SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 44th PARLIAMENT • VOLUME 153 • NUMBER 57

OFFICIAL REPORT
(HANSARD)

Tuesday, June 21, 2022

The Honourable GEORGE J. FUREY,
Speaker

CONTENTS

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

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

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

THE SENATE

Tuesday, June 21, 2022

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

Prayers.

SENATORS' STATEMENTS

NATIONAL INDIGENOUS PEOPLES DAY

Hon. Dan Christmas: Honourable senators, I rise to speak in recognition of National Indigenous Peoples Day, celebrated each year on this day. While it's a day on which we recognize and celebrate the unique heritage, diverse cultures and outstanding contributions of First Nations, Inuit and Métis peoples, it's also a perfect opportunity for recognizing innovations and best practices across national institutions seeking to play their part in achieving reconciliation between Canada and Indigenous peoples.

I'd like to share one such example with you and spotlight the incredible progress being made by a federal institution that's been around since Confederation — Canada Post. Weeks ago, in early May, Canada Post opened a new community hub post office in my home community of Membertou, only the second of its kind in Canada.

The new Membertou location includes meeting rooms available to rent, along with a parcel packaging area and secure printing and shredding services. There's also a space for public, wireless internet service, with computers and video conferencing capabilities. There's even a soundproof podcast room. The new post office includes electric vehicle charging stations, bicycle racks, water bottle refilling stations, accessible parking and automatic doors. The hub's signage is in Mi'kmaq, French and English, and the space showcases local artwork. As our Chief Terry Paul affirmed, "This is more than just a post office, it is a meeting and gathering place."

This is all part and parcel of Canada Post's national strategy to renew its long-standing relationship with First Nations, Métis and Inuit people, as well as with Northern communities. The Indigenous reconciliation strategy reflects Canada Post's commitment to undertake shared partnerships with Indigenous people and Northern communities, and to make real, sustained progress throughout Canada. It features four key pillars: Improving postal services to Indigenous and Northern communities; developing and implementing an Indigenous procurement strategy; improving Indigenous employment and retention; and supporting the viability, wellness and safety of Indigenous communities. The elements of this strategy are great examples of where reconciliation and retail commerce wonderfully collide with Indigenous culture, community health and sustainable economic development.

As if that weren't enough, in commemoration of National Indigenous Peoples Day, Canada Post is releasing three new stamps today honouring past Indigenous leaders Harry Daniels, Chief Marie-Anne Day Walker-Pelletier and Jose Kusugak in recognition for their commitment and contributions to the Métis, First Nations and Inuit communities they served.

Canada Post is to be highly commended for manifesting such a game-changing policy undertaking that makes Indigenous reconciliation a key item of the corporation's business. It seems highly appropriate that we shine a light on these very best practices on National Indigenous Peoples Day. Canada Post has indeed delivered a wonderful parcel of initiatives which all Canadians should be both proud of and thankful for. This is true reconciliACTION at work. *Wela'lioq*. Thank you.

Hon. Senators: Hear, hear.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the Honourable John Hogan, Q.C., Minister of Justice and Public Safety and Attorney General of Newfoundland and Labrador.

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

Hon. Senators: Hear, hear!

NATIONAL INDIGENOUS PEOPLES DAY

Hon. Patti LaBoucane-Benson: Honourable senators, my friends, today is National Indigenous Peoples Day, and there is so much to celebrate!

First, I am so grateful for the economic self-determination of Indigenous peoples, especially in my province of Alberta. I want to congratulate the Edmonton Chamber of Commerce for creating an Elder in Residence position. I can think of no better inaugural Elder in Residence than my friend Irene Morin of the Enoch Cree Nation. Her body of work is considerable. She was a powerful advocate for social justice in her work at Native Counselling Services of Alberta, and she was an effective and popular political staffer for the late, great Senator Thelma Chalifoux. There is no doubt in my mind that Irene will assist the chamber in forging new and stronger relationships with Indigenous communities surrounding Edmonton, as well as connect members with the Indigenous leaders, entrepreneurs, movers and shakers in the area. Believe me, Irene knows everyone.

This innovation towards reconciliation should not surprise us. The Alberta Treasury Branch recently published a report on the economic contributions of the 313,000 Indigenous people who reside in what is now known as Alberta. The report found that:

> The Indigenous economy in Alberta generated $6.74 billion of GDP in 2019 . . . which is equal to the GDP generated by Alberta's agricultural sector.

Honourable senators, economic self-determination is a cornerstone of reconciliation and of *miyo-pimâtisiwin* — the ability to live the good life — and I am celebrating all of the Indigenous-owned businesses across Turtle Island who are contributing to their communities and to our country in meaningful ways.

On a personal note, I am also celebrating the profound importance of our traditional ceremonies. This weekend, I had the honour to Sun Dance — to be part of one of the most sacred Nehiyaw ceremonies that is grounded in the principles of interconnectedness and sacrifice for the healing and well-being of the people. I have immense gratitude for Elder and Sun Dance Chief Fred Campiou and Melanie Campiou for their tireless dedication to this ceremony and for the *kisewâtisiwin* — the loving kindness — that guides their work.

Honourable senators, ceremonies are where Indigenous languages thrive. All weekend long, I was immersed in the nêhiyawêwin language, listening to stories, jokes and teachings. The preservation of Indigenous languages is indeed bound to the survival of these beautiful ceremonies.

• (1410)

And so, dear colleagues, I hope you have time this week to join me in celebrating Indigenous resilience, self-determination and healing.

Hiy hiy.

Hon. Senators: Hear, hear.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the Honourable Park Byeong Seug, Speaker of the First half of the 21st National Assembly of the Republic of Korea and a parliamentary delegation, and His Excellency Chang Keung Ryong, Ambassador of the Republic of Korea to Canada.

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

Hon. Senators: Hear, hear!

NATIONAL INDIGENOUS PEOPLES DAY

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, I rise in celebration of National Indigenous Peoples Day. This day is part of the Celebrate Canada program, which also includes Saint-Jean-Baptiste Day, Canadian Multiculturalism Day and Canada Day itself. National Indigenous Peoples Day is an integral part of the Celebrate Canada program in that it completes the recognition of Canada's multi-faceted diversity. Collectively, these four days allow for a completely inclusive recognition of all the peoples who together have built our country.

From the earliest days of Canada, Indigenous peoples contributed to the defence of Canada, doing so in the War of 1812, in the two world wars fought during the 20th century, assisting in the defence of my homeland of Korea and contributing to Canada's military efforts in the peacekeeping missions and conflicts that have occurred since that time.

One of the most decorated Indigenous veterans was Tommy Prince, who bravely served in both World War II and the Korean War. Too often the contributions made by Indigenous peoples have not been given the recognition they so justly deserve.

In this regard, I believe it is so important that the *War of 1812 Book of Remembrance* unveiled in Parliament's Memorial Chamber just a few years ago incorporates a listing of individual Indigenous warriors who gave their lives in the struggle which preserved their own individual nations and Canada itself in the face of invasion.

We also recognize the countless number of Indigenous peoples in all walks of life who have contributed so much to bettering the lives of their own people and all Canadians. There are literally too many people to name, but in my own field of education, we have the inspiring contributions of people like Verna Kirkness, an educational trailblazer in Manitoba; Janet Smylie, associate professor at the Dalla Lana School of Public Health at the University of Toronto; and our very own former colleague, the honourable Lillian Dyck, who served as a professor in the neuropsychology research unit, Department of Psychiatry, at the University of Saskatchewan before serving in the Senate with distinction.

On this day, we recognize and acknowledge all of their contributions to the building of our country. The historical relationship between Indigenous peoples and Canada has often been difficult, but through the day that we celebrate today, we proclaim both our gratitude and our determination to move forward together as we build Canada.

Thank you.

Hon. Senators: Hear, hear.

Hon. Marty Klyne: Honourable senators, I rise to share two stories in celebration of National Indigenous Peoples Day.

First, I wish to pay tribute to the late Harry Daniels, a proud Métis. Harry was recently honoured by Canada Post with a commemorative stamp that highlights his contributions to Indigenous history.

He was, perhaps, most well known for his part in the constitutional negotiations that defined Canadian politics in the 1980s. Daniels was a fierce advocate for the rights of the Métis, and he fought to ensure that Métis were included in the constitutional definition of "aboriginal peoples."

This was no small task. He clashed with then justice minister Jean Chrétien, who at first refused Daniels' demands. But Harry's fierce advocacy and persistent nature eventually persuaded Chrétien and then Prime Minister Trudeau to include the Métis. That decision changed the relationship between the Métis and the federal government.

I want to express my appreciation to Canada Post for honouring Harry with this tribute and for asking me to speak at last week's ceremony in Regina. This was a significant event for Regina Beach and our extended family. Harry was my mother's cousin, and because he was 17 years my senior, he was, and always will be, Uncle Harry to me.

These commemorative stamps tell stories, and I think that connects Canada Post with Indigenous peoples, as it is our tradition to connect generations by passing down our knowledge through storytelling.

I'd like to share another story, one that highlights another fight for justice. I recently watched a film called *I'm Not An Indian*, directed by R. J. Maloney in partnership with Jake Dockstator, a creator on the film.

The documentary tells the story of the late Chief Orville Smoke, leader of the Dakota Plains First Nation. It's a powerful story of uncomfortable truths and tragic and dreadful consequences, but there are also elements of hope.

The documentary is available on Crave, and although the subject matter deals with sorrowful and tragic events, I challenge my colleagues in this chamber to watch it this summer before September 30, 2022, when Canada marks the National Day for Truth and Reconciliation.

Chief Smoke and Harry Daniels fought hard to better the lives of Indigenous peoples. Their legacies are not just their accomplishments but also the path they paved for future generations. We must remember their stories, and we must tell their stories so they are not forgotten.

Thank you. *Hiy kitatamîhin*.

CANADIAN NAVAL TRIBUTE PROJECT

Hon. Victor Oh: Honourable senators, I rise today to speak on the Canadian Naval Tribute Project, cofounded by Sean Livingston and Mark Phillips. This project seeks to recognize 14 unsung heroes of the Royal Canadian Navy, heroes who endured racial and gender prejudice but never wavered in the face of combat.

Among the 14 officers honoured, we find a remarkable Lieutenant-Commander William Lore. Lore was born in Victoria, B.C., in 1909 and was a Chinese-Canadian pioneer in many ways. At the onset of World War II, Lore, then a public servant, was denied entry into the Royal Canadian Navy three times because of his ethnicity. He was not granted admittance until a personal request from the Chief of the Naval Staff was received.

With this acceptance, Lore became the first person of Chinese descent to become an officer in the Royal Canadian Navy, including all other Commonwealth navies.

Lieutenant-Commander Lore served in the U.K. and in Southeast Asia, where he was instrumental in planning the Alliance attack on Rangoon, Burma. In recognition of his service and sacrifice in the liberation of Hong Kong, Lore was selected to command the first party of Royal Marines into the city and became the first Allied officer to officially enter the liberated region.

Lore's remarkable story continued past VE Day. Upon his retirement from the navy in 1948, the Lieutenant-Commander went on to graduate with a law degree from the University of Oxford at the age of 51.

Colleagues, William Lore's exceptional service is just one example of equally impressive Canadian heroes being honoured by the Canadian Naval Tribute Project. Please join me in congratulating Mr. Livingston and Mr. Phillips for their efforts in preserving Canada's diverse military history.

Thank you. *Xie xie*.

• (1420)

AIR INDIA FLIGHT 182

Hon. Ratna Omidvar: Honourable senators, I rise to remember a sombre day in our history, June 23. On this day in 1985, a bomb downed Air India Flight 182 over the coast of Ireland. All 329 passengers on board were murdered, including 82 children, 6 babies and 29 entire families. This was and remains the single largest terrorist attack on Canadians. In a sense, it was our own 9/11.

In the 37 years since, much has changed in Canada. We have progressed as a nation that is more inclusive. We have learned some lessons from the past, and we have taken action. Our policies, protocols and legislation have evolved, but most importantly, I believe, it is our hearts and minds that have changed. We now mark June 23 every year as the National Day of Remembrance for Victims of Terrorism. But lest we forget, I take this opportunity to once again bring Air India into our national memory.

I am heartened by the progress we've made, embracing immigrants as our people and not just as people with half-ties to Canada. When Ukraine International Airlines Flight 752 from Tehran crashed in 2020, it took the lives of 138 individuals destined for Canada. This time around, we did not repeat the mistakes of the past. We didn't brush off the victims as lesser Canadians and, therefore, less valuable to us. We demonstrated, this time around, that "hyphenated Canadians" are not lesser Canadians.

None of this, of course, provides much comfort to the families who were robbed of a future, whose lives were changed forever, who will not live to see their children grow up, whose parents will not show up for their graduations, birthdays, weddings or the birth of a child or grandchild. They won't celebrate Mother's

Day, Father's Day or Family Day. For them, I wish and hope that the National Day of Remembrance for Victims of Terrorism counts.

Let's continue to fight as a nation against terrorism, hate and intolerance. 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 Steve Farlow. He is the guest of the Honourable Senator Deacon (*Ontario*).

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

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

BUDGET IMPLEMENTATION BILL, 2022, NO. 1

SIXTH REPORT OF NATIONAL FINANCE COMMITTEE PRESENTED

Hon. Percy Mockler, Chair of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, June 21, 2022

The Standing Senate Committee on National Finance has the honour to present its

SIXTH REPORT

Your committee, to which was referred Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures, has, in obedience to the order of reference of June 14, 2022, examined the said bill and now reports the same without amendment.

Respectfully submitted,

PERCY MOCKLER

Chair

(*For text of observations, see today's* Journals of the Senate*, p. 771.*)

He said: Honourable senators, I would like to thank the members of the steering committee of the Committee on National Finance, namely Senators Forest, Gignac and Richards.

[*English*]

I also want to thank the members of the Standing Senate Committee on National Finance for their cooperation, teamwork and dedication to ensuring the committee met that tight deadline. I would also like to thank the other six committees that conducted the pre-study of this bill.

Your Honour, our committee is supported by amazing staff, such as clerks, analysts, interpreters, communications staff and our office staff, who have worked hard to support the committee and its responsibilities.

[*Translation*]

Thanks to this group of people, the committee is able to focus on four core principles: transparency, accountability, reliability and predictability of the Canadian budget for all Canadians.

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

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

[*English*]

CANADIAN NATO PARLIAMENTARY ASSOCIATION

JOINT MEETING OF THE DEFENCE AND SECURITY, ECONOMICS AND SECURITY, AND POLITICAL COMMITTEES, FEBRUARY 17-19, 2020—REPORT TABLED

Hon. Jane Cordy: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian NATO Parliamentary Association concerning the Joint Meeting of the Defence and Security, Economics and Security, and Political Committees, held in Brussels, Belgium, from February 17 to 19, 2020.

ANNUAL SESSION, NOVEMBER 18-23, 2020—REPORT TABLED

Hon. Jane Cordy: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian NATO Parliamentary Association concerning the Sixty-sixth Annual Session, held by video conference from November 18 to 23, 2020.

SPRING SESSION, MAY 14-17, 2021—REPORT TABLED

Hon. Jane Cordy: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian NATO Parliamentary Association concerning the Spring Session, held by video conference from May 14 to 17, 2021.

HALIFAX INTERNATIONAL SECURITY FORUM, NOVEMBER 19-21, 2021—REPORT TABLED

Hon. Jane Cordy: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian NATO Parliamentary Association concerning the Halifax International Security Forum, held in Halifax, Nova Scotia, Canada, from November 19 to 21, 2021.

QUESTION PERIOD

IMMIGRATION, REFUGEES AND CITIZENSHIP

PASSPORT SERVICES

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question is for the government leader in the Senate. Senator Gold, on Monday morning, police were once again called to the Service Canada office in Montreal, in the suburb of Laval. Hundreds of Canadians who had lined up to receive a passport were told to leave. Many of them had been there since Saturday, leader.

Yesterday, leader, you told us the government's focus is on ensuring anyone who has travel planned within 25 business days is given priority for service. Last Friday, Minister Gould's parliamentary secretary said Service Canada agents were going through the lines to accommodate those with immediate travel within two business days, leader. Yesterday morning in Laval, people were told they would be helped if they had travel booked within 24 hours, despite a sign on the office door saying they could be helped if their departure was planned in the next 24 to 48 hours.

There are three or four different times there, leader. Which information is correct?

Hon. Marc Gold (Government Representative in the Senate): The short answer is, Senator Plett — and thank you for your question — there clearly is inconsistent information being provided both, as you described, at the site in Laval and, perhaps, elsewhere. The information I have was the answer that I gave you the other day, and that's the only information I have.

It is a deplorable situation. I will try to find out, to the best of my ability, what's happening in that particular centre. It is a busy one, but it is not the only one that is plagued with problems. I'll do my best to sort it out if I can.

Senator Plett: Hopefully, the minister can give you the correct information.

• (1430)

Our passport system, leader, is in utter chaos. No one in the Trudeau government knows how to fix it, and each day it seems to get worse. I hate to think what will happen next week when most schools close for the summer and more families start travelling. As I said yesterday, over 18,000 Service Canada employees who process passports still work from home as a pandemic precaution.

The insistence of this Trudeau government to prolong the pandemic as long as possible while the rest of Canada, and indeed the rest of the world, has moved on means the government can't keep pace with its citizens.

Fewer than 48,000 passports were issued last week, leader. The average before the pandemic was more than 90,000 passports per week — almost double.

Leader, a written answer tabled in the House of Commons states that as of May 12, 2022, 249 Service Canada employees were on leave in relation to the vaccine requirement.

How many of these workers process passports, Senator Gold, and are they now back at their jobs?

Senator Gold: I will certainly make inquiries as to the specific question with which you ended your comments.

Again, I will repeat: This is an unacceptable situation. The government is doing what it can. It is devoting the resources it has to resolve it. One hopes that the situation will improve such that Canadians can travel abroad, or receive their passports for whatever purposes they need them, as quickly as possible.

FINANCE

FEES TO SMALL BUSINESSES

Hon. Yonah Martin (Deputy Leader of the Opposition): Senator Gold, during the 2019 federal election campaign, the Trudeau Liberals made several different commitments to our small businesses that have not been fulfilled. As I have raised previously, it appears the Trudeau government is breaking its promise to cut the cost of federal incorporation by 75%. As well, the promise to end credit card swipe fees on GST and HST is being buried in endless consultations.

Leader, in 2019, your government also promised to eliminate fees for business advisory services such as mentorship and training from the Business Development Bank, Export Development Canada and Farm Credit Canada.

Leader, could you tell us if these fees have been eliminated and, if not, why not?

Hon. Marc Gold (Government Representative in the Senate): In order to answer both aspects of your question, I will have to make inquiries and will report back.

Senator Martin: Leader, with respect to the credit card swipe fees consultations that I mentioned, small businesses are still waiting to hear when the next round will begin, as announced in the budget. Over a month ago, on May 14, the Canadian Federation of Independent Grocers stated:

> . . . there has been a deafening silence from the government as to when this additional consultation will be taking place and what it will be addressing.

Leader, when I asked you about this last month, you said you would make inquiries and report back. What response did you receive if you've received any? Will your government launch these consultations as soon as possible?

Senator Gold: Thank you. I did make inquiries and, no, I have not received a response back. Therefore I am not in a position to answer the question, but I will add it to my follow-up.

TREASURY BOARD SECRETARIAT

PHOENIX PAY SYSTEM

Hon. Marty Deacon: Honourable senators, my question is for the Government Representative in the Senate. Senator Gold, it has been over six years since the Phoenix pay system has been rolled out, yet it appears that too many public servants still exist in a state of uncertainty over their pay. Some are still not being paid at all, and some are being overpaid. Some were overpaid and paid back the difference and yet still have money being clawed back. Six years on, it is unacceptable that people still have to live through these uncertain times.

When will the replacement system be online and operative? In the meantime, what is the government doing to assist those still living in this state of uncertainty?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. The government does recognize that these longstanding issues have been causing stress and hardship for employees and their families. The government is committed to fixing this. I'm advised that the government has recently seen an increase in new transactions received at the pay centre, though the majority are processed within service standards. Pay teams prioritize cases with financial implications for employees.

The government has taken significant steps to help stabilize the Phoenix pay system and continues to work with all stakeholders, including unions and employees, on the way forward. To be sure, there is still work to do. However, the government continues to progress toward pay stabilization to ensure that federal employees across the country are paid accurately and on time. The government continues to focus on addressing outstanding transactions while also working toward processing new transactions within service standards 95% of the time.

Finally, the government is also working toward the implementation of the next-generation pay system. This includes running pilot projects and tests to ensure the new system will provide pay to public servants accurately and on time, which is their right and due. This will take time, and Minister Tassi is focused on moving it forward.

Senator M. Deacon: Thank you for that response.

Regarding the last part to do with the new system and implementation, piloting, testing and starting, could you please elaborate? I think I heard most of what you said, but I believe the new system is running in parallel while finishing off the old system. Do you have a sense of, with fair training and pilot time, how long it might be before the new system is running independently of the old?

Senator Gold: Thank you, senator. No, I do not know. My understanding is that they are running pilots and tests while, of course, the other system is still functioning as the pay system. I do not know at what stage the transition will be possible. I'll make inquiries.

[*Translation*]

IMMIGRATION, REFUGEES AND CITIZENSHIP

PASSPORT SERVICES

Hon. Julie Miville-Dechêne: Senator Gold, if I may, I would like to return to the issue of the passport crisis, particularly in Montreal.

A colleague from Montreal told me a rather incredible story. He wanted to submit his passport application at the Service Canada office on Décarie Street in Montreal, six weeks before he was supposed to leave on a trip with his children. The clerk told him, "No, don't do that, get in line now." That means that some people in these lineups are leaving in six weeks and have been told that the system is so lousy that it is better to wait in line now than to submit their application. By doing this, by giving this kind of advice, is the government making the crisis worse?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. Unfortunately, I didn't understand your last sentence. Would you kindly repeat it?

Senator Miville-Dechêne: The man went to the passport office because he wanted to submit his application for processing. He was planning to leave in six weeks, so there was no rush. He just wanted to submit it. However, he was told not to submit it but to line up right away to get his passport. He was told to go ahead of other people. That means the lineups in Montreal include people who are not in urgent need of a passport. Is the government making the crisis worse by telling people to do this?

Senator Gold: Thank you for your question. I don't really have an answer for you, but I do have a comment. The situation is unacceptable. What you described is Kafkaesque.

That said, the government is doing its best to fix the problem. There are obviously still issues, and the only thing I can tell you is that I am going to talk to my counterparts in government again and ask them for information, which I will share with you here. I would also stress the importance of fixing this problem as soon as possible.

Senator Miville-Dechêne: I'm still a little perplexed, Senator Gold, because when the pandemic first hit, the federal government managed to get CERB out in record time, which clearly shows that bureaucratic obstacles can be overcome. However, this appears to be impossible today, even for passport services, which are essential. Why have officials not rearranged the employees' work schedules in order to open passport offices on weekends?

• (1440)

Senator Gold: I don't have an answer to your question. I will add it to my list of questions for the government.

PRIVY COUNCIL OFFICE

GOVERNMENT'S LEGISLATIVE AGENDA

Hon. Diane Bellemare: My question is for the Government Representative in the Senate. It's nearly time to look back and take stock of our parliamentary record for this session. Since the beginning of this new Parliament, the government has decided to introduce several of its bills in the Senate. Since December, a total of 10 government bills have been introduced. By way of comparison, the Trudeau government introduced six in the Forty-second Parliament, which lasted four years. Of course, it is the government's prerogative to proceed in this way.

Prime Minister Harper's Conservative government also had a habit of doing that. In the first session of the Forty-first Parliament, it introduced 17 bills, and in the second session of the Forty-first Parliament, it introduced seven bills.

Personally, I have no problem with this. On the contrary, I think it can allow the Senate to do its job of providing sober second thought, especially if the bills are introduced in February, March or April.

What do you think of this practice? Will this trend continue? Do you appreciate and encourage this approach?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. I am grateful for the respect the government has for the work of the Senate. I am very proud of the work that we have accomplished reviewing government bills in the Senate.

That being said, I believe that we need to strike the right balance. As many have already mentioned, it is also important to have more of the testimony and analysis done at the other place.

This is pure speculation on my part, honourable colleagues, because I have no idea what is going to happen to us when we return from the break. However, I am sure that when the Senate receives bills, either after they have been studied at the other place or at the beginning of the parliamentary process, we will continue to do the work we are known for, and rightly so, in the Senate.

Senator Bellemare: Don't you find it interesting that, under the current procedure, the Senate can, on the one hand, study bills and, on the other hand, debate changes made later at the other place?

Senator Gold: If I understood the question correctly, I do indeed find that interesting. We are, for example, debating Bill S-5 on the environment. It is a very important bill. We have done very good work in committee. We will see how the House of Commons receives the work we have done, and we will continue the debate this week.

As I said in response to your question, it is normal for us to receive bills after they have been studied and debated at the other place. In other words, there is room for both ways of legislating.

[*English*]

AGRICULTURE AND AGRI-FOOD

SUPPORT FOR AGRICULTURAL SECTOR

Hon. Robert Black: Honourable senators, my question is for the Government Representative in the Senate.

Senator Gold, as are you well aware, agriculture is one of Canada's most important industries. However, they are often left out of the conversation when it comes to government.

The next agricultural policy framework is a five-year investment by federal, provincial and territorial governments to strengthen and grow Canada's agriculture and agri-food sector. It will replace the Canadian Agricultural Partnership, which ends March 31, 2023.

Honourable colleagues, while Canadian agriculture is a leader on the world stage, we are underperforming. To get to where we need to be with regard to production, exports, sustainable operations and innovation, and to ensure a strong, accessible and affordable food chain at home, the sector will require additional support — both financially and through policy — by all levels of government.

The current Canadian Agricultural Partnership is a $3-billion investment, with $2 billion in shared costs between the federal, provincial and territorial governments and $1 billion in federal funding for activities and programs.

My question today, Senator Gold, is this: Will the government commit to providing a realistic five-year investment to support agriculture in realizing its full potential? I underline "realistic." Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator, for the question. I'm not sure that I would agree with you — although you are certainly more of an expert in this area than I — that our agricultural sector is underperforming. I think many factors have conspired to affect

the industry over the last number of years. This includes the usual suspects these days, if you will: COVID-19, but also floods and drought.

However, the agricultural sector has demonstrated great resiliency. The government has always been there and will continue to be there to support our producers and processors in times of need.

Budget 2022 says the following:

> Federal, provincial, and territorial governments will work together over the coming year to renew the programs under the next agricultural policy framework that begins in 2023.

Colleagues, there is strong political will to renew the partnership and to position the agricultural sector for continued success over the next five years.

PUBLIC SAFETY

ROYAL CANADIAN MOUNTED POLICE

Hon. Donald Neil Plett (Leader of the Opposition): Senator Gold, the *Halifax Examiner* just published an article entitled, "RCMP Commissioner Brenda Lucki tried to 'jeopardize' mass murder investigation to advance Trudeau's gun control efforts."

In the article, we learn that Brenda Lucki made a promise to Public Safety Minister Bill Blair and the Prime Minister's Office to leverage the mass murders of April 18 and 19, 2020, in Nova Scotia to get gun-control law passed.

Here is a quote, Senator Gold, from the notes of one of the RCMP officers who participated in the meetings with the commissioner:

> The Commissioner said she had promised the Minister of Public Safety and the Prime Minister's Office that the RCMP (we) would release this information. . . .

Senator Gold, is this true? Did the RCMP commissioner promise to use the mass murders in Nova Scotia to advance Liberal government policies?

Hon. Marc Gold (Government Representative in the Senate): Well, that is quite an accusation. I have no knowledge of this story or any of the facts. I am not in a position to comment at all.

Senator Plett: Senator Gold, the accusation is made in the *Halifax Examiner*, not by the Leader of the Opposition in the Senate. I ask that you investigate this, Senator Gold, and report back to us.

Senator Gold, if this report is true, do you believe that Commissioner Lucki can remain the head of the RCMP?

Senator Gold: I will certainly make inquiries, because this is the first I have heard of this. Forgive me for not being familiar with or a regular reader of this newspaper.

Again, I will have to make inquiries before I can make any comments, including a response to your last question.

HEALTH

PAN-CANADIAN HEALTH DATA STRATEGY

Hon. Judith G. Seidman: Honourable senators, my question is for the government leader in the Senate.

In the fall of 2020, an expert advisory group was established to provide advice on the development of a pan-Canadian Health Data Strategy. The purpose of the strategy is to support the effective creation, exchange and use of health data. A year ago I asked a question in this chamber about the steps that the federal government has taken to develop the strategy and to address the serious gaps found in Canada's current health data system. To this day, I have not yet received a response on this matter.

• (1450)

Senator Gold, the Pan-Canadian Health Strategy Expert Advisory Group published its third and final report on May 3, 2022, which includes ten recommendations to strengthen Canada's health data system. How will the federal government implement these recommendations to advance the strategy?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I regret that you have not received an answer. I will certainly follow up to see whether it dropped off the list as a result of circumstances. I will make inquiries as to your question and report back on the status of the government's response to those recommendations.

Senator Seidman: Of course, the reason that I am asking is because the COVID-19 pandemic has highlighted the inequities that exist in Canada's health data system. The absence of national standards for the collection and sharing of health data hindered Canada's ability to successfully measure the effectiveness of the COVID-19 vaccine, track the emergence of new variants and assess long-term complications from COVID-19.

In a *Globe and Mail* article published on June 4, 2022, health experts warned that the lack of data collection could hinder our ability to understand and find therapeutic options for long COVID.

Senator Gold, the need for a robust national health data system is evident. What steps will the federal government take to address the barriers that impact Canada's ability to collect, share and analyze health data?

Senator Gold: Again, I do not know what steps the government will be taking, but I would assume that these steps will be the fruit of discussions and consultations with provinces and territories, which have primary constitutional responsibility

and jurisdiction over the collection, management and protection of health data of citizens. I will try to get an answer and report back.

[*Translation*]

IMMIGRATION, REFUGEES AND CITIZENSHIP

PASSPORT SERVICES

Hon. Claude Carignan: Honourable senators, my question is for the Leader of the Government in the Senate. Leader, during question period on May 31, I raised the issue of the slow processing of passport applications and the long wait times in passport offices. At the time you replied, and I quote:

> The government is aware of the challenges and is listening to the staff on the ground. I have been advised that the government has created new centres to increase production capacity. It has hired approximately 500 new staff members and created a new online tool . . . .

Then you stated the following: "The government will continue to work on this issue to reduce the wait times . . . ."

That was three weeks ago, and it seems that the more people and tools there are, the longer the wait time gets. Can you explain why, over the past three weeks, the lineups have gotten longer rather than shorter, even though the government supposedly took steps to correct the situation?

Hon. Marc Gold (Government Representative in the Senate): Listen, this is a serious question and I will try to give a serious answer. I don't understand all the reasons behind this problem. I am aware of it. I answered you based on the information I had. As for why things have not improved as quickly as we would have liked, I don't have an answer to that question. I will try to find out. I'm inclined to say that when a solution is implemented it can take time for things to improve and start moving.

In all honesty, I don't have the information to answer your questions about why there are still delays.

Senator Carignan: Leader, I get the impression that there is no leadership. Where are the minister and the department in all this? Where is the Prime Minister? Bureaucrats seem to have been abandoned. Is there anyone flying this plane?

Senator Gold: Thank you for the question. All I can tell you is that the government is working on it, both at the political level and at the level of deputy ministers, public servants and employees.

[*English*]

HEALTH

FOOD LABELLING

Hon. Victor Oh: Honourable senators, my question is for the government leader in the Senate. It is regarding the Health Canada proposal for the front-of-package labelling for ground beef and pork which would require ground beef and pork sold at retail to carry a "high-in-saturated-fat" warning label.

As Senator Plett noted yesterday, this small label stands to have a significant negative impact on the Canadian beef and pork industries. As most other single-ingredient foods are exempt from this labelling, such as milk and eggs, it seems unfair to target ground beef.

In addition, we must remember that this discouraging people from ground beef consumption may have other negative consequences given that, one, ground beef contributes iron, zinc and other important nutrients that are vital for a balanced diet; two, with current food supply chain issues and high inflation and food costs, ground beef offers consumers these nutrients at a more cost-conscious way than more expensive cuts of beef.

Leader, yesterday you said Canadians would continue to purchase ground beef. Does the government understand that the cost of changing the labelling will be passed down to consumers, making ground beef more expensive at a time when families cannot afford to pay more? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. The government is of the view that the labels that provide information to consumers are an important tool so that Canadians can make choices as to how they want to eat and to understand better the consequences of the choices they make.

The government will continue to work with experts in the scientific community, but also with stakeholders to make sure that the information that is communicated to Canadians is appropriate.

These labels work. For example, in Chile, which introduced labelling, they saw major improvements in healthy eating in the country just a year and a half after the implementation.

I cannot generalize about every household in Canada, but I can assure you that in our household we continue to eat beef but over the years we have moderated our consumption of certain foods and replaced them with others out of consideration for our own health. In my household we continue to enjoy beef, but we have also made choices based upon what we now understand is best for our health, in terms of immediate and long-term effects.

The approach that the government is taking with regard to beef and pork is exactly that: to provide Canadians with the information that they need and deserve to make the free choices that they can and should make in terms of what they want to eat.

THE SENATE

TRIBUTES TO DEPARTING PAGES

The Hon. the Speaker: Honourable senators, this week we will be paying tribute to the Senate pages who will be leaving us this summer. Senate page A.J. Hancock will be leaving and A.J. unfortunately cannot be with us today, but she has just graduated from the University of Ottawa with an Honours Bachelor of Arts degree in History with a minor in Economics. She will begin her Master of Arts degree in History this fall at the University of Ottawa to focus on Canadian consumer history. She is excited to continue her studies at the graduate level with a full academic scholarship.

• (1500)

A.J. is grateful for the opportunity to have worked as a Senate page with such an amazing team. Thank you, A.J., for all your hard work and dedication.

Some Hon. Senators: Hear, hear.

[*Translation*]

The Hon. the Speaker: Anne-Frédérique Gour just completed her Bachelor's degree in International Studies and Modern Languages at the University of Ottawa. She hopes to continue working in the public service after she graduates and completes her two years as a Senate page, during which she represented the province of Quebec. Anne-Frédérique would like to thank each and every one of you for making this such a rich, unique and memorable experience.

Thank you very much, Anne-Frédérique.

Hon. Senators: Hear, Hear.

[*English*]

The Hon. the Speaker: Caleb Rudyk has just graduated from the University of Ottawa with a Bachelor's degree in Biopharmaceutical Science with a specialization in Genomics. He has been so proud to be able to represent his hometown of Vegreville, Alberta, as a page in the Senate of Canada over the last year. Caleb hopes to continue working in the public service next year, and he aspires to study law in order to work in the legal domain of the pharmaceutical industry.

He is so grateful to have had the opportunity to serve in the Senate alongside such wonderful colleagues, and he will never forget this incredible experience.

Thank you kindly for all your hard work, Caleb.

Hon. Senators: Hear, hear.

ORDERS OF THE DAY

BILL TO AMEND THE CRIMINAL CODE AND THE IDENTIFICATION OF CRIMINALS ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS (COVID-19 RESPONSE AND OTHER MEASURES)

THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Dalphond, seconded by the Honourable Senator Bovey, for the third reading of Bill S-4, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures), as amended.

Hon. Denise Batters: Honourable senators, I rise to speak to Bill S-4, An Act to amend the Criminal Code.

Over the past two years, Canada's criminal justice system — like nearly every facet of society — had to adapt quickly and substantially to function during a time of enforced social distancing and a myriad of other challenges posed by COVID-19. When we needed to put our modern communications technology to the test, most organizations found ways to advance efficiency, functionality and convenience that will certainly endure past the pandemic.

Having practised law for many years, and being a member of the Legal and Constitutional Affairs Committee during our 18-month comprehensive study on court delays, I am acutely aware of the problem of excessive backlogs and the need to innovate and modernize our criminal justice system. However, as the justice system grapples with how to change in a digital age, the integrity of Canada's court processes must remain paramount and should never be compromised for the sake of expediency.

Bill S-4 permits the continuation of many electronic processes that began during the initial COVID lockdowns. However, it also extends permanency to the option of virtual appearances before we have enough data and experience to assess the impact. I have specific apprehension with the proposal to allow an accused to appear and testify at their criminal trial by video. Under this bill, all criminal trials for both summary and indictable offences, and regardless of the severity of the offence, could be conducted this way.

What I find most concerning is the impact that could have on a judge's ability to assess the credibility of the accused. Those of us who have spent extensive time in a courtroom know that is a critical factor in almost all criminal trials. While we are a long way from fully understanding the total impact of virtualizing meetings, conversations and proceedings that have always been face to face, the data we have suggests cause for concern.

In a 2017 U.S. Government Accountability Office report on immigration courts, judges in 50% of the surveyed courts identified instances where they had changed credibility assessments made during a video hearing after holding a subsequent in-person hearing. In one instance, an immigration judge failed to identify a respondent's cognitive disability over video, which the judge said was clearly evident when the respondent appeared in person. In another case, the poor audio quality led to a misunderstanding of the facts of the case, which was not clarified until the respondent was able to appear in person. The change in the credibility assessment ultimately changed the judge's decision.

Another study by Swedish psychology professors Sara Landström, Karl Ask and Charlotte Sommar found a substantial difference in perceived credibility between video testimony and in-person testimony. They described the "vividness effect" whereby live testimony due to its face-to-face immediacy is more ". . . emotionally interesting . . . and proximate in a sensory, temporal, or spatial way," is generally ". . . perceived as more credible . . ." and ". . . better remembered. . . ."

In an article in the *Tulane Law Review*, law professor Anne Bowen Poulin points to a body of literature suggesting that video conferencing may have a negative impact on the way the defendant is perceived by those in court as well as the representation the defendant receives. She further notes that "when decisionmakers interact with the defendant through the barrier of technology, they are likely to be less sensitive to the impact of negative decisions on the defendant."

In committee, Senator Pate drew our attention to the research done at the University of Surrey in England, which studied the merits of electronic proceedings and found that defendants were more likely to be jailed following video hearings, and suspects whose cases were dealt with remotely were less likely to have legal representation.

Witnesses at our Legal Committee raised additional concerns with video conferencing. Emilie Coyle, the Executive Director of the Canadian Association of Elizabeth Fry Societies and the daughter of Senator Coyle, testified about stigma against an accused appearing by video from prison and often in prison clothing rather than, for example, a suit that their family had given them. This can cement in the trier of fact's mind — in this case, a judge — that someone being seen in a jail setting during a trial should, perhaps, remain in jail and it potentially gives a bias to a guilty verdict.

Ms. Coyle expanded, by stating:

> . . . society assigns judgment to people who are in prison without understanding their background. . . .
>
> Because we have this idea that people in prison are bad — we put bad people in prison — that judgment that we cast upon people who are in prison would lead potentially to an outcome in a trial that would not necessarily have been the outcome had that person not been in prison. . . .

Mark Knox from the Canadian Council of Criminal Defence Lawyers testified at committee about the ". . . slippery slope. . . ." and ". . . the movement away from the humanity, the decorum, all of these factors that are associated with an in-court trial. . ." He cautioned against rushing to implement these supposed modernizations ". . . for efficiency's sake in a rush."

When I asked him about an amendment to remove the ability to have trials by video while leaving the other proceedings as proposed, he responded:

> . . . I agree with you. . . . There are places that we could start to see how it works.

Our committee also heard from Ms. Eva Tache-Green from Nunavut Legal Aid. She told us that 24 out of 25 communities in Nunavut don't have the technology to do a video conference in court. Coincidentally, early in her testimony, her face froze, with the message "network bandwidth is low" on the screen. She was in a legal aid office with comparatively high connectivity, and even her ability to communicate with our committee was impeded. She then had to do the rest of her testimony using only audio, turning off her video.

When I asked for her input on this amendment, she agreed, suggesting that we hold off on making video conferencing available for trials and start with ". . . proceedings that have lesser jeopardy. . . ." She added the following:

> I am very concerned about the possibility of trials proceeding with an accused who is, of course, the person with the most at stake, being potentially cut out of the proceeding by the technology breaking down. . . .

Colleagues, even the best technology has its limitations. Look no further than this very chamber and the limitations a hybrid Parliament has placed on our ability to do our work. We often run into connectivity issues, and this is on Parliament Hill in Canada's capital city with state-of-the-art technology and a sizable IT department. Sometimes a senator who has lost their connection is in a fairly remote location, but there have been many other times that we lose connection with a senator from their home office in our largest cities or, even worse, from their office on Parliament Hill.

One can only imagine the substantial issues as the courts attempt to rely on video technology from northern, rural and remote locations. For example, it is no surprise that there are major technological gaps in northern Saskatchewan, but there are courtrooms in Regina that still don't have Wi-Fi. We are not talking about relying on a consistent connection for a 15-minute Zoom speech; this could potentially be several hours of accused testimony.

While carefully considering this amendment, I consulted with several people who work in courtrooms and conduct criminal proceedings every day, including defence attorneys and judges from provincial court and Queen's Bench court. I spoke to judges who were initially enthusiastic about using video technology for criminal trials, but who have completely changed their minds after seeing it in practice for two years. They believe strongly in

the merits of non-trial efficiencies, such as adjournments by emails, video for guilty pleas, et cetera, yet they have now seen first-hand that far too much is lost in conducting a trial this way.

The stakes are simply too high. One judge I spoke with made an excellent point. A courtroom is a serious place, and everything inside it — from the well-appointed interiors to the elevated dais to the judges' robes to the requirement to address judges as "Your Honour" or "My Lord" — evokes a sense of seriousness, sombreness and respect. That is crucial so that those testifying are more likely to feel bound by their oath and respect the judge's decisions. There is no comparison between putting your hand on a Bible in a courtroom full of people, including possibly a victim, your accuser, reporters and your family, versus taking an oath by video.

• (1510)

When an accused is sitting at home on his couch or in jail, not only is his Charter right to properly consult with his lawyer in jeopardy, but the gravity of the situation is unquestionably diminished. There is serious concern that, over time, there will be a major deterioration of respect for the court and the trial process to the profound detriment of all.

Judges relayed troubling examples from the past two years, such as an accused, testifying from his couch, who actually swore at the judge; a witness testifying from his shower during a criminal trial; and, most disturbingly, a domestic violence victim testifying from home with her abusive spouse in the next room. In these cases, testimony by video robbed the judges of any control over the environment.

In many sexual assault cases, the dynamic is very often he-said-she-said. If an accused appears by video, the judge often loses the ability to assess demeanour and to even examine any interplay between the accused and the accuser in the courtroom. The impact of this should not be underestimated.

Trial judges are trained how to assess credibility of witnesses, including a defendant, in a courtroom, and that assessment is considered extremely valuable. In fact, findings of credibility made by a trial judge are not to be overturned by an appeals court other than in very rare circumstances. This is because trial judges can assess credibility right in front of them, not in a remote way.

When I introduced my amendment to remove video from criminal trials at the Legal Committee, Senator Campbell, stating that he had testified at many trials, reminded the committee that ". . . a trial is a big deal, especially if you are the one who is on trial."

He further stated, "I don't think you can discount credibility. I believe that credibility is important in every single case."

He went on to say that:

> I will support this amendment. I don't believe it is a step back. I believe it is protecting Canadians from a technology that we have not perfected yet. . . .

Then, Senator White, when he spoke in support of this amendment, questioned whether the impact on victims and the importance of their ability to fully participate in a trial had been adequately considered in this bill. He said:

> I think we need to walk before we run. I'm not sure in the last two years that we have proven that we walk very well.

Rather than adopting the very reasonable amendments that Senator Carignan and I put forward, our Legal Committee decided to append several observations reiterating the very serious concerns of our witnesses — concerns about inequitable access to technology, interpretation, privacy, security, confidentiality and the ability of the accused to confer with defence counsel. One observation went so far as to say witnesses ". . . raised concerns that these rights were not being sufficiently respected."

Honourable senators, this is not observation material; this is amendment material. If the Trudeau government is willing to procrastinate on and ignore mandatory parliamentary reviews written directly into legislation, what hope does a mere observation have in catching the government's attention?

With respect to the amendment I'm bringing forward today, some have argued that there is minimal risk, as all parties must consent. However, many witnesses raised concern with the very concept of consent in this context, especially given the profound power imbalance that could impact an accused's ability to make free, informed decisions.

Ms. Emilie Coyle from the Canadian Association of Elizabeth Fry Societies said that an accused may be told they will face delayed time frames if they don't proceed virtually. And if they are not made keenly aware of what is at stake by forgoing a traditional day in court, can we honestly consider that a free choice? Just think about the Charter challenges that could arise when an accused has been told by their counsel that this is their only option, or they will spend less time in jail or save them money. It is easy to foresee an accused agreeing, then getting convicted and later challenging the decision based on a violation of their Charter rights.

Some maintain this is a non-issue, as the judge can simply decide not to sign off on this. On paper, there may be no reason to not proceed by video for a particular trial. A judge may later deem unforeseen connectivity issues as minor, but will never truly know what was missed. There may even be circumstances where the virtual trial appeared to be a success. However, a judge is a human being, and the research is clear: There are intangible qualitative elements that do not come through in a virtual setting that will likely result in an incomplete or even inaccurate assessment of the accused, even for the most experienced and well-intentioned judges.

To be clear, the amendment I am proposing will not remove all video capability for the accused in criminal proceedings. In fact, my amendment would allow the accused to use video technology for the many other types of criminal court proceedings and appearances permitted by Bill S-4, including bail, preliminary inquiries, pleas and sentencing. My proposal is simply to

eliminate this option for trials and start with these matters of "less jeopardy." This is very much a cautious, compromise proposal.

As the judges I spoke with emphasized, the provision to operate this way in an emergency already exists in the Criminal Code. If there is another lockdown, they can use video conferencing as necessary. Their concern was that Bill S-4 suggests that trial by video is the default or preferred method going forward, and the evidence is clear: making this the default approach comes at a tremendous price.

I will conclude with a quote from the Barreau du Québec, who recommended to our Legal Committee that all testimonial evidence should be excluded from video conferencing. First of all, the lawyers in this group work on the ground every day, and they state:

> In an in-person trial, a simple note passed to counsel, or even a glance shot at them by the judge or a witness, is likely to change their approach or strategy and affect the outcome of the trial. . . .

They further state that, under this bill, ". . . remote trials become the rule rather than the exception."

MOTION IN AMENDMENT NEGATIVED

Hon. Denise Batters: Therefore, honourable senators, in amendment, I move:

> That Bill S-4 be not now read a third time, but that it be amended, in clause 46,
>
> (a) on page 21, by deleting lines 4 to 16;
>
> (b) on page 22, by replacing line 5 with the following:
>
> "means, other than a trial for a summary conviction or indictable offence, the court may allow the accused or offender to".

The Hon. the Speaker pro tempore: Senator Batters, so far I have three senators who wish to ask questions. Are you asking for a few minutes to answer some questions?

Senator Batters: I ask for five minutes. Thank you.

The Hon. the Speaker pro tempore: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Hon. Frances Lankin: Honourable senators, in respect of the limited amount of time, I will put what might have been a question and supplementary together.

Senator Batters, I am inclined to agree with the analysis you put forward, but I wasn't there at committee. One part of our job, particularly when an amendment comes at third reading — which is kosher; there's nothing wrong with that — is to understand both sides of the arguments. To the best of your ability, would you articulate the arguments against your amendment? As we know, the committee rejected it. What did the senators who discussed this have to say? Why were they critical of it? And what witnesses came forward who took a position opposite to you and what did they say? Thank you very much.

Senator Batters: Thank you, Senator Lankin. I actually tried to deal with a few of those types of issues in my very speech, because I knew that might come up. Probably the main thing was, well, judges don't have to agree to it; they can simply not agree to it.

My position on that, as I stated in my speech, is that, first of all, there may seem like no particular reason not to have a trial by video until it is actually going ahead. And it is only afterwards, as I've shown in those particular examples with the research that was done in those other countries, that we see the very dire circumstances that can result.

Also, sometimes, particularly with video, you freeze. You might be the accused sitting at your screen at home, and don't even realize that you are not being well articulated, and you don't even find out that a crucial part of your testimony has been missed until after the fact, and it is then too late.

Hon. Paula Simons: Would Senator Batters accept a question?

Senator Batters: Yes.

Senator Simons: You make a really compelling argument, and many of the things you're saying are deeply disturbing. I guess my concern is, given the backlog we have in our courts, if there is another outbreak of a new COVID variant in the fall — you said there is an emergency provision. How easy is it to use that emergency provision? As very legitimate as the concerns you are raising seem to be, I am also concerned that if there is another bad outbreak, people's trials could be postponed to an extent that is also very deleterious.

• (1520)

Senator Batters: Thanks very much. Yes, the emergency provisions that are being used are exactly what has been used for the last two years. There is a provision of the Criminal Code that was put into place with Bill C-75, I think, that was passed a couple of years ago. In the courts throughout Canada, judges have been interpreting that as being able to use video and audio as need be for their criminal court proceedings for the past two years. So they have had that trial run. That's why judges are telling me that that trial run has been a dire failure, particularly on trials. However, it works well for some other types of proceedings. That is why I am limiting my amendment to trial only.

They already have the particular provision in the Criminal Code and they've been using it for the last two years. This just cements it. I quoted the Barreau du Québec. Their concern is that it makes it more of a default provision to go forward. That is, video trials would always be the way to go.

Hon. Brent Cotter: Senator Batters, will you take a question?

Senator Batters: Yes.

Senator Cotter: I would invite you to agree with me that the provisions of the bill included in proposed section 715.23 make it crystal clear that the question of whether a video trial would proceed is in the hands of the judge. Furthermore, the judge is required to take into account a series of criteria, including the accused or the offender's right to a fair public hearing, before he or she would make a decision to conduct a video trial. Second, with respect to trials, the provision includes the authority and the ability of an accused to decline to participate in a video trial.

Would you agree with me that those provisions are presently in the bill, despite your concerns?

Senator Batters: Yes, a number of those concerns are already taken care of. However, Senator Carignan tried to bring in an amendment to make more precise changes. As I discussed in my speech, there are a number of different reasons that the judge may not realize immediately. Just from human nature, they may not realize the difficulties they are having, but we have seen that from the research that has been provided in other countries.

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

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I rise briefly on debate to speak to the amendment proposed by Senator Batters. I thank you for your intervention, senator.

In short, the proposed amendment would remove the possibility of trials in virtual mode, both in the context of summary conviction and in the context of prosecution by indictment. In effect, the proposed amendment would remove the express possibility of the accused appearing remotely during the entirety of a summary conviction or indictable trial and it would further limit what is currently expressly permitted: for an accused to appear remotely in these instances. For these reasons, this amendment represents significant changes that are at odds with both the intent and the purpose of Bill S-4. The intent and purpose is to expand and to clarify the ability of accused persons to appear remotely, particularly to attend their trial remotely.

As I understand it, many of my colleagues on the Standing Senate Committee on Legal and Constitutional Affairs noted, along with many witnesses who participated in the committee's proceedings, that at this point in time, particularly as a consequence of the COVID-19 pandemic, there really is no going back, which would be the case if amendments were made to prevent virtual trials entirely or even just those where the evidence of a witness was being taken, as I think was implicit in the questions already posed.

Honourable senators, it is important to highlight that Bill S-4 contains several built-in protections to address these concerns, including a list of considerations to be used in determining whether to allow or require a remote appearance by an accused or an offender as well as enabling a court at any point to cease the use of a remote appearance and to require an in-person appearance where a court "considers it appropriate in the circumstances." I think that was the thrust of Senator Cotter's question.

It is also important to note that a significant number of stakeholders, including the provinces, territories, many members of the judiciary and defence bar, are eager to see Bill S-4 enshrined into law, including those provisions which explicitly authorize accused persons to appear at trial by video conference when the evidence of a witness is taken, except during a jury trial.

I also note my understanding that this amendment was proposed at committee and discussed at length but not accepted by the committee, whose work I respect, as I know we all do. For these reasons, honourable senators, I would respectfully urge this chamber not to the support the amendment. Thank you very much.

Some Hon. Senators: Hear, hear.

Senator Batters: Senator Gold, one of the issues that I didn't have time to deal with in my speech but I wanted to address — so I will ask for your comment on that — is when I spoke to judges about this, they said, "I guess the government must be trying to get at a better access to justice with this particular provision." They didn't really understand why else the government would be bringing this forward. But they said that if the government really wants to deal with access to justice in a significant way, the resources are not there, and it is hollow if they don't provide the resources. Their impression was that it is much better to fix access-to-justice issues if the government fills judicial vacancies that exist right now to prevent court delays and also properly funds legal aid. What is your response to that?

Senator Gold: Access to justice has been an issue of concern — and properly so — ever since I was a law student so many years ago. Much needs to be done, as we have discussed in this chamber many times.

The best answer I have is to rely upon the work of the Legal and Constitutional Affairs Committee, which heard the witnesses, which considered your amendment and others that were proposed and — for all the reasons that were known to the committee — decided not to accept the amendment.

For the reasons that I outlined, that is the government's position as well.

Hon. Mobina S. B. Jaffer: Thank you, Senator Batters, for your amendment. I want to intervene for a few minutes to let senators know that regarding trial for a summary convention offence, the bill states the court "may allow" it. Considering the circumstances, the court may allow, "with the consent of the accused and the prosecutor" if the accused is not in custody. If the accused is in custody, the court may allow it with the consent of the accused.

Regarding a trial for an indictable offence, the court "may allow." Honourable senators, I keep saying "may" because it is not "shall." The court is not bound by it. Considering the circumstances, the court may allow an accused to appear by

video conference, "with the consent of the prosecutor and the accused," except "when evidence is being presented to the jury." Then the accused has to appear in court.

For a plea, "the court may, with the consent of the prosecutor and the accused. . . ." And regarding sentencing, the court may allow "with the consent of the prosecutor and the offender. . . ."

Honourable senators, I'm not going to speak for all of the members who supported or didn't support this, but it was very clear the court "may allow." Obviously, I have not spoken to the same judges to whom Senator Batters has spoken, but looking at what is in the bill, it says the court "may allow." So the judges who had a problem with the issue would not have to allow a video trial. It is in there. The court "may allow" with the consent of the accused and the consent of the prosecutor. Senators, I think there is enough —

Senator Plett: Consent of the accused —

Senator Jaffer: Yes, "consent of the accused," Senator Plett. You can debate later. It is my turn. What I would say to you, senators, is that it was very clear to us that there was enough protection in the act to have trials. These are not all trials. For example, if the technology wasn't available, obviously there wouldn't be a video trial; the accused would have to appear in person. It is only in certain circumstances that the court "may allow." Honourable senators, I want you to remember that it is not "shall." It is "may."

Some Hon. Senators: Hear, hear.

The Hon. the Speaker pro tempore: Any more senators on debate? Are senators ready for the question?

• (1530)

Some Hon. Senators: Question.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Is there is agreement for a 15-minute bell?

Hon. Senators: Yes.

The Hon. the Speaker pro tempore: Call in the senators.

• (1540)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Black
Carignan
Dagenais
Deacon (*Ontario*)
Downe
Housakos
Lankin
MacDonald
Manning
Marshall
Martin
McCallum
Oh
Pate
Patterson
Plett
Poirier
Quinn
Ravalia
Seidman
Smith
Tannas
Wallin
Wells
White—27

NAYS
THE HONOURABLE SENATORS

Arnot
Audette
Bellemare
Boehm
Bovey
Busson
Christmas
Clement
Cordy
Cormier
Cotter
Coyle
Dawson
Deacon (*Nova Scotia*)
Dean
Duncan
Dupuis
Forest
Francis
Gagné
Galvez
Gerba
Gignac
Gold
Harder
Hartling
Jaffer
Klyne
Kutcher
LaBoucane-Benson
Loffreda
Marwah
Massicotte
Mégie
Moncion
Omidvar
Petitclerc
Ringuette
Saint-Germain
Simons
Sorensen
Woo
Yussuff—43

ABSTENTIONS
THE HONOURABLE SENATORS

Miville-Dechêne Moodie—2

• (1550)

[*Translation*]

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Dalphond, seconded by the Honourable Senator Bovey, for the third reading of Bill S-4, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures), as amended.

Hon. Claude Carignan: I rise today at third reading of Bill S-4, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures).

The Standing Senate Committee on Legal and Constitutional Affairs studied this bill carefully and issued its report on June 14. The subject brought up most often by the witnesses who appeared before the committee related to the issues and the potential of promoting the use of remote appearances in the criminal justice system. For that reason, my speech will focus on this aspect of the bill.

As we all know, public health measures during the pandemic forced courts across the country to replace in-person appearances with remote appearances by video and audio conferencing.

However, although remote appearances may be advantageous in many cases, they are not indicated in others. That was one of the observations in the committee's report, as follows:

> Many witnesses noted that remote appearances by audio or video conferencing can improve efficiency in the justice system and promote access to justice. Some noted however that these should only be used when appropriate and should not replace in-person proceedings when those would better ensure fair hearings and protect the legal rights of accused persons.

Here's an example of a serious and legitimate concern raised during the Senate committee's study. In its brief and its testimony, the Barreau du Québec recommended that the bill not allow evidence of a witness to be taken remotely. Their brief states the following:

> We are particularly concerned about the effect of videoconferencing on the assessment of a witness' credibility. Testimonial evidence, especially in highly emotional criminal cases, is about nuance and detail. In our opinion, virtual testimony is likely to affect assessments during examinations. Depending on the case, videoconferencing can hide certain mannerisms or amplify certain facial expressions, which can be misinterpreted by judges and counsel and misinform their assessment of non-verbal language.

For these reasons, the Barreau recommended in its brief that testimonial evidence be heard with all parties present. In other words, the Barreau deemed it necessary to "[e]xclude testimonial evidence from the new videoconferencing system."

• (1600)

Lawyer Michel Marchand, who testified before the committee as a representative of the Barreau du Québec, gave very concrete examples of current difficulties encountered in Quebec courthouses when witnesses are heard remotely rather than in person during trials, for example. First, he mentioned that some courthouses are not equipped to do recorded simultaneous interpretation. He also mentioned the risk of there being another person in the same room as the witness while they are testifying, without the judge's knowledge.

I am very concerned about that possibility, considering that someone who witnessed the offence could be in the presence of someone close to the accused while testifying. That individual could then, by his or her mere presence, intimidate the witness into withholding incriminating testimony against the accused.

In addition to Mr. Marchand, other presenters told the committee that the use of remote appearances in some prisons or courthouses has prevented defence counsel from having private conversations with their clients. Mr. Marchand and Professor Nicole Marie Myers also pointed out the difficulty in some cases of ascertaining the identity of a person appearing remotely, particularly if they are appearing by telephone.

[*English*]

While S-4 allows for audio conferencing in many situations where video conferencing is not readily available, Professor Myers identified to the committee a significant concern with the use of audio conferencing as a means of appearing for the accused. She said:

> . . . an accused may be muted with the intention of protecting them from saying something incriminating. However, this enhances their invisibility, and it raises concerns that they are not being seen or heard in the process, a consequence that is then intensified by not having legal counsel physically present beside them.

[*Translation*]

I am also concerned by the lack of suitable facilities in some Quebec penitentiaries for private attorney-client conversations by video conferencing, an issue that the Association des avocats carcéralistes progressistes brought to the Senate committee's attention.

Other serious problems have been observed in Canada with respect to practices enabling people in custody to attend hearings before a judge remotely rather than in person.

I would like to share a story we heard from Michael Spratt, who testified at committee on behalf of the Criminal Lawyers' Association. Here's what he said:

> I had a case where . . . an officer — and this was by phone because that's all we had . . . picked up the phone in the middle of a bail hearing where my client was going to be released and said, "I'm sorry, we need this line to call in to another court." The judge said, "We are in the middle of a bail hearing." That officer hung the phone up. . . . We had to return in two days. The accused was released, but he spent an extra two days in custody.

This example is consistent with the concerns expressed by Professor Cheryl Webster and PhD candidate Brendyn Johnson. They told the committee that remote appearances could increase, not decrease, the delays faced by many defendants in the judicial system.

However, I believe that the amendments passed by the Senate committee will help address some of those concerns, to some degree. The amendments will provide the means and opportunity to monitor the impact of the remote appearance measures set out in Bill S-4 on court delays over the next few years. In other words, it will enable officials to monitor the effectiveness of these measures for the justice system so that improvements to the law can be suggested, as needed.

The amendments create an obligation for the Minister of Justice to initiate an independent review of the use of remote proceedings in criminal justice matters, and to submit a report with recommendations, as needed, within five years. Furthermore, the amendments also require that the legislative provisions created by Bill S-4 be reviewed by a committee in each house of Parliament after the minister's report is submitted. Each committee will be required to produce their own reports with recommendations for changes to these legislative provisions, where appropriate.

Now for one last criticism we heard on the use of remote appearances. Can we say that if the incarcerated accused are given an earlier court date if they choose to appear by video or audio conferencing rather than appearing in person, they are freely consenting to the remote appearance?

Honestly, I see a risk if Bill S-4 is passed. I am concerned that the criminal justice system, especially for the accused or witnesses in custody, will use remote proceedings more and more often in future for reasons of administrative convenience, and not because it is the best and fairest option for participating in the court proceedings for all involved.

That being said, I note that Bill S-4 offers advantages in a number of areas, including by making the work of lawyers more efficient, which will benefit their clients. I described these advantages in my speech at second reading. In that context, I support passing Bill S-4 because I believe that despite its flaws, it will ensure greater flexibility in the justice system by giving the accused more opportunities to use remote appearances, which will contribute to a better administration of justice.

I remind senators that this bill contains an important safeguard for the protection the accused that most witnesses who appeared in the Senate committee agreed on. The bill would prohibit the use of remote testimony at certain key parts of the legal process in a criminal case, except where both the prosecutor and the accused consent. This procedural safeguard would, for example, require that a hearing be held in person if the accused does not consent to participate by video conference.

I urge senators to pass this bill, including the part about remote appearances.

I completely agree with what Senator Dalphond said in his speech last week with respect to two specific measures in the bill. The first measure would allow police officers to request search warrants, arrest warrants to enter a private dwelling and wiretap warrants without having to physically go to the courthouse. The second measure concerns the possibility of potential jurors being able to participate remotely in the jury selection process.

Thank you very much for your attention. I also want to thank the various stakeholders, in particular the Canadian Bar Association, who agreed to share their observations on Bill S-4.

Some Hon. Senators: Hear, hear.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

[*English*]

CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT

BILL TO AMEND—THIRD READING

Hon. Mary Coyle moved third reading of Bill S-9, An Act to amend the Chemical Weapons Convention Implementation Act.

She said: Honourable senators, I am honoured to be speaking to you today from Ottawa, on the unceded and unsurrendered territory of the Anishinaabe Algonquin Nation, whose presence here reaches back to time immemorial. Today is National Indigenous Peoples Day, a day to reflect and celebrate the First Nations, Métis and Inuit peoples of each of our regions, and, in particular, our many Indigenous Senate colleagues who enrich the work of our chamber and our lives.

Honourable senators, I am pleased to speak to you today at third reading of Bill S-9, An Act to amend the Chemical Weapons Convention Implementation Act, an act that, at its core,

is about life and the security of persons here in Canada and globally. My second reading speech highlighted the importance of this legislation, given our ever-changing world order.

The bill was sent to Standing Senate Committee on Foreign Affairs and International Trade on June 20. The committee heard from senior officials from Global Affairs Canada, including the Acting Director of the Non-Proliferation and Disarmament Division and the Deputy National Coordinator of the Canadian National Authority to the Chemical Weapons Convention. As our committee chair, Senator Boehm, said last evening in his report to the Senate, the committee considered a previous iteration of the bill in the last parliament and adopted it — again, without amendment.

• (1610)

Colleagues, it is more important than ever to have effective rules, structures and systems in place to help guide states and businesses in the international system. The work of the United Nations over the past 77 years has helped solidify a rules-based international order — a set of norms, institutions, treaties and arrangements — that has provided rules of the road for managing competing national interests, facilitating international cooperation and fostering peace.

The Chemical Weapons Convention, or CWC, is the perfect example of what the world can accomplish when it comes together for peace. Adopted in 1997, it was the world's first multilateral disarmament agreement to provide for the elimination of an entire category of weapons of mass destruction.

In November 2019, as a result of significant effort by Canada, the United States and the Netherlands, the Conference of the States Parties to the Chemical Weapons Convention took the decision to add four new categories of toxic chemicals to Schedule 1 of the convention's Annex on Chemicals. Included among these new chemicals was the Novichok-type nerve agent used in the attempted assassination of Sergei and Yulia Skripal in Salisbury, United Kingdom. A variation of this poisonous nerve agent was used in the assassination attempt on Alexei Navalny.

The term *Novichok* means "newcomer" in Russian and has been applied to a group of advanced nerve agents developed by the Soviet Union.

This addition to the CWC annex renders Canada's Chemical Weapons Convention Implementation Act out of date. This is the very issue which Bill S-9 seeks to resolve. Bill S-9 is a simple yet essential bill. It amends Canada's Chemical Weapons Implementation Act in order to clearly align our act with the Chemical Weapons Convention. Bill S-9 amends our act to remove the old, out-of-date list of prohibited chemicals appended to that act and makes it clear that the current, up-to-date list of prohibited chemicals under the convention is kept by the Organisation for the Prohibition of Chemical Weapons and is readily available on its website.

[Senator Coyle]

During second reading of Bill S-9 on June 14, Senator Ataullahjan, the critic of the bill, said:

> I believe Bill S-9 shows good governance, provides clarity for Canadians and reaffirms our engagement to putting an end to the use of chemical weapons.

She also cited the risk of Russia using chemical weapons in its illegal war against Ukraine.

It is clear, colleagues, that Bill S-9 demonstrates Canada's commitment to the Chemical Weapons Convention and, most importantly, solves the issue of our act being out of date.

Unfortunately, Bill S-9 alone does not reduce the risk of a foreign actor, like the Russian Federation, using a Novichok for nefarious purposes. It does, however, make it fully clear which chemicals are subject to control within Canada.

Honourable senators, Canada has been a proud leader in the fight against chemical weapons. We were one of the first countries to sign the convention on January 13, 1993, and we remain faithfully committed to the work of the Organisation for the Prohibition of Chemical Weapons.

Colleagues, as Senator Ataullahjan has said, amending the Chemical Weapons Convention Implementation Act is an act of "good governance." It has two main benefits. First, it makes clearer which chemicals are prohibited to Canadians without explicit authorization, and, second, it underscores our commitment to the Chemical Weapons Convention and, more broadly, to the rules-based international order.

Honourable colleagues, I would like to conclude with these thoughts. We cannot forget that real people are behind the stories that fleetingly captivate the headlines about dangerous and deadly chemical-weapons use and the threat thereof, as in the case of Ukraine. People from Syria, Iraq and other nations have had their lives ripped apart by the cruel and arbitrary actions of states and, in some cases, non-state actors that ignore the laws, the norms and the obligations — including the prohibition of chemical weapon use — that have evolved over time to help foster and maintain global peace and security for all persons. Many of these people have come here to Canada seeking a peaceful and secure place to live.

Colleagues, yesterday was World Refugee Day. Let us think of the now more-than-100-million people who were forced to flee conflict, violence, human rights violations and persecution and our many fellow Canadians who have come here over the years seeking refuge as we weigh our legislative and political responses to the very real threats they have faced.

Honourable senators, I believe that the Chemical Weapons Convention is a powerful disarmament instrument. Let's support Bill S-9 and its swift passage to the other place so that Canada's act implementing that convention is clear and up to date as we advance one of Canada's important contributions to world peace.

Thank you. *Wela'lioq.*

Hon. Salma Ataullahjan: Honourable senators, I rise today to speak on Bill S-9, An Act to amend the Chemical Weapons Convention Implementation Act.

As I stated in relation to this bill at second reading, I would like to thank Senator Coyle for her dedication and her passion, and for once again introducing this bill. This bill allows us to finally uphold our country's strong stance on controlling dangerous chemicals which can be used as weapons of mass destruction in addition to nuclear and biological weapons.

Let's not forget that Canada played an important role in the creation of the Chemical Weapons Convention, or CWC, having been one of the first countries to sign on to it in 1993. To this day, Canada continues to actively serve on the executive council of the Organisation for the Prohibition of Chemical Weapons.

While I support this bill, I must voice my one and only concern. I worry about the fact that the government allowed the previous bill, Bill S-2, to simply die on the Order Paper during the last Parliament after we dutifully passed that bill through the Senate. Hopefully, this mistake will not be repeated.

I am also concerned about the way Russia has undermined the CWC through its invasion of Ukraine. I am, of course, particularly worried that Russia may go as far as using weapons of mass destruction — including, perhaps, chemical weapons — in Ukraine.

Honourable senators, the potential threat of chemical warfare in Ukraine makes it all the more important that we stand by our principles and support the CWC as strongly as we can. I am pleased that the Senate is about to pass this bill once again. This time I urge the government to ensure its speedy passage through the House of Commons. Thank you.

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Agreed.

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

CONSTITUTION ACT, 1867

BILL TO AMEND—THIRD READING

Hon. Dennis Dawson moved third reading of Bill C-14, An Act to amend the Constitution Act, 1867 (electoral representation).

He said: Honourable senators, I rose in the Senate yesterday to speak in support of government Bill C-14 and, in the 24 hours since, my opinion has not changed, so I will not repeat myself. I know senators will laugh when I say "I will be brief" — I'll do my George Baker impression — but I rise today to deliver only a few remarks as sponsor of the bill.

I want to thank my colleagues who spoke yesterday, as well as those who will continue the debate today. Several senators asked questions about the structure of Canada's representation system. Regional representation, no doubt, is something important to many of us — that's why we exist as a Senate — and is one of Canada's greatest strengths as a country. I am glad to see the passionate advocacy among parliamentarians.

For my part, I will do what I can to make inquiries and raise awareness with the government about this issue. In particular, I want to mention the observations raised by Senator Simons on the lopsided representation of Canadians here in the Senate. I want to emphasize that these are important discussions that contribute to the health of Canada's democracy. However, let me be clear: These are serious issues, but they are beyond the scope of Bill C-14.

[*Translation*]

In short, this adjustment, an essential part of our democracy since 1871, includes a new calculation of the number of seats allocated to each province and a readjustment of electoral boundaries in each province to accommodate demographic changes and population changes throughout the country.

• (1620)

The problem is that the minimum threshold, the baseline for representation, is outdated. It has to be updated to ensure that no province will ever have fewer seats than it had in the 43rd Parliament.

[*English*]

What Bill C-14 does not do is institute a particular method for determining the distribution in the House. Canada has always been, in principle and in practice, a modified representation by population. That has always been enshrined in our constitutional formula. To change the formula itself and change our modified representation system would undoubtedly trigger the general amending formula. It would require resolutions here at the Senate, the other place as well as by at least seven provinces totalling 50% of the population of Canada. That, honourable senators, is a tall order.

By contrast, Bill C-14 is a carefully considered bill. It is more modest in its proposal, and it is wholly consistent with Canada's principles and practice of modified representation by population.

[*Translation*]

More specifically, it proposes a modest but significant update to the 1985 grandfather clause, which is in section 51 of the Constitution Act, 1867, and guarantees that no province will have fewer seats than it did during the 43rd Parliament. Basically, the update pins the threshold to the year 2021.

This is not the first time we have protected Canadians' representation this way. More recently, the grandfather clause was similarly amended in the Fair Representation Act of 2011. At the time, it did not trigger the general amending formula.

I believe now, as I did then, that the proposals in Bill C-14 are minor enough and consistent with our modified representation system to need nothing more than a resolution in both houses.

[*English*]

Colleagues, I promised to be brief, and I hope I have been so. The sooner we can pass this bill, the sooner the Quebec commission can proceed in their work. I urge all my dear colleagues to support the passage of Bill C-14.

Thank you.

Hon. Scott Tannas: Will Senator Dawson take a question?

Senator Dawson: With pleasure.

Senator Tannas: I have been following the questions and debate on this, and I just want to be clear. Nothing in this bill favours Quebec or any other province or changes the calculation for representation by population. If we use the example of Quebec, we are setting a floor of 78 seats. Right now, the population of Quebec relative to the population of Canada is about 22.5%. But it has fallen significantly over the last four decades. If we went forward, say, four decades, and it was 20%, all we would do is take the 78 seats for Quebec at, say, 20%, and true everybody else up to make this work. Is that your understanding?

Senator Dawson: It seems that you were listening to me quite closely, senator. Yes, it is my understanding. As we did for the Maritime provinces a few years ago, it is giving a floor. When that floor is established, it means that everybody else will have to go up.

That's what we are doing now. In the case of Quebec, we were not part of that floor, and now we will be part of the floor.

And I hope the percentage doesn't continue going down. I wouldn't want to be as pessimistic as you are, but, that being said, it won't change the balance of representation in the House of Commons.

Senator Tannas: One other question, just for the record. It is my understanding that the formula talked about here does not work out exactly right for representation by population — chronically — for Ontario, Alberta and British Columbia. But it does work out more or less even for Quebec, and it is the other provinces — the Maritimes, Saskatchewan, Manitoba and, obviously, the territories — that on a representation-by-population basis are slightly overrepresented. So in other words, it is correct that Quebec has not enjoyed any kind of disproportionate favour over the formula discussed yesterday, which is not part of this bill.

Senator Dawson: Senator Tannas, it is not something that is creating a different imbalance. There are imbalances — and we mentioned them yesterday — but this only gives a floor for Quebec. It does not penalize other provinces.

Senator Tannas: Thank you.

Hon. Donna Dasko: Would Senator Dawson take another question?

Senator Dawson: Yes, Senator Dasko.

Senator Dasko: Senator Dawson, I may have missed this over the past few weeks when this bill was being discussed. Can you explain why this bill did not go to committee? Thank you.

Senator Dawson: That's beyond my pay grade.

Senator Dasko: Do you have any explanation that somebody might have offered as to why this bill didn't go to committee in the Senate?

Senator Dawson: You could put the question to somebody who would be in authority to give an answer. I'm not in authority to give an answer to that.

[*Translation*]

Hon. Claude Carignan: Honourable senators, I am pleased to speak today at third reading of Bill C-14, An Act to amend the Constitution Act, 1867, in relation to electoral representation.

First of all, I would like to make a minor correction to something I said yesterday at second reading of Bill C-14. I pointed out that the Bloc Québécois bill to ensure that Quebec never has less than 25% of the seats in the House of Commons was still being examined in the other place. I even said that I wouldn't bet on its chances of moving forward. Apparently, it will indeed not be going any further, since Bill C-246 was defeated on June 8, so I apologize for the error. I'm grateful for the effectiveness of social media, and I especially want to thank Nicholas Thibodeau, who quickly brought to my attention the inaccuracy of that part of my speech. I wanted to set the record straight.

That being said, honourable senators, I will now begin my remarks at third reading of Bill C-14.

Canada is a very robust democracy that is the envy of many countries around the world. Our democratic values are reflected in our Constitution and our Charter of Rights and Freedoms, in our institutions, in our laws and in our electoral process, which offers Canadians the possibility of participating directly in choosing their elected members and of running as a candidate in an election. When we legislate electoral law, it is important to set partisanship aside and be even more vigilant, to ensure that the treasured gains we have made over the years and throughout the history of our country are not eroded in any way.

Section 3 of our Charter of Rights and Freedoms stipulates that any Canadian citizen has the right to vote and to be elected in a federal or provincial legislative election. For these rights to be reasonably applied and respected, they have to be framed in a fair and equitable electoral process. If, for example, no standard was applied to draw electoral boundaries, my vote in a riding of 200,000 voters would have less weight than if I lived in a riding of 30,000 voters.

That is why our laws seek to establish parity between the various ridings. However, perfect parity is impossible to achieve. I would even say that it would be harmful to try to achieve it at all costs. That is why we find different provisions in the constitutional formula for drawing electoral boundaries.

First, there is the population provision, which I believe is certainly the most important one. A set quotient is used to establish the average number of people in each riding. In that regard, the electoral commissions established in each province must ensure that the population of each riding is as close as possible to the province's electoral quota. This can vary by plus or minus 25% if useful or necessary. However, when Bill C-74 was adopted in 1986, greater flexibility was introduced.

In a note that the Library of Parliament prepared for parliamentarians studying this bill at the time, we read the following:

> To address the problems of vast ridings and to avoid their geographic expansion, Bill C-74 broadens the application of the 25% deviation by moving from the "useful and necessary" criterion to "reasonably possible". In that regard, Bill C-74 includes the following criteria: community of identity, historical pattern, rural and northern regions. In this way, the option of a departure from the electoral quotient replaces a deviation.

That is the population provision.

• (1630)

In addition, there is the senatorial clause, which ensures that no province has fewer members of Parliament than it does senators. This provision is primarily intended to protect the smaller provinces that have lower population growth than the more populous provinces.

Then there is the grandfather clause, which protects provinces whose populations are stagnant, or even declining, from losing seats in the House of Commons. This provision is currently referred to as the "1985 clause," and, as I mentioned yesterday, it is directly affected by Bill C-14. The bill would amend this clause to bring it in line with the levels of representation in the 43rd Parliament.

Last is the territorial clause, which assigns each of the three territories one member of Parliament to represent a population that is much lower than that of other ridings. This is therefore taken into account when electoral boundaries are being drawn or new electoral districts are being created.

It is incorrect to say that our voting system perfectly represents the number of voters and populations in each electoral district. Factors such as geography, history, shared language and tradition can be taken into account when electoral boundaries are set. The Supreme Court referred to this as "effective representation."

In a 1991 decision in *Provincial Elections (Sask.)*, the highest court in the land stated the following:

> Relative parity of voting power is a prime condition of effective representation. Deviations from absolute voter parity, however, may be justified on the grounds of practical impossibility or the provision of more effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced.

Further on, the Supreme Court justices added the following:

> . . . such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic.

Bill C-74 was introduced in 1986 to maintain that historic right and establish a threshold as a way to counterbalance and improve effective representation. Bill C-14 is entirely consistent with that approach because it establishes the new threshold based on the electoral map of the 43rd Parliament. Quebec's weight in the House of Commons has declined, and this enactment would restore it. To reduce Quebec's representation in the House of Commons would be tantamount to denying the recognition of Quebec as a nation and, most importantly, the recognition that it is one of modern Canada's two founding peoples.

With French as the common language, its own culture, its civil law tradition and unique customs and traditions, Quebec is most certainly a distinct nation, but that in no way prevents it from participating in the development and vitality of our country with vigour, integrity and drive. Therefore, I feel it is entirely legitimate to protect its representation in the House of Commons with the new 2021 clause.

We must not forget one important thing, honourable senators. Although Quebecers form a strong and proud nation, along with their fellow francophones in other provinces, this French-speaking population remains a minority in North America, a francophone minority in a sea of anglophones. As senators, we should be extremely concerned about this reality, especially in our role as defenders of minorities and of the regions. Bill C-14 essentially provides a constitutional guarantee of equitable representation in an important region of this country.

This bill is not contentious or divisive. It appeals to common sense. It does not infringe on anyone's rights, and it provides all Canadians with a minimum guarantee of effective, fair and equitable representation. For all these reasons, honourable senators, I urge you to lend your kind support to Bill C-14.

Thank you.

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Dawson, seconded by the Honourable Senator Klyne, that this bill be read a third time.

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

Hon. Senators: Agreed.

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

ONLINE STREAMING BILL

BILL TO AMEND—FIRST READING

The Hon. the Speaker pro tempore informed the Senate that a message had been received from the House of Commons with Bill C-11, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts.

(Bill read first time.)

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

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

APPROPRIATION BILL NO. 2, 2022-23

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Gagné, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-24, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2023.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Gagné, seconded by the Honourable Senator Gold, that this bill be read a 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 read third time and passed, on division.)

APPROPRIATION BILL NO. 3, 2022-23

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Gagné, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-25, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2023.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Gagné, seconded by the Honourable Senator Gold, that this bill be read a 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 read third time and passed, on division.)

[*English*]

STRENGTHENING ENVIRONMENTAL PROTECTION FOR A HEALTHIER CANADA BILL

BILL TO AMEND—THIRD REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Energy, the Environment and Natural Resources (*Bill S-5, An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act, with amendments and observations*), presented in the Senate on June 20, 2022.

Hon. Paul J. Massicotte moved the adoption of the report.

He said: Honourable senators, your committee has completed a study of Bill S-5, Strengthening Environmental Protection for a Healthier Canada Act, in obedience to order of reference of Thursday, April 7, 2022.

Bill S-5 represents the first major review and improvement made to the Canadian Environmental Protection Act, 1999, or CEPA, in over 20 years. The primary purpose of CEPA is pollution prevention. It provides a legislative and regulatory basis for many programs at the Department of Environment and Climate Change. The bill will, among other things, recognize Canadians' right to a healthy environment in CEPA's preamble.

It will enshrine the Government of Canada's duties to protect this right, consider vulnerable populations and cumulative effects in toxic substance assessments and implement a two-track system for the regulation of toxic substances under CEPA.

• (1640)

[*Translation*]

The Standing Senate Committee on Energy, the Environment and Natural Resources spent five meetings studying Bill S-5 and putting questions to the Minister of Environment and Climate Change as well as officials, members of the industry, associations, Indigenous representatives, non-governmental organizations and experts in various fields. The committee then dedicated another eight meetings to the clause-by-clause study of Bill S-5. Throughout this process, government representatives were present to answer committee members' questions. I also want to point out that the minister, the sponsor of the bill, and government representatives all indicated that the Canadian Environmental Protection Act will be amended again and that Bill S-5 does not represent all the changes that the government intends to make to the act.

[*English*]

In its report, the committee is proposing 32 amendments to Bill S-5 and addressing five observations to the Government of Canada.

During the committee's study and debate, several themes emerged, which are reflected in the committee's amendments to the bill. These themes address the right to a healthy environment, Indigenous peoples' rights and participation, animal testing and animal rights, transparency and accountability.

[*Translation*]

Part 5 of Bill S-5 would enshrine the right to a healthy environment in the Canadian Environmental Protection Act and would require the two departments responsible for this legislation to develop an implementation framework that sets out how that right will be considered in the act. The right to a healthy environment is a new concept in Canadian federal law, but similar laws have already been enshrined in constitutions, laws, legal decisions and treaties in countries around the world for several decades. The committee recognized that the establishment of this right would represent a significant improvement to Canada's environmental laws.

Although the bill introduces the right to a healthy environment, it does not define this right. The Standing Senate Committee on Energy, the Environment and Natural Resources has proposed a number of amendments to part 5 of the bill. These amendments would help ensure that the implementation framework is consistent with the purposes of the legislation and would require that the ministers define the reasonable limits that the proposed new right would be subject to. The amendments also add the principle of intergenerational equity to the ministers' considerations.

[*English*]

Throughout the Energy Committee's study of Bill S-5, we heard how Indigenous peoples' rights and their participation in pollution prevention are affected by CEPA. The committee also received evidence that First Nations experience disproportionate exposure to toxic substances. Among other things, the bill would acknowledge the Government of Canada's commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples, or UNDRIP, in the preamble of CEPA.

The committee considered and adopted several amendments to the bill that strengthened the rights and participation of Indigenous peoples under CEPA and which are in concert with the principles of reconciliation. For example, the committee proposed to amend the preambular commitment of the Government of Canada on UNDRIP by specifically including in the text of CEPA the principles of "free, prior and informed consent," words that are taken from article 19 of UNDRIP.

This amendment was proposed in recognition of free, prior and informed consent being, as Senator McCallum described it, "instrumental in bringing about self-determination and self-governance and independence of Indigenous people."

The committee is also proposing further amendments to the preamble that promote the meaningful integration of Indigenous knowledge in the CEPA decision-making process. Considering the evidence that the committee heard and the critical concerns raised by its members, it has proposed an amendment that would add a new clause to the bill requiring the ministers to report to Parliament every five years on the operation of CEPA with respect to Indigenous peoples.

[*Translation*]

Next, the preamble to Bill S-5 discusses animal testing in the context of scientific decision making, toxicity and environmental protection. The Committee on Energy, the Environment and Natural Resources is concerned about animal testing and animal rights in general. On this basis, the committee is proposing several amendments related to this issue.

Overall, these amendments would require the federal government to reduce its reliance on animal testing, prevent unnecessary animal testing, prioritize alternatives to animal testing and improve the conditions and processes adopted for animal testing where it remains necessary.

[*English*]

The Energy Committee is proposing amendments in several areas of Bill S-5 that would heighten government transparency and accountability. In addition to the new requirement for reports every five years on the operation of CEPA with relation to the Indigenous peoples of Canada, the committee is proposing a set of amendments that, when it comes to novel living organisms, would increase public participation and environmental protection. The committee heard that there is an urgent risk to Canadian wild species and Indigenous peoples' rights arising from the introduction of genetically engineered living organisms into the environment.

The committee is also proposing an amendment that would require the Minister of Innovation, Science and Industry to table in Parliament, no later than one year after the bill receives Royal Assent, a report regarding the environmental standards of countries that export products to Canada.

Colleagues, your committee recommends that the Senate pass Bill S-5, including our amendments that strengthen some important aspects of the bill. These changes represent an opportunity to modernize this important legislation all while introducing a new right for Canadians and improving its purpose of pollution prevention.

Your committee also requests that the Government of Canada address the five observations in the report as soon as possible. Thank you very much.

Hon. Senators: Hear, hear.

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

Some Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

(Motion agreed to, on division, and report adopted.)

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

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

CRIMINAL CODE
CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—SECOND READING—DEBATE

On the Order:

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

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak to the second reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.

Yesterday, I complimented the Prime Minister and Minister of Justice for introducing the mandatory minimum bill.

• (1650)

I want to share with you some of the history of mandatory minimum penalties from my experience.

In 1992, when the mandatory minimum sentencing bills were first put in place, we in the legal profession thought it was a temporary measure. Sadly, for many of us, successive governments have continued to impose mandatory minimum sentences.

To date, we have 73 mandatory minimum penalties. That is why, honourable senators, I believe the justice minister and Senator Gold, the sponsor of the bill, are very courageous to have taken the first step towards repealing mandatory minimum penalties.

I genuinely believe that this is a very big step. Over the years, even before I came to the Senate, I used to get into discussions with former Liberal justice ministers to stop imposing mandatory minimum sentences and to repeal them. They found it politically difficult to repeal mandatory minimum penalty bills.

Senators, since I have been in the Senate, I have introduced the following bills to get rid of mandatory minimum penalties: In June 2013, I introduced Bill S-221, An Act to amend the Criminal Code (exception to mandatory minimum sentences for manslaughter and criminal negligence causing death); in November 2013, I introduced Bill S-209, with the same name; and in February 2014, I introduced Bill S-214, once again with the same name.

I have introduced three bills, the last one in 2014. I tabled these bills because I truly believed that mandatory minimum penalties do not work.

As a lawyer, I used to see that it really destroyed my clients, my family and, I believe, society in the long run.

Indeed, traditionally — before 1992 — when a person is determined to plead guilty, the judge is then tasked with looking at sentencing principles, and they would have to ask the following questions: What is the act that is applicable? What crime was committed? How severe was the crime? What are the circumstances of the individual?

In Canada, sections 718.1 and 718.2 of our Criminal Code are very clear. Section 718.1 stipulates that a sentence be proportionate to the gravity of the offence and the degree of the responsibility of the offender. Section 718.2 follows by outlining some of the other principles to be followed in sentencing, as well as aggravating and mitigating circumstances to be considered in determining a sentence.

One of the most important factors the justices are tasked with considering is who has committed the crime and what factors might have contributed to the criminality, and then to look at the circumstances of the person appearing before them.

With regard to proportionate sentencing, section 718.1 of the Criminal Code sets it out as the fundamental principle of sentencing, which directs that all sentences must be proportionate to the gravity of the offence and the degree of the responsibility.

In other words, a sentence must accurately reflect the circumstances of a particular crime.

Mandatory minimum sentences handcuff judges and limit their discretion and ability to determine appropriate and proportionate sentences.

In Canada, at the moment, we have 73 mandatory minimum penalties, 67 of which are in the Criminal Code, while 6 are in the Controlled Drugs and Substances Act.

To date, at least 53 mandatory minimum penalties have been struck down by the courts, found to be violations of our Charter of Rights and Freedoms or called into question by provincial and territorial courts, as well as the Supreme Court of Canada, our country's highest court.

Of those 53, 10 have been included among the 20 in Bill C-5. Yesterday, Senator Gold spoke articulately about discretion of judges and proportionate sentencing, and over the years, many of us have spoken about judicial discretion and why it is important. I will not dwell on it now.

The fact is that if we trust our judges to do their job — and, by the way, we have the best judges in the world — then we should trust them with sentencing the person in front of them. If we trust our judges to do their job, then we should trust them with having the discretion which allows them to do their job to the best of their ability and with direct relation to the facts and the individual circumstances of any case before them.

In keeping with this sentiment, the Standing Committee on Justice and Human Rights in the other place heard from a majority of witnesses that all mandatory minimum penalties should be repealed. Experts from all manner of experience, perspectives and expertise reached a consensus.

Mandatory minimum penalties and the sentences they carry are predetermined by parliamentarians without knowing the exact circumstances of the case. Members of the other place and senators are determining the fate of countless people in Canada without even having to look at a particular person in front of them, without having to hear their story, without having to look them in their eyes and confront their humanity.

Instead, parliamentarians are predetermining their fate and are putting aside time-proven sentencing principles. In doing so, we are not only putting aside coveted sentencing principles on which the foundation of our Criminal Code is built; instead, we are wholly ignoring them.

Today, I want to explain to you the situation in the best way that I can. The exact numbers may need a little bit more work, and we can do that in the committee, but I want to give you the bigger picture.

As I have said a number of times, there are 73 mandatory minimum penalties in the Criminal Code and the Controlled Drugs and Substances Act. Various levels of courts across the country have struck down 53 mandatory minimum penalties, including appellate courts and the Supreme Court of Canada.

As the judges see the person in front of them, they impose the penalty that fits the crime, and not what we parliamentarians decided many years ago without seeing the eyes of the person standing in front of the judge.

The government has introduced Bill C-5 to repeal 20 mandatory minimum penalties. This bill includes 10 of the mandatory minimum sentences that have been struck down by the judiciary.

Now, senators, I want to repeat that I'm sure the Department of Justice might be able to give us better figures, but my purpose in sharing this with you is to make sure we understand that we parliamentarians have created a patchwork across the country that is inconsistent. For example, if my appellate court in British Columbia strikes down a mandatory minimum penalty, it will be applied in British Columbia, but it will stay in force in the rest of the country, unlike a mandatory minimum penalty that is struck down by the Supreme Court or the Government of Canada. I want to say this again, senators: We have now ended up with a patchwork, and at committee and at third reading, we are going to have to find a way to address the patchwork.

I agree with the leader, Senator Gold, that we cannot shoot for the moon. All my life I have been a political person, and I understand the realities of repealing mandatory minimum penalties. That is why, senators, when the leader says that we cannot shoot for the moon, I get it.

That is why we, at committee or at third reading, will have to deal with this patchwork in a creative way.

I want to repeat, senators, that currently we have 73 mandatory minimum penalties in force in Canadian law, the courts have struck down 53 and Bill C-5 repeals 20. Among the 20 included in Bill C-5, 10 mandatory minimum penalties were struck down by the courts.

I hope that we will be able to address this patchwork situation in committee. Thank you, senators.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Senator Lankin, before you begin, it is almost five o'clock. At five o'clock, I'm obliged to leave the chair for the Senate to form Committee of the Whole. Perhaps you could wait until we return after Committee of the Whole. We're about 30 seconds away.

Senator Lankin: If you keep talking, Your Honour, we will not have that problem. I'm absolutely fine with that.

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

BUSINESS OF THE SENATE

The Hon. the Speaker: Pursuant to the order of Monday, June 20, I leave the chair for the Senate to be put into a Committee of the Whole on the subject matter of Bill C-28, An Act to amend the Criminal Code (self-induced extreme intoxication). The Honourable Senator Ringuette will chair the committee. To facilitate appropriate distancing, she will preside the committee from the Speaker's chair.

• (1700)

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—CONSIDERATION OF SUBJECT MATTER IN COMMITTEE OF THE WHOLE

On the Order:

> The Senate in Committee of the Whole in order to receive the Honourable David Lametti, P.C., M.P., Minister of Justice and Attorney General of Canada, accompanied by no more than two officials, to consider the subject matter of Bill C-28, An Act to amend the Criminal Code (self-induced extreme intoxication).

(The sitting of the Senate was suspended and put into Committee of the Whole, the Honourable Pierrette Ringuette in the chair.)

The Chair: Honourable senators, the Senate is resolved into a Committee of the Whole on the subject matter of Bill C-28, An Act to amend the Criminal Code (self-induced extreme intoxication).

Honourable senators, in a Committee of the Whole senators shall address the chair but need not stand. Under the rules the speaking time is 10 minutes, including questions and answers, but, as ordered, if a senator does not use all of his or her time, the balance can be yielded to another senator. The committee will receive the Honourable David Lametti, P.C., M.P., Minister of Justice and Attorney General of Canada, and I would now invite him to join us, accompanied by his officials.

(Pursuant to the Order of the Senate, the Honourable David Lametti and his officials were escorted to seats in the Senate chamber.)

The Chair: Minister, welcome to the Senate. I would ask you to introduce your officials and to make your opening remarks.

Hon. David Lametti, P.C., M.P., Minister of Justice and Attorney General of Canada: Madam Chair, thank you for inviting me to discuss Bill C-28. I am here with Carole Morency and Jay Potter. This is the last time Carole Morency will be joining me for a committee appearance, so I would like to take this opportunity to thank her for her lengthy career and her smarts.

Hon. Senators: Hear, hear.

Mr. Lametti: On May 13, 2022, the Supreme Court of Canada ruled in *Brown* and *Sullivan* that section 33.1 of the Criminal Code was unconstitutional. That section prohibited accused persons from using the defence of self-induced intoxication for most violent offences, such as assault and sexual assault. The Supreme Court found it to be unconstitutional because it excluded the defence of extreme intoxication in all cases, even when the accused could not reasonably know that their consumption of an intoxicating substance could cause them to lose control of their actions and harm others.

[*English*]

Extreme intoxication is a rare state where a person is unaware of their actions and is incapable of forming a basic level of intent to ground criminal responsibility. In other words, the body is doing something, but the mind is not in control.

The vast majority of crimes committed by intoxicated persons do not involve extreme intoxication. To be clear, extreme intoxication is not simply being drunk or high. Being drunk or high is not a defence for committing criminal acts like sexual assault. That was the law before the Supreme Court decisions, and that remains the law today.

That said, the Supreme Court decisions have left a gap in the criminal law because individuals who commit violent crimes, like aggravated assault or even manslaughter, may not be held responsible for those crimes even when they knew or should have known that their intoxicant consumption could lead to a violent loss of control.

The decisions have led to a significant and disturbing misunderstanding and, at times, misinformation by some that it is okay to drink a few beers and commit sexual assault because now they can't be held criminally liable. This further demonstrates the need to respond quickly. The law must provide that persons be held fully responsible for the harm they cause to others as a result of their negligent, voluntary consumption of intoxicants.

This is why we have introduced Bill C-28 just five weeks after the release of the Supreme Court decisions. Bill C-28 proposes a new section 33.1 that mirrors the public protection and accountability objectives of the old section 33.1, but is revised to address the concerns of the Supreme Court and ensure consistency with the Charter. The new provision would criminalize individuals who negligently self-intoxicate to an extreme degree and cause harm to others. The vital difference with the old law is that, under Bill C-28, individuals would not be held criminally liable where the risk of violent loss of control was not foreseeable, or, where it was foreseen, where reasonable efforts were made to avoid that kind of harm.

In all cases, courts would need to determine whether the accused's perception of risk and any action taken to avoid it departed markedly from what a reasonable person would have done in the circumstances. So today being in a state of extreme intoxication can give rise to a defence but, if this bill is adopted, where a person negligently puts themselves in that state, there would be a new way of holding them accountable for any violent criminal acts that they commit.

In practice, the accused must first establish extreme intoxication akin to automatism by calling expert evidence in addition to other requirements. The prosecution can certainly challenge the claim that the accused was in a state of extreme intoxication and these claims are often, in fact, rejected on the facts.

[*Translation*]

If extreme intoxication akin to automatism is established under Bill C-28, the prosecution would also have the opportunity to prove that the accused's use of the intoxicant prior to the violent act was negligent. The jury or court would consider all the evidence at the end of the trial in order to determine the appropriate verdict.

Criminal negligence is well known and understood by judges and criminal lawyers, who will be capable of applying the new legislation accordingly. I am confident that Bill C-28 will ensure accountability, protect victims and respect the Charter. Thank you.

Senator Carignan: Thank you, minister. I would like to thank and congratulate your official, Carole Morency. I have been in the Senate for 12 years, and I have seen her testify before the Standing Senate Committee on Legal and Constitutional Affairs, always with great accuracy. She is truly a highly qualified expert. I wish you a happy retirement, Ms. Morency.

Minister, the Leader of the Government in the Senate provided us with a list of various organizations that were consulted before Bill C-28 was introduced. There were about 30 of them, including a professor from the University of Montreal named Hugues Parent. In an article in this morning's edition of *La Presse*, Mr. Parent expresses his concerns about the bill, and these are the same concerns that my team and I raised on Friday. We also sent this information to your office.

I will read you some passages from the article, so that you understand the meaning of my question. The article states, and I quote:

> The bill defines extreme intoxication as "intoxication that renders a person unaware of, or incapable of consciously controlling, their behaviour," a condition known as "automatism."

The article goes on to clarify that:

> The problem — and it is a serious problem — is that by limiting extreme intoxication to a state of automatism, the government is discounting states of intoxication that do not disrupt the individual's awareness, but that affect their sense of reality, such as psychosis.

Obviously, extreme intoxication can lead to different types of behaviours, and I believe automatism happens in extremely rare cases. Experts have identified four or five cases in the past few years, whereas extreme intoxication can result in insanity and psychosis, which is much more frequent. In my opinion, the bill leaves the door wide open by not covering these situations. You consulted 30 or so organizations, but we don't know what they told you.

• (1710)

Can you reassure me on this and tell me what you think about Professor Parent's comments?

Mr. Lametti: Thank you for your fine comments, senator. They are greatly appreciated.

I want to reassure you. We are in the process of responding to the recent Supreme Court decisions in *R. v. Sullivan* and *R. v. Brown*. I will give a two-part answer to respond to Professor Parent's concerns.

First, the majority of cases are already covered. These recent Supreme Court rulings involve incidents that occur very rarely, as you mentioned. We are remedying the situation by following the Supreme Court's suggestions, but the other cases are already covered by the Criminal Code, such as cases of psychosis, for example, because there are already ways to address them in criminal law. However, in very rare cases where psychosis is covered by section 33.1 of the Criminal Code, provisions were already included in the law 10 years ago by the Supreme Court following *R. v. Bouchard-Lebrun*. The court has already addressed this situation, and we assume that these cases are already covered for the most part, and also in the rare cases where a person is in a state of automatism. Therefore, psychosis is covered in both cases.

Senator Carignan: I don't want to question your point of view, but Professor Parent, an expert on the Criminal Code who specializes in criminal defences in Canada and teaches at the University of Montreal's Faculty of law, is one of the very few experts in this field and seems to disagree. He does not find this reassuring, and I am certain that he is familiar with all the case law in that regard. Don't you think it would be more prudent to specify insanity rather than automatism?

Mr. Lametti: With all due respect, and since I'm familiar with Professor Parent's reputation, we believe that all of that is already included in the case law through Supreme Court decisions and that this could open the door to unintended consequences. We sincerely believe that Bill C-28 offers the most prudent approach. Obviously, you, as senators, have the authority and the right to study this matter. I know that my colleagues in the House of Commons will be studying it in the fall. We need an in-depth study to ensure that there are no unintended consequences.

Senator Carignan: Minister, in an effort to mitigate this risk, would you be prepared to commit to authorizing the Standing Senate Committee on Legal and Judicial Affairs, or another Senate committee, to study section 33.1 of the Criminal Code and to hear from experts and get other opinions on this matter in the fall? The committee could make recommendations. You are appearing as a witness today, but we haven't heard other witnesses. A lot of individuals and organizations were contacted, but we don't yet know what they think. We feel limited in what we can do, given the circumstances under which we are being asked to pass this bill. I'm sure you would agree that this is a rather peculiar approach.

Mr. Lametti: Absolutely. I must be honest. It is very important to address the gaps noted by the Supreme Court. However, you are in charge of your work and I invite you to study the issue. I am always open to suggestions, particularly with respect to technical issues, which is the case here, where the issue really needs to be studied in depth.

Based on the expert testimony and everyone who was consulted, in conjunction with the Supreme Court ruling, which gave us two options, we made a decision with Bill C-28, and I believe it is a good option. However, when it comes to questions of interpretation in particular, it is better to take the time to study the bill more closely, which I invite you to do.

Senator Carignan: I understand that on the House of Commons side, that study is part of the motion to pass Bill C-28. It is therefore a condition to have it passed?

Mr. Lametti: Yes, it is, but you can do your own study.

Senator Carignan: I think it would be wise for us to do a study as well.

[*English*]

Senator Jaffer: Thank you, minister, for being here. I have the same concerns as Senator Carignan. This is an important issue and a difficult issue. It is an issue that needs a lot of studying because extreme intoxication can happen with many things. We need to have expert evidence, and not just the usual experts we have. We also have to have scientific experts.

I have a lot of questions, but my biggest anxiety is what negligence will look like. How will the prosecutors prove negligence and the standard of care?

I agree with everything Senator Carignan has said, but I also want to take this opportunity to ask how they will prove it. It is very difficult. The person doesn't know. For instance, you may eat some food that you haven't eaten before, then you have something to drink, and then you go into extreme intoxication. How is that negligent? I'm really struggling with this.

Mr. Lametti: Thank you, senator. Let me reassure you if I can.

First of all, these cases are extremely rare. What we are doing with this piece of legislation is filling a gap that has been created by the Supreme Court in a very rare set of cases where it is not just extreme intoxication, but it is extreme intoxication leading to a case of automatism. All the other cases of extreme intoxication are already covered by the criminal law and by criminal law principles. It is the general intent defence, and prosecutors, judges and participants in the criminal law system are used to those standards. We're closing a small gap based on the guidance the Supreme Court has given us.

With respect to criminal negligence, it is a known standard. We use criminal negligence as a standard in a variety of different defences. There is a reasonableness standard, which is: What would a reasonable person do or what ought a reasonable person to have done? So it is an objective standard. Again, it is something that is known to prosecutors. It is something that is known to judges and participants in the system.

The question becomes: Was there a marked departure from that standard by the person in question in ingesting intoxicants?

Senator Jaffer: Minister, I don't mean to be rude, but I just have a minute.

I want to say that that's the challenge for me — what a reasonable person would do. This is outside of what a reasonable person would do if you don't even know you are doing something wrong. We have the "reasonable" test on driving, and you don't drink and drive. But when you've eaten something and then you drink something, and go into extreme addiction or intoxication, that's the challenge. It is not a reasonable person test. That's why I think we have to study this further.

• (1720)

Mr. Lametti: I think the answer, senator, is that it is in the act of ingesting intoxicants that the criminal negligence or the reasonableness standard is applied. If there were something that ought to have triggered that this could have led to violent behaviour in a person's past, or with respect to what's being ingested — and that's in the vast majority of this small fraction of cases — then that person will be found to be negligent.

If it was completely innocent — and there have been examples — for instance, taking prescription drugs and there was a reaction that could not have been predicted, that's what the court found unconstitutional about the previous law. That's the only part that we are excluding here.

Senator Jaffer: I have so many questions, minister, but I must respect Senator Miville-Dechêne's time.

[*Translation*]

Senator Miville-Dechêne: Good afternoon, minister, and welcome to the Senate. Bill C-28 limits the defence of extreme intoxication, as you explained, while allowing it to be raised under certain circumstances. As you know, that worries women's groups, such as the National Association of Women and the Law, which says there was not enough consultation.

Here is my question: Under Bill C-28, if a man voluntarily consumes alcohol, possibly along with other intoxicating substances, and then commits a crime, can he raise the defence of extreme intoxication? In other words, is this defence once again available to someone who gets drunk, smokes one or more joints, and assaults a woman?

Mr. Lametti: Thank you for the question, senator. As Senator Carignan just pointed out, we consulted about 30 groups, and the vast majority of them said this is the best way to go given the guidance of the Supreme Court. They were almost unanimous.

The former section was clearly unconstitutional. We worked within the parameters provided. In answer to your question, the Supreme Court noted that such a thing is rare, very rare even, and that only alcohol consumption results in that state, a state of intoxication that resembles automatism. That is rarer still. Other cases are already covered by criminal law, and the individual would be found guilty in such cases and when the consumption of intoxicating substances was negligent.

Senator Miville-Dechêne: The fact remains that this defence is coming up again and could be used. This in itself is not a trivial matter in the eyes of women's groups, who believe it will have an influence on the justice system, since some individuals will use extreme intoxication as their defence.

Mr. Lametti: First of all, once again, these are very rare cases. Second, this defence must be raised by the accused, and the accused must prove, with evidence and with the help of experts, that it was a case of automatism, which is also extremely rare. Third, the accused must show that his or her actions were not negligent. Obviously, it will be up to the Crown to prove that it was not a state of automatism or that the behaviour was negligent. The chances of this defence being available are very slim, and we have explicitly provided for it. Other groups, such as the Women's Legal Education and Action Fund, have had a significant influence over the development of Canada's legal framework over the past 40 years and support us in our efforts because they understand that this is a moderate, thoughtful and constitutional response.

Senator Miville-Dechêne: Thank you.

[*English*]

Senator Loffreda: Welcome to the Senate, Mr. Lametti.

Any learnings from global jurisdictions? To what extent does the defence of extreme intoxication akin to automatism exist in the laws of our G7 allies or other Organisation for Economic Co-operation and Development countries? Is it unique in Canada?

Mr. Lametti: First, thank you for the question. It is good to be here and to take your question.

It is not unique. I have to get back to you with specific countries, but we form part of the general English tradition of English criminal law, but codified. It was codified in the colonies long before it was codified in the U.K. We're part of that general common law tradition. The defence would exist in other forms in other places. It is a defence towards general intent offences, which is one of the categories of offences in criminal law, including assault, sexual assault and manslaughter. There is a different set of defences for specific offences. It would fall within that general tradition.

I could come back to you with a more specific answer, but generally we would fall within the jurisdiction of English criminal law jurisdictions.

Senator Loffreda: Thank you.

Senator Cordy: Minister, thank you for dealing with the Supreme Court of Canada decision in *R v. Brown* and *R v. Sullivan* in such an expeditious manner. I'm not a lawyer, but I believe this legislation is extremely important to protect victims, so thank you very much.

In the *Brown* case, the Supreme Court mentioned a couple of legislative paths that Parliament could take on extreme intoxication. You are proposing to take one of those paths with this bill. Can you explain why you decided not to go with a stand-alone offence of self-induced extreme intoxication?

Mr. Lametti: Thank you, senator, for the question. It is a good one and it brings me back to a discussion that I had with my team only a few days after the decision. Ms. Morency was also there presenting us with options.

Two options were given by the Supreme Court, as you said. One was a stand-alone offence of criminal intoxication. The other is the path we chose, which is to build a criminal negligence standard into the act itself but still charge the person with the same offence.

First, we heard from a number of groups, women's advocacy groups in particular, that they wanted it to be the same offence, and that it had to carry the same gravitas or — I don't want to say "stigma" — be in the same order of events with the same terminology. The person will be found guilty of sexual assault, say, or assault, and the criminal negligence part will be wrapped up in that.

Second, we are hoping that this will really help frame and reduce litigation down the road because they are known standards. We're still working effectively within the same parameters as the original piece of legislation brought in by Minister Rock 20-odd years ago.

If we went to a different standard, a stand-alone offence, it would take the courts another 10 or 15 years to work out the parameters of that particular new provision. We hope to be able to eliminate that. That helps victims. That helps everybody, frankly, in the criminal justice system because it adds clarity. We're working with known standards.

Senator Cordy: Thank you very much for that, minister. For those of us who are not lawyers, can you explain succinctly why the current law as now written was open to a constitutional challenge, and why you believe this new legislation will stand up to any possible constitutional challenges in the future?

Mr. Lametti: The original law as written was open to a constitutional challenge, again, because someone might have innocently entered into a state of intoxication leading to automatism and could still be found guilty of a very serious offence even though they — and I will put this in air quotes — "did nothing wrong." A person following, for example, for the first time, a course of prescription medications and not knowing that his or her particular body would react in the way that it did.

• (1730)

That's very different from states where someone knows they have done this before. They have mixed this and that before and it has led to a violent outcome that, perhaps, did not lead to a criminal offence. That is a different situation. The court wanted to hive that off.

I will be honest, that is the way that our lawyers were interpreting the previous decision in front of the Supreme Court, and the Supreme Court said, "No, not good enough, you have to tighten it up."

That is a part of the answer to your question — they wanted to take out that case of innocent intoxication, I suppose, that led to tragic consequences.

We feel this is constitutional in part because of that, but also in part because we're actually following the guidance that the Supreme Court gave us. We have stuck to one of the two lanes that they gave us and we think that, therefore, this will withstand a constitutional challenge.

Senator Bovey: Thank you, minister, for being here. I want to follow-up on that question from Senator Cordy, if I may.

There is obviously a lot to do to build sexual assault victims' confidence in the criminal justice system. Bill C-28 will certainly help, but won't be enough. What else is the government willing to do to support victims?

Mr. Lametti: Thank you for that question, senator. It is an important one.

I would say quite a bit. You will recall just over a year ago we amended the Judges Act in order to better train our judges. Obviously, the principle of judicial independence is important to us. But we are requiring that all applicants at the Superior Court level and Federal Court level agree, as a precondition to their application to becoming a judge, to take training with respect, in particular, to sexual assault and social context training to make them better judges and to help understand cases.

We have also amended the Criminal Code to strengthen and address sexual assault laws in order to make them more fair, in order to make them, I think, more sensitive to victims but also lead to good results.

We are also investing a great deal of money as a government — free access to legal advice for sexual assault. We are working in programming to reduce intimate partner violence, prevent gender-based violence and help support survivors. There are significant investments there. In 2022, we invested almost $540 million to help prevent gender-based violence and to support survivors.

This piece of legislation is a small part of a larger effort to really work at education, society, judges and participants in the legal system, but also support people who need that support within our system, survivors in particular.

Senator Bovey: Thank you for that.

It is obvious that the Supreme Court decisions have captured the attention of Canadians and raised many questions, especially for young women and girls.

Last Friday, Minister Ien spoke about some of the false information floating around. You have talked about misunderstandings turning into misinformation. I wonder if you could elaborate a little more on some of the misinformation that you have seen and how this bill will address it.

Mr. Lametti: Thank you, senator. I was very moved by Minister Ien in that press conference. I can also say that it touched me as well. I have a 21-year-old. I have three. My youngest is a 21-year-old. She had a long discussion with her mother — also a law professor — based upon this provision as a result of this Supreme Court case.

What happened was — they were mistakes. Mistaken tweets, mistaken postings on social media that said, "Oh, this decision gives people a free pass to have drinks and then go out and assault people or sexually assault people." Of course that was wrong. But it was hard to counter that trend with, frankly, the correct answer, which is, "No, this is a very small group of cases." It is a handful of cases, as Senator Carignan said a moment ago, over the course of 20 years.

Acting as we are doing helps us, in a sense, put the genie back in the bottle because we can now say, "Look, we fixed that part, and the rest of it wasn't touched and it is still intact." We can clearly say, in social media and other kinds of media, that the whole spectrum has been covered. You do not have a free pass, depending upon whom you are speaking to, or you are protected, depending upon whom you are speaking to. It helps us better educate everybody.

But it is, frankly, scary, I have to admit. We are using this opportunity — in fact, we used the press conference with Minister Ien — as a way to get that message out, that not only are we acting to fill this gap, but people need to know that getting drunk or getting high is not a defence to assault or sexual assault, period.

Senator Bovey: Thank you.

Senator White: Madam Chair, through you to the minister, thank you for your attendance here today.

This legislation is important. It's equally important that we get it right. I understand that consultation was identified as having been completed by the government when the bill was introduced in the other place. I have not seen the dates indicating when these consultations were conducted. I also note that the National Association of Women and the Law was listed. However, they advised that the meetings occurred days prior to the bill being tabled, and they are concerned about the consultation process.

Before you answer, I have to leave as I have a committee to go to, so I will go quickly. Can you walk us through how this short timeline can allow for meaningful consultation, when the consultation took place and whether or not any changes were made in the original draft of the bill as a result of those consultations?

Mr. Lametti: Thank you, senator. That is a good question. We did the consultations we could do in the time that we had from the date of the Supreme Court decision. We reached out. I can tell you that my team has probably been doing nothing else. Certain people have been doing nothing else but reaching out to organizations. As I have said, the vast majority of organizations, including women's organizations, were supportive of this particular approach. They, too, had read the Supreme Court decision. They had seen the two proposed ways forward.

I can also say — and I look back at my Justice Department officials with a smile — that we were not unready for this kind of decision. In fact, some of my old colleagues at McGill — like now-Justice Patrick Healy — who have been teaching for 20 years that the original 33.1 was unconstitutional as a response to the original *Daviault* decision. We had an inkling that we would have to move on this at some point, so there had been a lot of preliminary work done.

I can tell you that we took those consultations seriously. We do feel that we have taken the best step given the framework the Supreme Court has given us in these last decisions.

Senator White: Thank you, Madam Chair. I will cede my time to Senator Patterson.

Senator Patterson: Madam Chair, through you, minister, I would like to ask you, I note that despite your government's — may I say — barrelling ahead today with the unanimous consent motion to pass this bill through all stages in the other place without hearing witnesses, you have also endorsed referring the subject matter of the bill to the Justice Committee in the fall. That indicates to me that there is a problem and, as you said, to make sure there are no unintended consequences. So there is a possible problem and merits to the concerns being raised.

My question is: Why are we then rushing to pass this bill ahead of the committee's report? I know you have said that no one wants to be held responsible for any acquittal that may result from not passing this bill, but what about bearing the responsibility of acquittals resulting from the expedited passage of what may well turn out to be a flawed bill?

Mr. Lametti: Thank you, senator. With all due respect, I disagree with the general gist — I think this is the way forward. I do not think, quite frankly, that — let me frame it the other way. We simply cannot wait. You may have been aware of the reaction to the Supreme Court decision. It was pretty much universal across Canada. Women's groups, criminal law experts and other victims' and survivors' groups said, "You need to act quickly."

• (1740)

"Minister Rock acted quickly the last time; you need to act quickly this time." And we did. We think, frankly, that we have threaded the needle. What we are doing is reassuring ourselves with the studies in the other place — and it is a political compromise with a study in this place should you choose to do it — that other questions that have been raised, such as the question of conditions akin to what we used to say was insanity or toxic psychosis, we're just making sure that we have got it right given these other questions that have been raised.

My legal understanding is actually that I think that we did get it right. The Supreme Court has already ruled on this 10 years ago in the *Bouchard-Lebrun* case, and we will be fine moving forward. I do not think, on the other hand, that we should leave this. There is a confused message out there, as Minister Ien pointed out, in particular to young people on social media, that somehow there is a free pass given by this decision. We need to correct that. We need to close this gap. It is what all of the survivors' groups and what all of the leading experts are saying that we ought to do, and it is what the Supreme Court told us we ought to do.

Senator Patterson: A question, from one lawyer to another. In the bill before us, we have a requirement that a person be able to reasonably foresee that extreme intoxication would lead to harming another person. Without there also being a component of reasonably foreseeing the loss of control, the bill could create an unfortunate loophole in the opinion of several lawyers — including the National Association of Women and the Law and Kent Roach, another name on your consultation list — namely the inability to prove the essential elements of crime, the *mens rea* or even the *actus reus* of the defendant. Is the evidentiary burden too high for the Crown to prove that an individual could have objectively foreseen the risk?

Mr. Lametti: I do not think so, with respect. It is interesting that we're not far from what Professor Roach had suggested in our consultations with him, and he is a leading expert.

We do not think that it is too high a standard. We think that these standards are well known. The criminal negligence standard is a standard that we use in other areas of the criminal law, as is reasonable foreseeability. Again, it is an objective standard of reasonable foreseeability. It is what a person ought to have known across a wide swath of society. It is something that prosecutors are used to. It is something that the police are used to in terms of laying charges, and it's something that the judges are used to dealing with.

We do not think that it is too high. It is up to the accused to prove at the outset a state of automatism. Already that puts a fair bit of weight on the side in favour of the prosecution. I think, quite frankly, that we are working with a provision that is not new. This is an amendment to 33.1; we are replacing it, but there is a provision that was there before. So I think that in terms of the evolution of it, we are working with known standards, and I think that the balances will be fine.

Senator Patterson: Thank you.

Mr. Lametti: Thank you.

[*Translation*]

Senator Dagenais: Mr. Lametti, congratulations on taking just five weeks to react to the intoxication defence with Bill C-28.

However, I would point out that the courts gave the government 12 months to address the issue of searches of electronic devices by customs officers. You took 18. Now you're telling us that you managed to consult 30 or so organizations since the Supreme Court ruling. What I want to know is quite simple: Why were the reaction times so different? This leads me to believe that sometimes, the government can act more quickly on some files than on others. Are there priorities that may be more political than legal?

Mr. Lametti: The circumstances were different, especially because of the Supreme Court rulings. In the other case, we were given 12 months. In this case, the court set aside the existing legislation and made a section of the criminal law unconstitutional. We needed to react quickly, and we did.

Obviously, as I just said, it was a problem that I would not describe as known, but foreseeable. Some experts had said from the start that former section 33.1 was unconstitutional, so some of the work had already been done.

The groups that reacted in the wake of the ruling were obviously very open to our consultations. We were able to proceed very effectively because of these circumstances.

Senator Dagenais: Nevertheless, it took your government 18 months in the case of digital devices when the court had granted 12 months. That means you took an additional six months.

Mr. Lametti: I can tell you that the other case was fairly complex. In this case, we could focus on just one section of the Criminal Code. That made it a much more circumscribed study.

Senator Dagenais: Thank you, minister.

Senator Boisvenu: Welcome, minister. First, like my other colleagues, I want to highlight how quickly you reacted to the Supreme Court decision.

However, my understanding is that what you're proposing doesn't entirely respond to the Supreme Court's decision and recommendations.

Over the past two years, 333 women have been murdered in Canada. That represents an increase of 30% in three years. We know that intoxication is the most common element in intimate partner violence. Many women's groups clearly stated that this Supreme Court decision will increase the vulnerability of women who are living with intimate partner violence and who don't dare report their abuser for fear of being killed.

I read your bill carefully and tried to identify which parts would give women more protection from intoxicated abusers. I saw nothing about prevention and victim protection. In the event that I misread it, can you tell me which provisions of the bill deal with victim protection?

Mr. Lametti: Thank you, senator. I always appreciate your collaboration.

With this bill, we are simply responding to a loophole created by a Supreme Court decision that struck down a single section as unconstitutional. The response is really focused on a single section, framed by the Supreme Court's analysis. Yes, the bill strengthens protections, and admittedly, women are the majority of victims in this case. We are doing other things as well, senator.

Senator Boisvenu: You agree that the Supreme Court referred to intimate partner violence as a "pressing" and "substantial" issue.

Mr. Lametti: Yes.

Senator Boisvenu: If the pressing issue was to better protect women, why didn't you wait until fall to introduce this bill? In my opinion, the pressing issue is to protect women. There may be four cases of extreme intoxication between now and next fall, while 20 women may be murdered in Canada during that same period. Don't you think you should have waited until the fall to ask the Legal Affairs Committee to study the issue of intimate partner violence and self-induced intoxication in order to come up with a solid bill that would further define self-induced intoxication and better protect women? This bill does not affect the vulnerability of women, and that is what the Supreme Court has asked us to change.

Mr. Lametti: We are taking a number of steps to address the issue of intimate violence.

Senator Boisvenu: Are you going to introduce electronic monitoring devices, as Quebec has done?

Mr. Lametti: First of all, we just passed a private member's bill along the same lines. We are in the process of supporting the provinces in this regard, and this issue is set out in my mandate letter.

• (1750)

Senator Boisvenu: Will you force —

Mr. Lametti: May I finish my answer? There are measures in place. There is also a bill, senator, about firearms and handguns that also contains measures to better respond to red flags and yellow flags in intimate partner violence cases.

We're supporting programs, both our own and those we created with the provinces, that fight intimate partner violence. We are taking a number of steps. There is also criminal law, and if you want to do a study on that, you're welcome to.

What we tried to do with this bill is close a loophole, and that is what we did. Of course we are also taking other steps to address this scourge.

Senator Boisvenu: Minister, you are well aware that we are faced with the prospect of a trial in which the experts will face off and argue, just as they did with mental health issues, where two experts will often clash. One says the accused is not criminally responsible, and the other says the accused is. The door has just been opened to that kind of debate among experts.

As you know, the Criminal Code places the burden of proof on the Crown, while the balance of probabilities is enough for the defence.

How are victims supposed to come out on top with this bill when all the defence has to do is raise reasonable doubt? The Crown's standard is proof beyond a reasonable doubt, and we know that voluntary intoxication is the hardest thing to have admitted as evidence.

Mr. Lametti: With all due respect, this will not change anything in the vast majority of cases of self-induced intoxication. Rules already exist. What we're dealing with here are cases of extreme self-induced intoxication that are akin to a state of automatism. These cases are very rare. In such cases, it is up to the accused to provide evidence of such a condition at first instance. Thus, a much higher level of protection is provided for the victim.

We believe that we did the right thing in this case. As I just explained to Senator Carignan, there is the issue of toxic psychosis, but the Supreme Court, in our view, has already settled the matter. I believe that, after careful consideration, others will come to the same conclusion.

So, no, we are not opening doors here, we are closing them.

Senator Boisvenu: Minister, I consulted the same groups that your department consulted. I am thinking in particular of Luke's Place, the National Association of Women and the Law, and Women's Shelters Canada. These groups told me that the consultation was rushed and that the bill did not go far enough in protecting vulnerable women. How do you respond to that?

Mr. Lametti: We held every possible consultation in the time we were given. As far as the other issues are concerned, we are not trying to resolve everything, we are doing something else. Here we are trying to respond to the Supreme Court in a rather specific case. Yes, we would like to eradicate intimate partner violence. Obviously, we want to better protect the victims, and we are in the process of doing that in other cases, such as with Bill C-21, as you already know, which deals with handguns.

We will continue our efforts. In this case, the goal was to reach an agreement as soon as possible because it was very important. However, that does not mean that we are not open to the idea of introducing other bills. We will work with the National Association of Women and the Law, Luke's Place and other organizations to find solutions.

Senator Boisvenu: I have one last question, minister. Why didn't you use section 33 of the Canadian Charter of Rights and Freedoms and wait until fall to introduce a comprehensive bill on women's safety? Again, in the case of crimes committed in a state of self-induced intoxication, the primary victims are women. Why didn't you use section 33 of the Canadian Charter of Rights and Freedoms and introduce a bill next fall that would have covered the entire theme of intimate partner violence and self-induced intoxication, which would have helped to achieve the objectives of the groups that were consulted?

Mr. Lametti: Self-induced intoxication is already a crime and is not a defence. As I just repeated to you today, self-induced intoxication is not a defence.

There was a loophole, and it was important to shut the door immediately and fix it.

Senator Boisvenu: That's not what I asked.

Mr. Lametti: When presenting a bill like this, we have to start by identifying all the gaps. This bill will take years.

Senator Boisvenu: Why not use a notwithstanding clause in the Charter of Rights and Freedoms to temporarily suspend the Supreme Court decision and introduce a bill in the fall that would address the concerns of the organizations that I myself consulted, which said that the bill was drafted too quickly, does not go far enough and leaves women even more vulnerable than they were before the Supreme Court decision?

The Chair: We must now move on to the next group.

[*English*]

Senator Simons: Minister, I'm worried that we could get caught in an *ex post facto* logic loop, because somebody who consumes an intoxicant in an irresponsible way is not guilty of the crime of doing that until and unless they commit an act of violence.

I am worried about the predicate of this. I look back at the cases of *R. v. Brown*, *R. v. Sullivan* and *R. v. Chan*, and I think in every case you would be hard-pressed to say that they could have reasonably foreseen the consequences of their actions.

Mr. Sullivan was attempting to commit suicide when he took Wellbutrin, a prescription drug, that put him into a psychotic state, and he stabbed and injured his mother. Mr. Chan, a rugby star who had suffered a head injury, used magic mushrooms, went into a psychotic state and stabbed and killed his father. Mr. Brown was the captain of his hockey team. He used magic mushrooms, and the next thing he knew he had ripped off all of his clothes and attacked a woman he did not know with a broomstick.

In each of those cases, I am hard-pressed to see where the act of specific negligence lay in the sense that any of those three men could have had an objective foreseeability that the risk of consuming what they did could cause them to act in this way.

Some Hon. Senators: Hear, hear.

Mr. Lametti: Senator, thank you for the question. I would turn it around it. It's not *ex post facto* logic. I think, with all due respect, you have reversed the analysis.

The analysis is that you are responsible for your actions when you become intoxicated for these general intent offences in all cases, except in this rare exception where you became intoxicated and it wasn't negligent.

Forgive me for not commenting on the specific cases. I believe that *Chan* has been sent back to the Ontario Superior Court, so I will not pronounce on any of them. What I will say is that it is

precisely in cases where somebody became intoxicated in a way that was non-negligent that that person will be exculpated, but only those cases.

Otherwise, it is the case in the rest of the criminal law that you are responsible for your actions, your violent actions, if you become intoxicated. In this particular case, this will also be true even where you reach a state of automatism, because we've criminalized the negligence with which you enter into that state. Other places you don't need to get to that state; you're still responsible.

• (1800)

Senator Simons: I guess the question is: Are you deemed negligent simply for taking a drug for an off-label use or for taking a drug that doesn't put any of the rest of your friends into a state of excited delirium or automatism?

This is my question: At what level are you negligent? Are we to say that anybody who takes an illegal drug is responsible because they've committed an illegal act in taking an illegal drug? Or are you supposed to have some foresight that says you're uniquely vulnerable to this, which you may not know in advance?

Mr. Lametti: Each case will be decided according to its own context. My own view is that it would approach the latter of what you've just said, which is that there has to be something uniquely present in a case to exculpate you. But again, there's a large body of law on criminal negligence; there's a large body of law on intoxication and criminal negligence. We use it in other places — for example, in drunk driving cases. Again, these are standards that are known to police. They're standards that are known to prosecutors and judges. I think this is a workable standard and in fact a standard suggested by the Supreme Court in the *Sullivan*, *Chan* and *Brown* cases.

Senator Cotter: I'll try to be brief, Minister Lametti. This is a conversation that in a previous life we might have had academically, but it is pretty darn serious here.

I want to follow up on Senator Simons' point. The language of the legislation calls for this objective measure of the criminal negligence in ingesting the intoxicating substance that could cause extreme intoxication but also lead to harm to another person. It seems to me what Senator Simons was saying is that in the cases that were before the Supreme Court — I'm not asking you to judge them — these were first instances for these people and nobody, including a judge, could say objectively that they could have anticipated that taking all these substances would lead not only to extreme intoxication but a risk of harm to the people who were harmed. The only way you would know that is if somebody, having taken these drugs before, actually had those experiences and chose to do it again.

Minister Lametti, what I worry about here is that the proposal, as heartfelt as it is, will miss the mark and almost nobody will be able to be convicted under this provision.

Mr. Lametti: Thank you, senator. You hearken me back to the old days when I could call you Brent and Paula — but there we are.

I disagree with the interpretation or the critique that you've presented in the sense that there is a known body of law with respect to criminal negligence, and there is a known body of scientific knowledge with respect to drugs and the potential impact of certain drugs — you know that it might do this or that to you based on what it's done to other people. Then there are the person's own experiences as well that will get factored into the contextual analysis of whether a person departed markedly from the reasonable standard and reached that level of criminal negligence. Again, it is, I believe, a series of known standards. I believe it is a workable standard, given other parts of the criminal law and given the state of medical knowledge.

It is also, as I have mentioned on a number of occasions already this afternoon, a standard that was suggested to us by the Supreme Court under the pen of Justice Kasirer, who has taught criminal law in parts of his past.

I'm confident that we have threaded this needle. I understand the critique, but I'm not persuaded by it.

Senator Cotter: I don't disagree with the point that it meets the constitutional standard. It seems to me that it does; it's just that it's not going to achieve convictions. Thanks.

Senator Pate: Thank you, minister. I want to shout out that it's not my first waltz with Ms. Morency. I think we waltzed on *Daviault* on this very issue 20-some years ago. You can call me Kim.

Following up on the previous two questions, as you know, the circumstances of intoxication are unique to the individual who is intoxicated. As has been pointed out by Senator Cotter, the only person who really knows that is the person who gets intoxicated.

Even Sean Fagan, one of the defence counsel in the case before the Supreme Court of Canada, has been quoted as saying that the law would be entirely ineffective due to the burden placed on prosecutors. I'm curious how you see the Crown will otherwise be able to prove beyond a reasonable doubt that a reasonable person in the circumstances of the accused would have foreseen both extreme intoxication and the risk of harm, given the standard of proof that is now in place and the burden being on the Crown.

Also, have you considered the options that some of the women's groups have put forward? As others have indicated, many of us have been contacted by both lawyers and women's groups about this very concern. Sadly, they've expressed the concern that it looks to be an appearance of trying to protect women as opposed to an actual legitimate move forward.

Mr. Lametti: Thank you, senator. Let me flip it back first and say that we did consult with a wide variety of groups — women's groups, victims' groups — and this was the way that most of the groups said we ought to go forward. So I do think there's a real sense that we wanted to protect. Nobody should throw our sincerity into doubt on that. I think we've done our best on this.

There is that initial burden on the part of the accused, in a sense, to show proof that they reached that state of extreme intoxication leading to automatism. They have to show evidence

for that, and then the Crown comes back and attacks, saying either that state didn't exist or the person was criminally negligent in reaching that state.

With respect to criminal negligence, there are enough objective indicia out there about what drugs might do to you that I think a court will say a reasonable person ought to have known that this could happen. Then if there are particular circumstances or conditions in that person's past — even a history of head injuries or that sort of thing — that might lead to this, again, there's enough objective evidence out there.

I think this is a workable standard.

The Chair: Honourable senators, the committee has been sitting for 65 minutes. In conformity with the order of the Senate, I am obliged to interrupt proceedings so that the committee can report to the Senate.

Minister, on behalf of all senators, thank you for joining us today to assist us with our work on the bill. I would also like to thank your officials.

Hon. Senators: Hear, hear!

The Chair: Honourable senators, is it agreed that I report to the Senate that the witness has been heard?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Pierrette Ringuette: Honourable senators, the Committee of the Whole, authorized by the Senate to examine the subject matter of Bill C-28, An Act to amend the Criminal Code (self-induced extreme intoxication), reports that it has heard from the said witnesses.

• (1810)

The Hon. the Speaker: Honourable senators, it now being past six o'clock, and pursuant to rule 3-3(1), I'm obliged to leave the chair until eight o'clock unless there is leave that the sitting continue. If you wish the sitting to be suspended, please say "suspend."

It shall continue.

Before I call on Senator Lankin, we have a minor problem with the translation on Zoom. We will suspend for a moment.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1820)

The Hon. the Speaker: Honourable senators, it appears that the problem is system-wide, so I call upon Senator Gagné to adjourn the sitting.

(*At 6:22 p.m., the Senate was continued until tomorrow at 2 p.m.*)

CONTENTS

Tuesday, June 21, 2022

PAGE

SENATORS' STATEMENTS

ROUTINE PROCEEDINGS

QUESTION PERIOD

ORDERS OF THE DAY

CONTENTS

Tuesday, June 21, 2022