) Subsections (2) to (7) apply if Bill C-69, introduced in the 1st session of the 42nd Parliament and entitled *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, receives royal assent.

(2) The Minister of the Environment must, no later than 180 days after the day on which both this section and section 93 of the *Impact Assessment Act* are in force, establish a committee to conduct a regional assessment in relation to activities to which this Act relates.

(3) Before establishing the committee, the Minister of the Environment must offer to the governments of British Columbia, Alberta and Saskatchewan and to any Indigenous governing body within the meaning of section 2 of the *Impact Assessment Act* that acts on behalf of an Indigenous group, community or people that owns or occupies lands that are located on the part of the coast of British Columbia that is referred to in subsection 4(1) of this Act to enter into an agreement or arrangement respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted.

(4) If an agreement or arrangement referred to in subsection (3) is entered into, the Minister of the Environment must establish — or approve — the committee's terms of reference and appoint as a member of the committee one or more persons, or approve their appointment.

(5) The committee must submit to the Minister of the Environment a report of the assessment no later than four years after the day on which this section comes into force.

(6) The Minister of the Environment must have the report referred to in subsection (5) laid before each House of Parliament on any of the first 30 days on which that House is sitting after the Minister of the Environment receives it.

(7) The *Impact Assessment Act* applies to the regional assessment conducted by the committee established under subsection (2) as if that committee were established under section 93 of that Act, with any modifications that may be necessary in the circumstances.".

In the spirit of the "One Dish, One Spoon" treaty and after careful consideration, this provision is a new section that is necessary to protect the rights of Indigenous peoples of Canada.

This section provides as follows: For greater certainty, nothing in this act is to be construed as abrogating or derogating from the protection provided for the rights of Indigenous peoples of Canada, et cetera, a standard non-derogation clause we find in many other pieces of legislation. Further, this section requires the Minister of the Environment, when making a decision under the act, to consider any adverse effects the decision may have on the rights of Indigenous peoples of Canada, recognized and affirmed by section 35 of the Constitution Act, 1982. The second amending provision is also a new section intended to ensure certainty of engagement with stakeholders, including Indigenous peoples of coastal B.C. and the governments of British Columbia, Alberta and Saskatchewan.

This amendment will require the Minister of the Environment to establish a committee to conduct a regional assessment of activities under the oil tanker moratorium act as provided for by the impact assessment act.

Before establishing this committee, the minister must offer to the governments of British Columbia, Saskatchewan and Alberta, and to any Indigenous governing body that acts on behalf of any Indigenous group, community or people that own or occupies land that is located on the part of the coast of British Columbia, which is referred to in subsection 4(1) of the oil tanker moratorium act to enter into an agreement or arrangement respecting the joint establishment of a committee to conduct the assessment in the manner in which the assessment is to be conducted.

The amendment will also require a parliamentary review of the provisions of this act after five years by a committee of both the Senate and the House of Commons which must take into account any report of that regional assessment.

I urge you, honourable senators, to consider these amendments and to vote in favour of them which, after careful study, I believe offer the best compromise to protect the West Coast of Canada, the economic interests of the country and the rights of the Indigenous peoples of that region.

Some Hon. Senators: Hear, hear!

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

Senator Sinclair: Certainly.

Hon. Frances Lankin: Honourable senators, I am intrigued and optimistic by what I see here. I clearly understand the non-derogation clause. I understand the place at the table for the provinces that have been the most concerned about the impact assessment act. I want to ask about the regional assessment. From my recollection of discussions, people have been either for or against Bill C-69 and impact assessment, as it has been set out in that bill, the regional assessment has been a very strong and popular provision that has been put in.

This would be a regional assessment with respect to the tanker moratorium. It also, if there were a potential project that was to start to be developed in ideas — and we know how long that takes — it would also provide for a lot of the base work on regional assessment that could provide information to that process and perhaps help speed up, for those provinces and those proponents, to move through the impact assessment act.

Am I reading it correctly? Could it have that effect?

Senator Sinclair: Thank you for the question, honourable senator. You are essentially right in your observation. Let me point out that some of the comments received by the committee during its community hearings, as well as in the course of the hearings that were held with respect to the impact assessment act was that, when it came to resource development projects and the transportation of oil by a pipeline across the country, there was very little science that was being shared with the communities about what the potential impact would have, what the costs of any spillage would be, what the risks were that the communities were facing and how those risks would be handled.

• (2020)

In addition to that, it was about how the economies of the territories that were being traversed would be impacted by the projects. The regional assessment was intended to put together scientific and economic information for the benefit of the communities and the areas that were being affected by a particular project.

The regional assessment that is being called for by this particular amendment is not just a regional assessment about the moratorium ban — that would be part of it — but it will also be part of any project that is intended to be benefited by either the lifting of or a relaxing of the ban itself.

Hon. André Pratte: Honourable senators, I rise to speak in favour of the amendment of Senator Sinclair. As you know, Canada sits on some of the largest oil reserves in the world. As Prime Minister Justin Trudeau said a couple of years ago, no country would find 173 billion barrels of oil in the ground and leave them there. Canada possesses 3.4 times more oil than the United States and 6.5 times more oil than China. At today's production rate, our known reserves could produce oil for at least 30 years.

Extracting this oil and accessing markets in a viable and sustainable manner is one of our principal economic, environmental and democratic challenges in the coming years. Some might say that these oil reserves should be kept underground. Such a stance would be, in my view, as irresponsible as one that would promote the uninhibited exploitation of these resources without environmental consideration.

For the foreseeable future, oil will remain a major global source of energy. According to the International Energy Agency, by 2040, even if countries adopt all the necessary measures to keep climate change under control, world oil demand will reach 106 million barrels per day, 11 million barrels a day more than the current consumption.

At present, as you know, the United States is our only foreign market for oil. This needs to change, not only because the monopoly situation pushes prices down, but also because the U.S. produces increasing quantities of oil while their demand is projected to stagnate or even decrease.

Our neighbours have begun exporting oil. From sole customer, they are now becoming competitors. Consequently, we need to find new markets. We know where these new markets are — in Asia.

On these facts, the experts agree, senator Harder agrees, the current government agrees, and I'm pretty sure the opposition also agrees.

An Hon. Senator: I think so.

Senator Pratte: Our crude oil output is forecasted to increase by 1.5 million barrels a day by 2035. If Enbridge's Line 3, TransCanada's Keystone XL and the government's own Trans Mountain all go ahead, we might not need additional pipeline capacity. Admittedly, this is a very optimistic scenario. Besides, three quarters of the new capacity would flow toward the United States, which may not need all this heavy oil in the future. It would be imprudent and short-sighted to refuse to even consider future capacity enhancement. Yet this is precisely what Bill C-48, if it becomes law under its current form, will prevent us from doing, which is to plan for the future.

It would preclude any and every pipeline project, whatever the project, the evolution of the Canadian and international energy markets, the evolution of transportation technologies, and the will of the First Nations concerned. The tanker ban would be permanent and, politically, extremely difficult to repeal.

This is why I opposed Bill C-48 in principle at second reading. After closely following the work of the Standing Senate Committee on Transport and Communications, after speaking with biologists and ship pilots, after discussing the issue with many of you, after listening to Senator Harder's powerful speech last night, I have not changed my mind. However, in my view, simply defeating Bill C-48 is not a solution. It is not a solution because, first, this would run counter to the government's election commitments. Second, and more importantly, defeating Bill C-48 would ignore the will of the elected chamber of Parliament and the wishes of the majority of British Columbians and coastal First Nations. Third, defeating the bill would pit the Senate against the House of Commons.

Inevitably, if the Senate plays its legitimate constitutional role, these confrontations will happen. However, before initiating such a clash, we must be convinced that the interests of Canadians will be served by a tug-of-war between Parliament's two houses.

We should also be confident that the Senate, as an institution, will not come out of this confrontation seriously impaired. I am convinced that these conditions are not met in this instance. This is a situation in which one region of Canada is pitted against another and, understandably, emotions run high. In such a case, I believe that the Senate, the house of regions, the chamber of sober second thought has the duty to attempt to find a compromise that will accommodate, as best as possible, the needs of all provinces concerned with an eye on the national interest, which comprises the reduction of tensions between regions.

In my view, the most promising avenue resides in Senator Sinclair's amendment. That is, the introduction in Bill C-48, of a joint federal-provincial-Indigenous regional impact assessment for the northern coast of British Columbia, pursuant to the new impact assessment act, Bill C-69, to be followed by a comprehensive parliamentary review.

[*Translation*]

This approach is worthwhile for a number of reasons. During the Transport Committee meetings, as Senator Sinclair just said, several witnesses regretted the lack of scientific evidence supporting the government's decision to impose a moratorium on tanker traffic to or from ports located along British Columbia's north coast. The reality is that Canada is suffering from a serious lack of information on this topic. A regional impact assessment would help with that.

A regional impact assessment, as proposed by Bill C-69, is a large-scale environmental assessment. At the end of that process, Canadians would have complete and reliable data on the rich environment of that region of British Columbia, on the best ways to protect that environment and on the risks and benefits of tanker traffic along that coast. The contemporary energy and economic context would be taken into account, as well as the evolution of species and technologies. The regional impact assessment followed by a more thorough parliamentary review of the legislation would provide hope to oil-producing provinces and companies and workers in this sector that the moratorium will be lifted in the future if the necessary conditions are met.

The regional impact assessment would be jointly conducted by the Government of Canada; the governments of British Columbia, Alberta and Saskatchewan; and the First Nations affected, which would give the process more credibility. I am under no illusions here, but this measure could help ease tensions a bit and open a dialogue so that we can work together to find alternative solutions to protect the environment and ensure the survival of the Canadian oil industry. This could involve, for example, implementing what are known internationally as large-scale marine protected areas. One such example is the Great Barrier Reef area in Australia.

I must point out that witnesses who testified at the Standing Committee on Transport and Communications spoke in favour of reviewing the act after a certain period of time. The Shipping Federation of Canada said the following:

> We . . . highly [recommend] that the bill provide for a periodic review of the need for the moratorium itself . . . . [This] review mechanism would provide the government with an important tool for ensuring that the moratorium is based on an appropriate assessment of risks in response to evolving circumstances.

• (2030)

[*English*]

The amendment proposed by Senator Sinclair paves the way to a solution that I believe would be acceptable to a majority of Canadians.

Within six months after the implementation of the moratorium, the Minister of the Environment would be required to launch a federal/provincial/Indigenous regional impact assessment pursuant to section 93 of the new impact assessment act, Bill C-69.

The governments of B.C., Alberta, Saskatchewan and the representatives of the Coastal First Nations would be invited to participate in the setting up of this regional assessment.

The terms of reference and the composition of the committee charged with conducting the regional assessment would be negotiated by Ottawa with the three provinces and First Nations of the northern coast.

The regional impact assessment would have to be completed before the beginning of the parliamentary review, which would be required to take it into account.

Importantly, the amendment would also enshrine a non-derogation clause within Bill C-48, protecting Indigenous rights as recognized and affirmed in section 35 of the Constitution Act, 1982.

Honourable senators, Canada was built on compromise. Often in our history, agreements achieved have left stakeholders on both sides of an issue dissatisfied and frustrated, but with time Canadians have come to realize that accommodation was the only solution and the only way to make our country work.

Compromise is a give and take between two parties confronted by conflict due to their diverging but legitimate interests. By its very nature, no one is entirely satisfied with a compromise, but a compromise ensures that we move forward collectively.

As many of you have said, Bill C-48 has become a national unity issue. We all know what the solutions to national unity issues are: dialogue, open-mindedness and, yes, compromise.

[*Translation*]

I'm convinced that amending Bill C-48 to include a joint regional impact assessment followed by a comprehensive parliamentary review is exactly the kind of compromise that will

enable our country to move forward. These measures will protect British Columbia's northern coastal environment and enhance our knowledge of the region's biological diversity and our understanding of the environmental and economic pros and cons of crude oil transportation along the coast while taking into account rapid developments in markets and technology.

Consequently, future decisions about the moratorium will be based on sound scientific evidence, and future opportunities won't be shut down forever as they would be if we were to adopt Bill C-48 as it currently stands.

[*English*]

Honourable senators, Canada is both an oil producing country and an environmentally mindful nation. This evidently requires give and take from all parties. Finding a sustainable manner of exploiting and trading our natural resources is essential and in the national interest. In its current form, Bill C-48 ignores this by precluding the enhancement of our export capacities to world oil markets. A better balance must be found.

The Senate is in a unique position to propose such a balanced solution. I believe that a regional assessment mechanism conducted jointly by Canada, oil-producing provinces, impacted provinces and Coastal First Nations does the trick. It protects British Columbia's northern coast. It provides for future opportunities for oil-producing provinces. It will provide decision makers, and all of us, in fact, with a wealth of information on the biology of the coast, the different alternatives to protect it, the environmental and economic pros and cons of tanker crude oil transportation — considering the present and future state of the oil market — modern shipbuilding techniques and the treacherous navigation conditions in the area.

The motion before us attempts to accommodate the needs and demands of all concerned stakeholders. It is not perfect. It will not make everyone happy, but the amendment is proposed in good faith. It offers a reasonable and pragmatic solution where no solution appeared possible. It offers a compromise: a good compromise and a Canadian compromise.

Thank you.

Hon. Larry W. Smith (Leader of the Opposition): I have a question, Your Honour. Would Senator Pratte accept a question?

Senator Pratte: Of course.

Senator Smith: Thank you very much, senator, for your speech. The first question that came to mind after hearing you and Justice Sinclair is: Have you had a chance to go through the process from start to finish? In that evaluation, how does that compare to Bill C-69 in its present state after whatever amendments the government will accept? What people are after is some form of certainty and real understanding of timing and the process.

I'm not sure whether you were able to get into the process. Have you had a chance, between the two of you gentlemen, to do an assessment from start to finish? When could we expect it if everything worked and the Indigenous population was happy, the provinces were happy and the federal government was happy? The chance is, in a case like this, you have a league of nations where a lot of people have good intentions but nothing ever gets done.

Did you look at this thing and extrapolate through the process what the end game is? What is the timing? What does it look like compared to the possibility of going through just Bill C-69 versus this particular option?

The Hon. the Speaker: I'm sorry, Senator Pratte, but your time has expired. Are you asking for five minutes to answer some questions?

Senator Pratte: To answer this question, yes, please.

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

Hon. Senators: Agreed.

Senator Pratte: In fact, in working on this amendment, we were very cognizant of the fact that the issue of timing is extremely important. We have heard that time and again in the debate on Bill C-69. What is provided for in the amendment is that the launch of the negotiations for the establishment of this assessment committee would be 180 days, or about six months after the entry into force of the act, and at the maximum, the report will have to be tabled at the end of the fourth year.

There is a deadline. Then you have a parliamentary committee. The parliamentary committee has one year to do its study. The timelines are in the amendment and, of course, if the amendment is adopted, it will be part of the act.

Senator Smith: May I ask a question? I'm a neophyte, so I'm asking a simple question.

How much time does that take and where does that put the potential project at?

Senator Pratte: Well, the beauty —

Senator Smith: — or whatever project it is. We're going through a process. Sorry, go ahead.

Senator Pratte: The beauty of this amendment, if I may say so, is that we all know that no pipeline will be arriving on the northern coast of British Columbia in the next five years. We know that.

We also know that there is a lot of information that we don't have. This was evident in both committees that studied Bill C-69 and, especially, Bill C-48. There are a lot of things we don't know on both sides of the issue. Many people have argued that the government does not have enough information to impose a tanker ban. Others have said that the biology of the region is so extraordinary and pristine, as we've heard so many times. But why is it so pristine and important? We have some data but not all the data. How relevant are the new navigation safety techniques and technologies that exist today?

There is a lot of information we don't have. If we do this regional assessment, we'll have all this information gathered, which will help advance projects because this information will

have been collected in advance by the regional assessment. We won't have to do it again if ever there is a project, a pipeline or oil transportation on the northern coast of B.C.

Senator Smith: Thank you very much for that response. I'm just sitting here as a businessman asking: If you want people to invest back into the country, because we realize a big chunk of the investment in terms of the oil and gas industry has left for the United States and other areas, what hope can you give to business people who are bottom line-oriented who will need to have some clearer definition of where this can take them with respect to any potential project? What's the hope?

Senator Pratte: You have asked me what hope there is. We have a choice. That's why there is a compromise on the table. The choice is the tanker ban passes, you have a permanent tanker ban and nothing else happens. With this amendment, you have a tanker ban for five years and maybe more, but you have a lot of things that happen that involve the oil-producing provinces, the federal government and the First Nations of the area. Stuff will be happening for these five years. If the industry does a good job in presenting its case in the next five years, then maybe they will have an opportunity to see this ban lifted.

• (2040)

Hon. David Tkachuk: I have had a look at this amendment. First of all, I think this makes the bill worse, because, number one, this proves that all these things should have been done before Bill C-48 was brought into the House of Commons and that we not be faced with having to do a regional assessment starting after five years. But I'm looking at a regional assessment on the second page, brought to my attention by my seatmate here. After reading it twice, I have no idea what it means. Perhaps you could tell me what paragraph 3 means after "regional assessment" and explain that to the Senate.

Senator Pratte: I'm sorry, would you just repeat the exact —

Senator Tkachuk: Proposed subsection 33(3), "Before establishing the committee, the Minister of the Environment must offer . . ." What does that mean?

Senator Pratte: The minister is required to offer to the governments and the First Nations the negotiation of the terms of the regional assessment. That's what it means. It's pretty clear to me. To enter into agreement or arrangement respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted.

What is complicated here is the definition of the involved Indigenous group because it refers to another act, but if you take a little bit of time, you will understand that the First Nations' concerns are the First Nations that reside or own territory on the northern coast of B.C.

The Hon. the Speaker: Sorry, Senator Pratte, but your time has expired. On debate on the amendment, Senator McCallum.

Hon. Mary Jane McCallum: Honourable senators, I rise today to join the debate on Senator Sinclair's amendment to third reading of Bill C-48, the Oil Tanker Moratorium Act.

As a member of the Standing Senate Committee on Energy, the Environment and Natural Resources, I have grown quite concerned about the serious and irreversible impacts that can potentially result from energy projects and their related operations. We have seen time and again how, despite the best efforts to mitigate these risks, they seem to be an inevitable and unavoidable result of the operations being undertaken.

It seems to me, colleagues, that at times we run the risk of taking a cavalier approach and playing roulette with the well-being of our environment as well as the collective health of those individuals who live in these impacted regions.

I understand well the need to balance the needs of the environment with the needs of the economy. There is a fine line to walk in that regard, but I believe the onus is on us to make sure both remain healthy and vibrant. I think Senator Sinclair's thoughtful amendment accomplishes this by implementing a review of this tanker ban five years after its implementation.

Industry is a well-oiled machine — no pun intended — which has the capacity to make compelling arguments as to why we should exercise trust and understanding when it comes to the carrying out of their projects and initiatives. However, there are certain instances where we need to ensure that we step up and advocate for the environment as well.

We hear more and more troubling reports every week it seems about the dire situation our delicate ecosystems are in. There comes a time when we need to be risk averse for the sake of environmental preservation so as to avoid some of these potential perils. This is what we are accomplishing through this bill.

Honourable senators, I could speak at length about the importance of Bill C-48 and what it means for the region and the peoples who depend on it. However, I would like to take this opportunity to allow the voice of those individuals in this region to be heard. I would like to read into the record a letter I have received from Chief Marilyn Slett, President, Coastal First Nations:

> Dear senators . . . By now, we've all heard the arguments for and against Bill C-48, the Oil Tanker Moratorium Act, which would protect B.C.'s ecologically unique and fragile north coast from risk of catastrophic spills by banning large tankers carrying more than 12,500 tonnes of crude or persistent oil from docking, loading or unloading in these areas.

Every argument against this bill is driven by short-term and unsustainable economic interests that are based far away from the coast and, therefore, from any consequences if a spill were to occur in these coastal waters.

Every argument in support of the bill comes from those that would have to live with the consequences — the coastal fishing communities and First Nations with thousands of years of culture and history in a region that not only provides their livelihoods but defines who they are. Their calls to ban large oil tankers in these waters can be traced back almost 50 years, from unanimous motions passed in the B.C. legislature in 1971 and the House of

Commons in 1972 opposing oil tanker traffic on B.C.'s coast, to what eventually evolved into the voluntary Tanker Exclusion Zone, 1985, that is still in place today.

On the other hand, arguments against this bill and against a half century of measured reasoning from across the political spectrum are relatively new. They have intensified drastically since the global price of oil dropped, making energy companies and their proponents more anxious than ever to get raw oil products to market from inland. And that's only natural, since opposition to Bill C-48 is almost exclusively driven by a thirst for those short-term oil profits.

But this is not a typical economy versus environment debate, and supporters of Bill C-48 are not only focused on protecting the fragile ecosystems that line the north coast and the abundant wildlife that depend on them. Economic development is vital for coastal communities, just as it is for every other region across Canada. Indeed, there is nothing that drives that home more than having your livelihood under constant threat from a devastating environmental disaster beyond your control.

Just ask the Heiltsuk Nation, which is still feeling the negative economic effects of the *Nathan E. Stewart* tugboat grounding in 2016 that spilled more than 100,000 litres of diesel and other fuels into nearby fishing grounds. What if that tugboat was a massive tanker, loaded with toxic diluted bitumen? *Nathan E. Stewart* was catastrophic, but an oil spill would have been exponentially worse. That's almost too frightening to comprehend.

The arguments in favour of a ban on large tankers have been scrutinized for decades now, and they still stand the test of time. The arguments against a ban derived from political expediency and short-term economic thinking from special interests vying for profit.

What we're asking you to do is simple. We assume you've already given some careful, reasoned thought to Bill C-48, as currently written, but we ask now that you provide some sober second thought on the unprecedented and, frankly, reckless calls within this Senate to reject the bill entirely.

We ask that you step back and take the long view. A perspective that recognizes the long history of efforts to ban tankers in this region and the many reasons for doing so and that also takes into account the promises made, over and over again, to the coastal First Nations in the spirit of reconciliation.

As coastal First Nations people, we hold a deep interconnection of mutual respect with the ocean. Reflecting on the words of Heiltsuk elders who also provided testimony at the 1977 West Coast Oil Ports Inquiry "an oil spill would finish us." We hold no intentions of leaving our home in search of other opportunities if our territory was to be destroyed by an oil spill, which is a high possibility if this bill is not passed. There is much work to be done, and the Oil Tanker Moratorium Act is a significant step towards improving the marine oil spill response regime.

Further, the passing of Bill C-48 honours Canada's calls for reconciliation allowing First Nations people of the coast to continue to live in relationship with their ancestral territories. The teachings of coastal First Nations communities are rooted in our relationship to the natural world and harvesting cycles. We have survived attempted assimilation and attempted cultural genocide. We are pleading to the senators of Canada to allow us to continue to live our way of life connected to a healthy intact ocean.

• (2050)

> We also ask you to take the long view when it comes to the economic effects of this bill. As oil executives and Alberta politicians offer exasperated calls for 'national unity' and for clawing away at regulations that stand in the way of their short-term profit, we ask that you consider economic interests of not just current generations, but future generations as well.
>
> Along the North Pacific Coast, the coastal First Nations have been establishing such a sustainable economy for many years. Protecting resources here is a matter of survival; the ocean is our breadbasket, and the source of our food and income.
>
> In other words, we ask you to consider the economy right here along the coast that would be threatened by oil spills — the more than 7,500 permanent jobs in traditional territories, and almost 400 million dollars in revenue generated every year — not just the economy hundreds of kilometres inland.
>
> Signed yours truly,
>
> Chief Marilyn Slett
>
> President, Coastal First Nations

Honourable senators, sometimes a letter of this nature, which conveys such a reasoned and passionate perspective, needs to stand on its own.

It is a well-established boom-and-bust cycle that exists inland, removed from the impacts of a potential catastrophe. The highs and lows of this cycle can be difficult to predict. However, as Chief Slett has indicated, the economy of the coastal region, on the contrary, is stable, constant and much less volatile. The coastal economy and livelihood of its inhabitants, which generates hundreds of millions of dollars each year, would be faced with a potentially irreversible risk of destruction should Bill C-48 not pass.

After the five-year mark of the implementation of Senator Sinclair's amendment, the Coastal First Nations will have their voice heard alongside the provinces to determine important aspects of the regional assessment process. I think this is a balanced and inclusive approach on how to examine this issue in the near future.

Honourable senators, I ask that you stand with me in heeding the advice of Chief Slett. Let us support Senator Sinclair's amendment as well as Bill C-48. In doing so, let us take the long view in recognizing the economic effects of this bill. Thank you.

Hon. Patti LaBoucane-Benson: Honourable senators, I rise today to speak in favour of this amendment to Bill C-48. The reason I'm in favour of this amendment is twofold.

First, the introduction of regional assessments is important. Within months of Royal Assent, a regional assessment will be launched. This is good for Alberta because the Province of Alberta will be invited to the table to create the framework for the assessment. Alberta's voice and interests will be protected in the process.

This is likely over and above any provision that would be required in the regional assessments in Bill C-69. The regional assessments will commence before any project is proposed. It will collect data that is very important in an impact assessment.

It is important to remember that there are no projects planned in this area at this time. If a project is proposed in the future, a great deal of scientific information that will be required will have already been collected. This would speed up the process for proponents and ultimately make the impact assessment process faster. Honourable senators, the speed of the impact assessment is very important to Alberta and this clause matters.

Second, it affirms Indigenous and treaty rights. First and foremost, this clause is important to the Nisga'a people. It recognizes the modern treaty and right of the Nisga'a people to pursue economic development. It was a mistake in the development of this bill not to properly consult and accommodate the Nisga'a in the bill. This amendment corrects this error.

In fact, President Eva Clayton of the Nisga'a wrote all of us a letter. I want to read parts of that letter into the record.

> The Nisga'a Nation does not support the imposition of a moratorium that would apply to areas under our Treaty. We believe that Bill C-48 flies in the face of the principles of self-determination and environmental management that lie at the heart of the Nisga'a Treaty.

> . . . the Nisga'a Treaty was the first modern Treaty in British Columbia. It was also the first Treaty in Canada, and perhaps in the world, to fully set out and constitutionally protect our right to self-government and our authority to make laws over our land and for our people.

> Under the Nisga'a Treaty, we have substantial rights over the Nass Area, which encompasses over 26,000 square kilometers in northwestern British Columbia. We also own and have legislative jurisdiction over approximately 2,000 square kilometers of land in the Nass River Valley, known as Nisga'a Lands.

— since year 2000 —

> . . . our Nation had the recognized legal and constitutional authority to conduct our own affairs.

She goes on to say:

> This legislation was introduced without any discussion about the significant implications it would have on the Nisga'a Nation and the Nisga'a Treaty.

Finally she says: "For the Nisga'a Nation, this is entirely about our constitutionally protected right to have a meaningful say in what happens in our own territories. This includes a process in the treaty which ensures that decisions are based on robust environmental assessment processes where scientific evidence plays a central role and all appropriate considerations can be appropriately identified and analyzed. This ensures that the necessary balance between a strong economy and protecting our environment is achieved."

The Nisga'a Nation has never and will never support a project that could result in devastation to our land, our food, and our way of life.

"At the same time, we cannot stand idly by as arbitrary and unsubstantiated restrictions are placed on our treaty area and not others."

> We regret that on this issue, which has such an immense implication to the Nisga'a Nation and all Canadians, the government has proceeded without any meaningful accommodation for those with different views of Indigenous peoples who have the most to lose.

Honourable senators, this clause is also good for Alberta. It affirms the Nisga'a have the right to economic development which could be a port as well as Indigenous nations who probably want to pursue a pipeline with non-Indigenous investors. While there are no projects proposed at this time, this leaves the door open for potential projects.

In addition, this clause is good for Canada. It changes the common narrative that Indigenous people are opposed to development. This is an example of a First Nation who is interested in excellent environmental standards as well as the development of good, safe resource projects. I would venture to say that this is what most Canadians want: projects that create jobs and stimulate the economy while protecting the environment for our grandchildren's grandchildren.

Finally, the clause connects with the announcement of the Province of Alberta to create a billion dollar fund for Indigenous resource development. The Province of Alberta is already trying to change that narrative about Indigenous people in its important work. I can foresee a future where Indigenous peoples are pursuing both pipelines and ports that will benefit the entire country while maintaining their traditional ways of life because it doesn't have to be one or the other. We can do both.

Finally, honourable senators, I argue that a vote for this very thoughtful, compromise-seeking amendment in many ways is a vote for Alberta and Indigenous people. Thank you.

Hon. Scott Tannas: Would the honourable senator take a question?

Senator LaBoucane-Benson: I will.

Senator Tannas: Honourable senator, thank you for your contribution. A couple of questions.

• (2100)

The Eagle Spirit group is a long way along in the development of a vision and proposal. Would they or do they support Senator Sinclair's amendment and this particular approach? Similarly, do the Nisga'a people support this approach? Would this allow those parties to move ahead now, or would they have to wait until the meetings and the five years are up before they could launch something?

Senator LaBoucane-Benson: I thank you for that question. I have met with many different Indigenous groups who have interests in pipelines, and certainly Eagle Spirit is one of them. I think the National Coalition of Chiefs is another group that would be interested in that area. I can't imagine why they wouldn't be interested in leaving the door open to possible development. While I have not spoken to them directly, I would hazard a guess that they are interested.

After careful study of Bill C-69 over the past eight months, I would say the introduction of the regional assessment and the preplanning is where the magic lies in Bill C-69. There are problems with it, which we have worked to fix, but the magic lies in that regional assessment because it provides good scientific evidence upon which we can base a proponent's proposal, and the preplanning becomes much faster. It becomes clear what has to be studied and what has to be done in the impact assessment process.

I think having a regional assessment in place right away, while projects get under way and while Eagle Spirit finds its financial legs, for example, will move those projects much further. I think this will be supported by proponents and investors.

Hon. Yuen Pau Woo: Honourable senators, Bill C-48, it would seem, puts us between a rock and a hard place. The rock, some would say, is the environmental catastrophe of an oil spill on the north coast of B.C., which would forever damage the livelihoods and traditions of those who live on or near the water. The hard place, others assert, is the economic catastrophe of stranded oil assets in Alberta and Saskatchewan.

A narrative has emerged in this chamber and beyond that our choice is a binary one. We have been led to believe that we need to choose between crashing into the rock and running aground on the hard place.

But do we? In our zeal to simplify, have we made the rock bigger and the hard place harder than they are? Have we allowed overzealous and, dare I say, alarmist arguments on both sides to corral us into the dead end of a decision that will, either way, result in a shipwreck?

What if the rock and the hard place are not as close to our vessel as we have been told? What if the situation on either side of the debate is not as immediate, not as dire and not as permanent as we have led ourselves to believe? And what if there is, in fact, a pathway between the rock and the hard place? Are we willing to find it?

I believe the amendment before us is that pathway. I am talking about a way to navigate safely and consciously between the two extremes that have been laid before us as the only options.

There is no risk currently of a major oil tanker spill because there are no large oil tankers within 126 kilometres of B.C.'s north coast. And there is no risk of stranding oil assets in Alberta and Saskatchewan at this time because there is no pipeline from the Prairies to B.C.'s north coast, nor is there a concrete project proposed for such. If the TMX project gets the go-ahead next week and it comes to fruition, the risk of stranded assets is further reduced.

To pass Bill C-48 in its current form, resulting in a permanent ban on oil tanker traffic on B.C.'s north coast, could lead to a situation in the future where the transport of oil from Alberta and Saskatchewan to British Columbia is limited. Conversely, to reject Bill C-48 could undermine the voluntary Tanker Exclusion Zone off northern B.C., increasing the risk of an oil spill — which is why we should avoid either scenario.

Honourable senators, sober second thought cannot predict the future. We do not know if residents of B.C.'s north coast, especially the First Nations who have inhabited those lands for millennia, may change their minds about having an indefinite embargo on oil tankers carrying more than 12,500 metric tonnes of crude or persistent oil. Likewise, we do not know if there is, in fact, a business case for a pipeline from Alberta to northern British Columbia, and if there are corporations with the know-how, financing and access to markets to bring such a project to fruition. By presenting the choice on Bill C-48 as binary, we are both exaggerating the risk on either side and pretending to have more information than is currently at our disposal.

I support the proposed amendment in part because it admits to our knowledge limitations. Tidewater access is indeed crucial for landlocked resources to find their way to markets in Asia, but we cannot be sure that Asian markets will support a second pipeline to the West Coast, given the rapidly changing nature of energy markets.

Similarly, if there is a solid business case for a pipeline to Canada's northwest coast, I think it would be reckless of us to assume that all the residents of the coast would choose to permanently disallow the development of facilities that could provide for tankers to safely and sustainably export Canadian oil and gas to markets in Asia. Should we not allow them the right to change their minds if new information is available on the potential benefits and risks of oil tanker traffic off the north coast of B.C.?

The point, after all, is not whether a pipeline to the north coast should be stopped in its tracks through a ban on oil tanker traffic since there is, at this point in time, no pipeline to be stopped. It is, rather, that the First Nations most directly affected by an oil tanker ban should have the right to choose whether or not they consider the risk to be acceptable — if there were a genuine business case for such a project.

What the amendment says, honourable senators, in effect, is that we are not ready to answer the question of whether a permanent ban is warranted. We don't know if coastal First

Nations will change their minds about a ban. We don't know if a northern pipeline is needed and who would build one. We don't know if market demand in Asia will support the decades of oil exports from Canada that would be needed to justify the building of a pipeline and terminal. We can only guess at the geopolitics of trans-Pacific trade, especially on a strategic resource such as oil. And we do not know what breakthrough innovations that may be in the offing — from crude oil transportation methods, to oil tanker safety, to more affordable and accessible renewable energy.

The proposed regional assessment that forms an essential part of the amendment will answer some of these questions. In fact, Bill C-48 already contains a provision for the possibility of a regulatory review to assess, A, the latest science and evidence on how oil products act when spilled; B, innovations and technological developments in the transportation of oil; C, the state of cleanup technology. This amendment will make that regulatory review mandatory and expand on it through the regional assessment process that is contemplated in Bill C-69.

One point that both advocates and opponents of Bill C-48 agree on is the limitations of Canada's oil spill preparedness and response regime on B.C.'s north coast, and the lack of coastal protection in general. Coastal nations rely on the health of the ocean for their subsistence and economic development. A regional assessment à la Bill C-69 would shed light on the risks to this unique ecosystem and could pave the way for a coastal protection plan so that if the ban is lifted, all residents of the coast can be reassured that environmental safeguards are in place.

A mandatory review by Parliament, built on the findings of a regional assessment as prescribed in Bill C-69, including meaningful consultation with First Nations, is an example of how the Senate can exercise prudence and wisdom.

• (2110)

Honourable senators, in Bill C-48, the other place has sent us the following question: Should there be a permanent ban on oil tankers off the coast of Northern B.C.?

Our answer should be that this question is not ready to be answered. It is unfortunate that the government has put to us a question that is not ready to be answered. But the oil tanker ban was a campaign promise of the then-leader of the Liberal Party, now Prime Minister. We should consider Bill C-48 in that light.

If you accept the Salisbury Convention, you should not vote against the bill. I recognize that some senators do not agree with the Salisbury Convention. If you fall in that camp, you should still ask if the Bill C-48 meets the high test of the Senate voting against the government bill — an act of defiance so rare that it has taken place only four times since the Second World War.

An Hon. Senator: Five sounds good.

Senator Woo: Even if you feel that the high test has been met, there remains yet a reason to pause so as to consider if a reasonable amendment can be found in order to send the bill back to the other place for reconsideration. I believe that amendment has been found.

Honourable senators, I cannot be sure the government will accept this amendment. I have high confidence this it will be seriously considered. For one thing, First Nations on the B.C. North Coast who are for the tanker ban, as well as First Nations groups in the same region who are against the ban, have expressed support for a mandatory review of Bill C-48 and proper consultation with affected provinces and relevant Indigenous jurisdictions.

This amendment, after all, underscores the principle of self-determination for First Nations in a way that Bill C-48, in its original form, did not. To use the colourful metaphor that Senator Sinclair offered us just a little while ago: One dish, one spoon.

Of course, there will be those who will huff and puff about how this amendment sells out the environment or landlocked provinces. We are not selling out in any way. There is no dishonour in a B.C. senator telling the residents of the North Coast that the country is not ready for a permanent ban on tanker traffic off that coast. Just as there is no dishonour in an Albertan senator telling Albertans that the lifting of an oil tanker ban is not a panacea for the deeper challenges facing the oil and gas industry in Canada. There is dishonour, however, if we use Bill C-48 as an opportunity to stoke division and inflame interprovincial discontent.

As senators in the federal Parliament, part of our job is to defend the federation. Yes, we represent our regions, but we do our regions a disservice if we knowingly encourage false claims and exaggerated fears.

Honourable senators, we are not between a rock and a hard place. We do not have to throw ourselves in either direction in the belief that we have to choose one or the other. The amendment before us responds to the situation in B.C.'s North Coast as it is, rather than the situation that we fear it might be.

I choose neither the imaginary rock nor the hypothetical hard place, but opt instead for the proposed amendment that I believe will take us to safe harbour. I hope you will join me.

Some Hon. Senators: Hear, hear!

An Hon. Senator: Question.

Senator Tannas: Would the honourable senator take a question?

Senator Woo: Yes.

Senator Tannas: Thank you, Senator Woo. A couple of things. First, on your assertion that there is no pipeline and that we don't know if there is any market, you have forgotten that Enbridge committed billions of dollars to the Northern Gateway Project. It was smothered by the Liberal government. That, in fact, was the evidence that was needed, if you want to look at it. That was not government subsidized or anything else. That was billions of dollars that have since gone to the United States in pursuit of other projects and employment there. That is some evidence that we could hang our hats on with respect to demand.

I want to ask a question around the platform. We all know that a tanker ban was not in the platform. I've gone and looked — I cannot find it in the manifesto. We know that it was mentioned in one speech, maybe two, somewhere in the heat of the campaign, but it was not. In the careful reading of the Salisbury Convention, it would not apply at all.

An Hon. Senator: Is there a question?

Senator Tannas: However, we know that there is, in the coming election a party that has in their platform the repeal of Bill C-48.

An Hon. Senator: Hear, hear.

Senator Batters: Yes.

Senator Tannas: It will apply under the Salisbury Convention that we will need to consider. What I want to know is what your thoughts are on this particular amendment becoming some kind of an excuse or a sword to thwart the will of the next elected government when they go to repeal Bill C-48?

Senator Batters: Hear, hear.

Senator Woo: Thank you, Senator Tannas. On the question of the election platform, I think it is quite clear that then-candidate Justin Trudeau made very public statements, both in Northern B.C. with the Coastal First Nations as well as in Vancouver. He made it very public. It was widely reported and I think a fair reading of whether or not voters considered that to be a promise would conclude that it was part of the platform. We could have differing views, but there is sufficient evidence to suggest that it was a campaign promise.

Even if you don't accept the Salisbury Convention, I have already made the case that there are two other tests that you need to satisfy if you vote against this bill. First, there is a very high standard for voting against a government bill, setting aside the Salisbury Convention. We all have to ask ourselves if that test has been met. Defeating a government bill has only happened four times since the Second World War. I think it would be extraordinary if we added Bill C-48 as the fifth occurrence.

I've given yet another test for us to consider, if we want to contemplate voting against this bill, which is have we tried our best? Have we made every effort to find the pathway, solution, the compromise that would not put us in a position, not put the Senate in a position, as unelected Parliamentarians, voting against a government bill, and all of the ramifications that would have for our institution.

This is not a question just for the ISG or the Conservatives, it is for all of us, particularly for those of us who might be here for many years to come.

Now on the other question concerning the platform of the Conservative party, what I would like to think is that the Conservative party places value on evidence, scientific research, on consultation, if this is the belief of the party and a regional assessment is under way that does all of these things, collect information on the risk of an oil tanker spill, the sensitivity of the ecosystem, the impacts both near-shore and inshore, the economic ramifications if there was an oil spill. I would like to think any government would want to pause and look at that information before deciding to repeal the moratorium or extend the moratorium.

This amendment gives us the opportunity to do exactly what I heard everybody complain about, which is that we don't have sufficient information to make a decision. If that is true today, it will be true on October 22 when a new government is elected. They will still not have sufficient information.

I would hope that any government would want to wait for the information before making an irrevocable decision.

Some Hon. Senators: Question.

• (2120)

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

Hon. Nicole Eaton: Senator Woo, no one has managed to explain to me why there are 2,000 tankers full of diesel oil that go up the East Coast every day to the Arctic, through Iceberg Alley. I'm sure you've been to Nova Scotia, Prince Edward Island, parts of Newfoundland. There are beautiful coastlines and we don't talk about oil spills or tanker moratoriums. Why is the West Coast more precious or more sensitive than the East Coast? No one has managed to explain that to me.

Senator Woo: It is a very good point, and this is precisely why this amendment does not permanently rule out the possibility of tanker traffic off the West Coast.

As I indicated in my speech, the fear of a major oil tanker spill off the north coast of B.C. is hypothetical because there are no oil tankers currently within 126 kilometres off that coast. So to collect the information on the safety of oil tanker traffic, to collect information on the sensitivity of the ecosystem — an ecosystem, I should say, that has been described as particularly sensitive. I am not a biologist, but we heard speeches from Senator Jaffer, delivered by me, and Senator Harder that attest to the special character of that rainforest. We need the information to ascertain if, in fact, this ecosystem has a special status that requires protection in perpetuity.

But we don't have that information yet. Therefore, I think that this amendment will help us get the information we need to make a decision in prudence and looking at the long-term interests of Canadians.

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

Hon. Senators: Question.

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Sinclair, seconded by Senator Campbell, that Bill C-48 not be read the third time but — shall I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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 to the motion 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 the bell?

Hon. Donald Neil Plett: We will defer the vote to the next sitting of the Senate.

The Hon. the Speaker: The vote is deferred to 5:30 p.m. at the next sitting of the Senate.

BUDGET IMPLEMENTATION BILL, 2019, NO. 1

THIRTY-SIXTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE ON SUBJECT MATTER—DEBATE ADJOURNED

The Senate proceeded to consideration of the thirty-sixth report of the Standing Senate Committee on Social Affairs, Science and Technology (*Subject matter of Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures*), tabled in the Senate on June 6, 2019.

Hon. Ratna Omidvar: Honourable senators, as I have listened to this discussion, I am reminded of the fact that I have been a senator for three short years. People ask me, "What's the best part of your job?" I have to admit that we deal with issues ranging from pipelines to tanker bans and rocks and hard places, to cannabis pardons and structured intervention units. We truly embrace Canada in full, and that's an incredible privilege.

With that in mind, I want to point your attention to a measure in Bill C-97, the budget bill, and the report from the Standing Senate Committee on Social Affairs, Science and Technology, and bring your attention to asylum seekers.

Today at the Standing Senate Committee on National Finance, which I attended, this measure, along with all others, was approved. Nevertheless, I wish to go on the record and provide some context for the Social Affairs Committee report before you.

The changes that are in Division 16, Part 4, of Bill C-97 have been in the news a great deal, so let me assume that most of you are aware of them. In summary, they introduce a new ground for ineligibility for refugee protection if a claimant has made a claim for refugee protection in another country with which we have a data-sharing agreement. These agreements are with the U.S., the U.K., New Zealand and Australia.

Any individual who has made an asylum claim in any one of those countries would therefore be barred from a hearing before the Immigration and Refugee Board, the IRB.

Although this agreement covers all our Five Eyes partners, it is particularly targeted to those who are crossing irregularly from the U.S. into Canada.

Instead of a hearing at the IRB, claimants who fall under this category will be rerouted to a process called the pre-removal risk assessment, or PRRA. Let me take a few minutes to explain to you what PRRA is and how it differs from an IRB hearing.

The PRRA is a risk assessment process to determine whether a person would be at risk of physical harm if they get sent back to their country of origin. To date, it has mainly been applied to asylum seekers who have been rejected by the IRB. The PRRA helps determine if that individual would still be vulnerable to risk. A good example could be a claim from an individual from Afghanistan who may not meet the criteria for refugee protection but, nevertheless, would be at risk if deported back to Afghanistan.

The objective of this measure is, and I quote the government, to "better manage, discourage and prevent irregular migration and to improve the efficiency of the Canadian asylum system, without compromising its fairness and compassion," fairness to Canadians who are concerned about delays and are worried about the integrity of the border, and fairness to asylum seekers so that those who cross our border irregularly are not unfairly advantaged or disadvantaged based on where they arrived from.

As many of us have observed in the Senate, the devil is always in the details of the legislation. And as there are upsides, there are also downsides, and I would like to use some of my time to unpack these a little.

I posed some questions to myself, as I studied this measure, and I would like to share them with you.

First, should changes like this, which have a significant impact on people's lives and our system of asylum approval, be buried in a budget bill? Does a budget bill allow us to exercise our due diligence, as is normal on stand-alone legislation? Does it allow us appropriate time to study and hear from experts and stakeholders? Can we truly exercise our sober second thought in this context?

At pre-study, the committee devoted precisely four hours to hear from precisely five witnesses.

The next question I asked myself was to assess the potential harm to at-risk communities, such as women fleeing domestic violence, children and LGBTQ+ communities.

As a letter from 40 women's organizations said, "Women and children could be returned to their home countries, where they faced violence and persecution, without a proper hearing before an independent adjudicator."

Deepa Mattoo of the Barbra Schlifer Clinic, which is a shelter for women in Toronto that has significant expertise in domestic violence, wrote in the *Toronto Star* this past weekend:

> Women refugees already occupy a precarious position in the global community. Gender-based persecution is the No. 1 reason female refugee claimants seek asylum in Canada. Approximately half of these women flee to escape domestic violence when they are unable to find protection within their home country.

• (2130)

This is particularly concerning since the Trump administration has slammed the door on women seeking protection from domestic and gang violence. Domestic violence is a recognized ground for protection in Canada but no longer in the United States.

To be absolutely clear and factual, a U.S. federal court struck down the Trump policies as it applies to the initial interviews of asylum seekers, but not to the decision of the immigration court. It is hard for anyone to predict what the hurly-burly of current U.S. politics will do to women whose claims rest on domestic violence, given that President Trump has removed domestic violence as a grounds for protection. It's a bit like you are allowed to go through security, but you're not allowed to get on the plane.

My third question — and I think this is a serious one — is around the independence of decision-making. The IRB has been structured to be independent of political influence, political preferences and political reach. This is essential to retain the integrity of the system.

The PRRA process, in comparison, will be staffed by public servants, and much as I respect and admire public servants, they are not independent of political influence because, at the end of the day, they work for a minister and a department In many instances, we have seen how public servants can be given direction and can be influenced one way or another.

Further, claimants who go through this process will also not be able to seek an appeal to the Refugee Appeal Division. Instead, they will apply for judicial review, which is a much narrower process, focusing on the legalities of the decision. And complainants can be deported before the judicial review is completed.

My third question concerns consistencies with past court decisions that guide our refugee system. The Supreme Court, in *Singh v. Canada*, in 1985, declared that the legal guarantees of the Charter of Rights and Freedoms apply to everyone physically present in Canada, including asylum seekers. The court also said that refugees have the right to a full oral hearing of their claims before being either accepted or rejected.

At committee, the House of Commons amended the bill to require such an oral hearing at the PRRA; thus replacing the current paper review, and the government has called this "an enhanced PRRA."

When asked about whether this measure would bring us in line with the Supreme Court decision, Minister Blair assured us that this change satisfies the spirit of the decision. I'm not sure I disagree with him on this, but I'm also told by stakeholders that this decision will be challenged in the courts. Not everyone is convinced by Minister Blair's assertion that this will not be challenged.

Andrew Brouwer of the Canadian Association of Refugee Lawyers noted that it would be more appropriate to call these hearings at PRRAs interviews — they're not hearings — even when they are enhanced. They bear none of the hallmarks of what makes up for a fair tribunal hearing. The claimants and counsel are not allowed to present the case as they see fit, but they are there to respond to issues by the PRRA officers. They may not call or cross-examine witnesses, and they have no opportunity to redirect. The way I translate that, to my non-legal mind, this is a one-way conversation.

The fourth question I will ask you to consider is this: Is the government investing in two parallel systems? I believe the government when they say they are dedicated to strengthening the IRB, and they have made the investments in funding for the next five years. This is a lot of money, but I hope this will restore the IRB, that has been cash-strapped for the last decade, and so enable it to deal with its caseloads and backlogs.

I also know that this will not happen in a nanosecond. It takes time for these changes to demonstrate impact. If this is going to be the case, why would we simply not second IRB judges to the PRRA hearings, thus creating efficiency and retaining the independence of the system.

Conversely, why would we not bring the entire PRRA process under the jurisdiction of the IRB? This way it would still stay independent, benefit from its knowledge and competency but speed up the process.

I was surprised to learn that in 2012, under then-Minister Kenney, legislation was tabled and approved to bring the PRRA into the IRB, but this legislation was never brought into force. There are other options that could be considered.

My question is whether this is the start to a slow deterioration and undermining of the independent adjudication system. This government, or future governments, may move more claimants away from the board and into the new enhanced IRCC apparatus from the mother ship, so to speak, to the garage.

The fifth question relates to uncertainties and the timing. Minister Blair has informed us at committee that the IRCC will hire 46 new officers. They will be trained and equipped with the competencies to make life-changing decisions. Again, this does not turn on a dime. The measure comes into force at Royal Assent.

In conclusion, advocates have raised the alarm about the potential impact on women, children and the LGBTQ+ community. The independence of the system could be at risk. A budget bill does not allow us sufficient time to examine these measures.

I'm left with this question: Will this measure make us stronger or weaker? That's a loaded, value-based question. I ask myself which lens should I use to answer that question, and I reach back to one of my personal heroes, Mahatma Gandhi, who said, "A nation's greatness is measured by how it treats its weakest members." Those who are the weakest, those with no voice, and those with little personal agency.

I hope, with these questions in mind, along with others you may have, we can still provide a modicum of sober second thought as this particular measure is considered at third reading.

As for myself, I have very reluctantly accepted the fact that it is well nigh impossible to amend a budget bill. I have used other routes to create enhancements. In successive meetings with Minister Blair, has been extremely responsive to suggestions both from the Social Affairs Committee and my own suggestions. He has incrementally enhanced the PRRA process to more closely meet a higher bar. I will admit this measure is not perfect. I do not believe perfection is within our reach.

In addition, Minister Blair has said that the government is willing to provide the Social Affairs Committee with an update on the effectiveness of these new measures within two years.

Honourable senators, this is not the last time I hope you will hear about this, and certainly not the last time you will hear from me about this. Thank you very much.

(On motion of Senator Martin, debate adjourned.)

(*At 9:39 p.m., pursuant to the orders adopted by the Senate on February 4, 2016, and May 9, 2019, the Senate adjourned until 1:30 p.m., tomorrow.*)

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