SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

2nd SESSION • 43rd PARLIAMENT • VOLUME 152 • NUMBER 25

OFFICIAL REPORT
(HANSARD)

Tuesday, February 9, 2021

The Honourable PIERRETTE RINGUETTE,
Speaker pro tempore

CONTENTS

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

Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 343-550-5002

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

THE SENATE

Tuesday, February 9, 2021

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

Prayers.

SENATORS' STATEMENTS

BUSINESS OF THE SENATE

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

> That, notwithstanding any provision of the Rules or previous order, for today's sitting, the duration for Senators' Statements be 45 minutes, to be used for the purposes of paying tribute to our late colleague the Honourable Elaine McCoy, who passed away on December 29, 2020.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

TRIBUTES

THE LATE HONOURABLE ELAINE MCCOY, Q.C.

Hon. Scott Tannas: Honourable senators, I rise today to pay tribute to our friend and colleague, the Honourable Elaine McCoy, who passed away here in Ottawa on December 29.

Saying goodbye to a Senate colleague has always been a bittersweet moment for me. Reflecting on the career and accomplishments of so many great Canadians, who have come and gone from this place, always leaves me humbled and grateful to have been given a chance to meet and work with such extraordinary people.

I'm sad that Elaine did not get to leave the Senate in the way she wanted, with a chance to say goodbye, have a toast with her friends, having given a terrific speech in the chamber filled with wisdom and plenty of advice. Her battle with lung disease is over, but her spirit and her accomplishments live on.

Elaine was a pillar of the Alberta legal and business community. She was a close and influential associate to Peter Lougheed, one of Canada's greatest premiers. She became a powerful cabinet minister and political thought leader in the turbulent 1980s in Alberta. She was an inspiration to an entire generation of women in politics, human rights and community affairs in our province.

During her time in the Senate, she had different roles in different eras. She had an outsider's voice and perspective in the early years, and she was at the centre of the action during the past six years of evolution toward a modern Senate.

As a CSG colleague, I was touched to witness the wonderful, caring relationship that she had with her staff over these difficult last few years. Sara Caverly and Peter Price worked above and beyond to make sure that Elaine could contribute to the work of the Senate on a continual basis. I know Elaine was grateful to them.

I asked Peter and Sara if they would like to contribute some words for the record. Here they are:

> Senator McCoy was entertaining and erudite — and if you were a kindred spirit, a devoted mentor, persistent with her encouragement and prolific in her connections.
>
> Her singular qualities would shine through in everything she did to the very end, trying to evade life's trickier realities. She applied her energies to setting straight problems with legislation in an extensive series of pamphlets and graphics. She took up gourmet cooking with enormous vigour. And she had been preoccupied with her retirement speech.
>
> She had planned to share her deep conviction that to be truly effective, the Senate should always be an equitable forum that places primacy on consensus over control. She used the illustration of having an intricate tapestry of conversations to understand each other. Senator McCoy will long continue to bring people together.

Thank you, Peter and Sara, for those words. I hope we can live up to them.

I'm proud to have known the Honourable Senator McCoy and to call her a friend. God bless you, Elaine, and rest in peace.

Hon. Senators: Hear, hear.

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, it isn't easy to sum up a life and a career in a short statement, but I think it's important there is a record of accomplishments and personal sentiment detailed in Hansard for posterity for our late colleague, the Honourable Elaine McCoy. She deserves that much and more for her years of service and dedication to this chamber and this country.

Senator McCoy passed away on December 29, 2020, after a lifetime of service to her province, country, and the issues and causes that most mattered to her. She was appointed to the Senate on the recommendation of Prime Minister Paul Martin in 2005. At the time, she chose to sit as a Progressive Conservative, a

party that no longer existed federally. This choice was evidence of Senator McCoy's independence and foreshadowed her influence on the Senate as it is structured today.

Senator McCoy's life as a politician and Alberta MLA from 1986 to 1993 was as a provincial Minister of Consumer and Corporate Affairs, Minister responsible for Women's Issues, Minister of Labour, and Minister responsible for human rights and for Alberta's civil service.

As a senator, she was dedicated to her province and the issues for which she fought. These included women's, human rights and environmental issues. She was also a fierce and loyal representative of Albertans here in the Senate.

When, in 2016, Prime Minister Trudeau began recommending independent senators to the upper chamber, Senator McCoy helped organize and became a founding member of the Independent Senators Group. As the most senior independent senator, she was appointed the group's first facilitator and fought for fair representation on committees, the recognition of the ISG as a formal group, and she fought passionately for the modernization of the Senate.

When I was appointed, I understood the constitutional role of the Senate within Confederation, but I was not prepared for the rules and traditions of this chamber when I first arrived. It was Senator McCoy who helped me navigate our processes and learn our practices. She welcomed me, and I will always be grateful for her sage advice.

Elaine McCoy's presence in this chamber will be missed. On behalf of the Government of Canada, I offer my sincerest sympathy to her family, her province and her many friends across the country. Rest in peace, Elaine.

• (1410)

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I also rise today to pay tribute to one of our own and my friend, the Honourable Elaine J. McCoy. Throughout her 15 years in the Senate, Senator McCoy was one of very few senators who sincerely reflected upon what the notion of independence truly is. From the moment she was appointed by Prime Minister Paul Martin to her last days in this chamber, Senator McCoy actively pursued her independence, while always being one of Alberta's most passionate voices. It is without a doubt that she will be remembered for her staunch support of the residents of her home province of Alberta.

From her time in the provincial legislature in Alberta to the Red Chamber in Ottawa, she always displayed a deep commitment to her country. This unwavering commitment to her constituents informed everything she accomplished over her decades of dedicated public service. She had a very unique perspective on policies. Her foresight and formidable intellect made her an influential leader. Her contributions to public policy have benefited all Canadians.

Senator McCoy's most recent impassioned and tenacious defence of Western Canada's energy sector against the harmful Bills C-48 and C-69 was testament to her deep commitment to her home province and the thousands of people employed in the sector across Canada.

Please, colleagues, let me quote her directly:

> Bill C-48 proposes to ban oil tankers from most of Canada's west coast. The bill threatens national unity severely and significantly by pitting one region against another and communities against communities.
>
> Canada was built on conversation, not conflict. We have always talked our way through to solutions that balance everyone's interests; this has become a fundamental national principle. Bill C-48 promotes conflict, not co-operation.

The words of a great politician. I know very few politicians who can finesse words in such a simple way and yet bring forward such a powerful message. Her departure will leave a void of wisdom in this chamber. On behalf of the official opposition in the Senate, and myself personally, I wish to convey our most sincere condolences to her family, friends and our entire Senate family. May she find eternal rest and peace in the kingdom of heaven and our gracious Lord. Thank you.

Hon. Yuen Pau Woo: Honourable senators, erudite, effervescent, elegant and enigmatic, the Honourable Elaine McCoy was a force of nature in the Senate and in all of her life. As someone whose early, formative period in the Senate was shaped by the late Senator McCoy, I'm honoured to pay tribute to her on behalf of the Independent Senators Group. She was, of course, the founding facilitator of the ISG.

I remember well the many occasions I visited her in her office on the fifth floor of Centre Block. Entering her office was like going into the private den of a philosopher sage *auteure*. In one corner, the books piled high; on the wall, the projector with the slide showing pictures of her life and her experiences and history; in the next room, a group of young people working feverishly on who knows what. And there was Elaine McCoy, sitting quietly on the comfy chair in the corner of the room, almost waiting for us to go to her, to learn from her, to listen to her, to speak with her. And we did. We did so on so many occasions. Her impact on all of us went much beyond what she said in this chamber and what she said in committees.

We've already heard that she was a pioneer of the more independent senate, and it's hard to overstate the impact she has had on the modernization of this chamber.

She oversaw a number of important steps toward a more independent upper house, including that the Senate authorize CIBA — the Standing Committee on Internal Economy, Budgets and Administration — to provide funding for independent senate groups; that the Senate adopt a motion to assign committee seats based on proportionality, something which we now take for granted; that the Clerk of the Senate change the designation on all formal documents from non-affiliated to Independent Senators Group, which made it possible to recognize the ISG as a formal entity; and that the Senate adopt rule changes that put recognized

parliamentary groups on par with recognized political parties. These are just some of her accomplishments in the modernization of the upper chamber.

If I can summarize her approach to modernization, it is that she saw this chamber as a place of continued evolution and a continued need for all of us to press for evolution and modernization and to not be bound or beholden to a fixed idea of what many call the Westminster model. If you have any doubt about her conviction and want to know more about her thinking, I invite you to read her tour de force testimony to the Special Committee on Senate Modernization on November 16, 2016.

Colleagues, Senator McCoy was fond of saying that her role was not to tell us what to think. Her objective, rather, was to be the "wind under our wings." Elaine is no longer with us, but the wind will always be under our wings. Thank you.

Hon. Jane Cordy: Honourable senators, I would like to add my voice to those paying tribute today to our friend and our colleague the Honourable Elaine McCoy. As others have already mentioned, she was a fierce advocate for Albertans and for her province of Alberta, and, of course, for Canada. She truly demonstrated what public service should look like, first as an MLA and provincial cabinet minister, and then here in the Senate where most of us got to know her.

When Senator McCoy was appointed in 2005 by the Right Honourable Paul Martin, she chose, as Senator Gold said earlier, to sit as a Progressive Conservative. This was despite the fact that they no longer had an official caucus. This was just the first example of how she charted her own path and stayed true to her own beliefs. Senator McCoy was very forthright about her own views, and it was clear that one of her main values was fairness — fairness to people and to the institution.

This was reflected in how she dealt with the partisan nature of politics. Senator McCoy was truly an independent senator. She understood that there are always competing viewpoints, but she worked hard to find ways to bridge those divides and to work across party lines for what she felt was in the best interest of Canadians.

This approach was also useful as she tackled the competing issues inherent within two of her passions: supporting Alberta and its energy sector while also advocating for the environment.

Senator McCoy could take complicated issues and simplify them. Though she was very serious about her work, she also had a wicked but subtle sense of humour. I was always impressed by her ability to stand in the chamber and deliver compelling arguments without any notes.

Her voice is one that will certainly be missed by many, not only within the Senate but across Alberta and throughout the country. On behalf of the Progressive Senate Group, I would like to offer my sincere condolences to her family and to her friends. Thank you.

Hon. Stephen Greene: Honourable senators, Elaine McCoy has been a practising lawyer, an MLA, a provincial cabinet minister, an advocate and, of course, a senator. However, she is probably best described as a maverick. After all, she was appointed to this place as a Progressive Conservative by a Liberal prime minister, Paul Martin. She was later instrumental in forming and leading a new caucus composed of independents, the ISG. Then, as this group surrendered and succumbed to the joys and temptations of groupthink — and things even worse, perhaps — as she believed, she became an independent again. And last year she became a founding member of the Canadian Senators Group, which is composed of very independent senators. Thus, she founded two new caucuses.

• (1420)

Some people, including some senators in this house, think that being a maverick is a bad thing, that "maverickism" should be stamped out in all its forms. I am not one of those people. For me, maverickism equates with fresh thinking, rigorously developed and communicated. It is a willingness to stake out independent ground without worrying about the personal consequences of doing so. It is about following your own conscience and convictions. In other words, maverickism equates with hope and freedom.

For me, that is what Elaine McCoy represents.

She was an inspiration to me in partnering with my good friend Senator Paul Massicotte in holding a symposium on Senate modernization in October of 2015. She was among the first to sign up for it.

Her knowledge of the history of this place was unparalleled. Her deep understanding of the flexibility of the Westminster system will be missed; so too will be her wit in describing those Westminster dogmatists as suffering from a Westminster syndrome.

Senator McCoy spoke her truth plainly, with conviction, all the time. May she rest in peace. Thank you, honourable senators.

Hon. Paula Simons: Honourable senators, as an Alberta senator, I want to speak first today to Elaine McCoy's achievements in Alberta long before she joined the Senate. She followed quite literally in Peter Lougheed's footsteps, succeeding him as the MLA for the riding of Calgary West. She became a cabinet minister as soon as she was elected in 1986 — the year, incidentally, I started journalism school. I remember vividly the figure she cut in Alberta's legislature — tall, slim, strikingly beautiful. She had panache, elegance and a cool, take-no-prisoners wit.

As a member of Don Getty's cabinet, Elaine McCoy was a woman ahead of her time: a champion of gay rights long before that was easy or mainstream; an environmental advocate, one of the first in the Alberta government — more than 30 years ago — to push for a real public policy response to global warming. When the Aryan Nations first began rallying in Alberta, she established a human rights investigation into white supremacist movements. She was the driving force behind the Lake Louise Declaration on Violence Against Women. She reformed the Alberta Securities Commission and came up with the original idea for the annual Family Day holiday.

In 1992, Elaine McCoy entered the leadership fight to be Alberta's next premier. She ran as a fierce fiscal hawk but lost to Ralph Klein , who ran, ironically, on a far less fiscally conservative platform. The new Premier Klein paid Elaine McCoy the most sincere of compliments; he removed her from cabinet and then appropriated her budget-cutting platform as his own.

After leaving provincial politics in 1993, Elaine McCoy went on to do important environmental leadership work in Alberta. In 2005 she accepted Paul Martin's invitation to join the Senate of Canada, where she served proudly, first as a defiant Progressive Conservative and then as a champion of a more independent, non-partisan Senate.

When Senator LaBoucane-Benson and I arrived in 2018, Senator McCoy welcomed us with an elegant lunch in the old Parliamentary Dining Room and a binder full of briefing materials on how to be a senator. I watched and learned as Senator McCoy dug deeply into Bills C-69 and C-48, using her expertise in regulatory law, her passion for the environment and her deep understanding of Alberta's energy sector to seek thoughtful policy compromises.

Health problems meant that she spent the last years of her life in Ottawa, physically unable to travel home to her family and to the province she so deeply loved. But she leaves Alberta an enduring inheritance and she leaves all Alberta senators, present and future, the enduring challenge of living up to her legacy. May her memory forever be a blessing.

Hon. Patricia Bovey: Honourable senators, we all lost a keen and valued colleague at the end of December. In many ways, the passing of the Honourable Elaine McCoy brought to light, as others have said this afternoon, the very real distance the Senate has come in its reforms and independence over the past four to six years. I echo those thoughts of non-partisan developments that Senator Dean articulated last night.

I do not believe that any of us ever forgets the day we were appointed to this august chamber of sober second thought — the honour, the humility, the anticipation of what lay ahead, the tremendous responsibility to our province and to all Canadians that came with our appointment. In the midst of those overwhelming thoughts and emotions that tumbled within me that late October 2016 came the many, much-appreciated calls of welcome. Senator McCoy made one of those early calls to me.

Her genuine welcome, her grace, wit, depth of knowledge of parliamentary process and her obvious love of the Senate and its work was clearly evident. So too was her steadfast love of Western Canada and her province of Alberta.

Elaine McCoy, like me, was born in Manitoba, her birthplace being Brandon. Her pre-Senate background as senior legal counsel in energy in Alberta, her seven years as a member of the Alberta Legislature for Calgary West and her time as an Alberta cabinet minister served her well when she arrived in this chamber. The breadth and depth of her work and interests, her vision, her key role in forming the ISG, and her dedication to the rules and procedures of the Senate was inspiring, certainly to me. This elegant, experienced and dedicated woman was also very articulate — with or without a speech prepared in advance. Her ability to construct cogent arguments, based on fact, on the spot, is indeed an enviable gift.

Senator McCoy was also a key mentor to many. She certainly was for me as a new senator when the ISG was young and small. I remember well one instance in particular and very much valued her endorsement of a position I took based on the principles of my past experiences. At that point, I didn't have enough Senate experience on which to base whatever point of view I took that particular day.

As a fellow westerner, I applaud Senator McCoy's unwavering, steadfast support for all things and issues affecting Alberta. Canada was fortunate indeed to have Elaine McCoy give so ably of herself in her legal profession, in her home legislature and here in the Senate of Canada. I am fortunate to have had her as a colleague.

I thank her. I offer my condolences to her family and friends and province. May she rest in peace. Thank you.

Hon. Douglas Black: Honourable senators, I also rise today to honour a great Albertan, a great Canadian and a very dear friend.

Aritha van Herk is an influential Alberta author and poet. She said:

> The cowboy code of neighbourliness, loyalty, independence and uncompromising persistence is part of Alberta's code. It's unspoken, but it's written larger than the looming mountains.

That was our Elaine — kind, loyal, independent, and as we all witnessed over the last several years as her health declined, uncomplainingly persistent. Elaine's gift, in my opinion, was to take her intelligence and couple it with her bred in the bone instinct for people's hopes and fears, and then to convert that to public policy action.

Just a few quick examples. As we've heard, in the late 1980s, Elaine led in developing a national action plan for the scourge of violence against women. This was the first-ever public declaration of this nature.

As important, in the early 1990s, 30 years ago, as Senator Simons pointed out, Elaine led and gave voice in Alberta to our concerns about climate change, and how to reconcile environmental challenges with the importance to Canada of our oil and gas industry. In 1993, she chaired a provincial task force on climate change. Thirty years ago, a pioneering thought leader.

She then served as the vice-chairman of Climate Change Central, an important Alberta-based leadership group that develops funding for research to reduce greenhouse gas emissions.

I cannot stress enough to my colleagues how forward-looking and important this work has been. It has laid the paving stones for all the discussions and actions on climate change and the environment that surround us today.

• (1430)

Finally, colleagues, as has been pointed out and as we saw in her interventions on Bill C-69 and Bill C-48, Alberta has lost a tremendous advocate, and the Senate has lost a respected leader.

What I saw and respected so deeply was Elaine's basic humility. She never forgot her simple prairie roots. She never forgot the privilege of public service. I can also tell you, from limited experience, that Elaine loved a party. Her Calgary Christmas parties are legendary if not notorious.

Senators, Elaine loved Alberta. She loved our majestic beauty, our huge skies, our vibrant cities, our quiet solitude, and she loved our promise. She will be missed. Thank you, colleagues.

Hon. Mary Coyle: Honourable senators, it is with great sadness and humility that I pay tribute to our beloved and respected colleague the late Senator Elaine McCoy. Senator McCoy was a generous and wise mentor to me and many other new senators. She guided us with her one-on-one counsel, her Senate 101 training and, most importantly, by her own example of thorough study of legislation and her intelligent, compelling debates in the Senate Chamber. When Elaine spoke, we listened.

In conversation with Elaine this past summer on the topic of Senate modernization, she reminded me of the importance of understanding the subtle and powerful role of the Senate. She said, "You have to come to agreements to make laws."

She valued collaboration. We all witnessed her herculean efforts aimed at bringing a middle-road solution to the Oil Tanker Moratorium Act. Elaine abhorred bullying and raised caution to groupthink or vesting too much power in the hands of leaders or any one group. As she said in her 2018 *Policy Options* article:

> The capacity of individual senators to act autonomously and critically, beyond coercive strictures, is the bedrock that makes it the kind of legislature that Canadians want. At the same time, they must rise above ideologies and personal loyalties to work collaboratively with senators of every stripe.

Senator McCoy, a Progressive Conservative with extensive experience in the Alberta legislature and cabinet, was appointed to the upper chamber in 2005 — Alberta's centennial year.

In her first speech in the Senate Chamber on Senator Andreychuk's inquiry on climate change and the Kyoto Protocol, Senator McCoy spoke of the deep questions facing Albertans. She said:

> . . . how should Alberta be contributing to our nation's future? How can we shape that future so that it benefits not only Albertans but also Canadians? How can we help Canada be at the leading edge of the 21st century so that it secures not only Albertans but all Canadians a prosperous 21st century?

She went on to answer her own questions by saying, "In Alberta, we are now big enough, rich enough and mature enough to be nation builders."

How I wish she was with us today so I could thank her personally for her wise guidance, her exemplary conduct, her efforts to forge a Senate for the 21st century and her countless contributions to her cherished province and our nation.

Senators, thank you for this opportunity to honour the legacy of the Honourable Elaine McCoy, a superlative Albertan, a magnificent Canadian and standout woman leader. Thank you. *Wela'lioq*.

Hon. Leo Housakos: Honourable senators, I rise today to pay tribute to a great parliamentarian — someone I had the privilege of meeting when I came to this institution. I had the privilege of befriending her, and I had the privilege to listen carefully to her. Even in the last few days, when we had exchanges, she stimulated my mind and warmed my heart. Elaine McCoy: great intellect, sharp sense of humour. Her sense of fairness and justice is unparalleled. A media outlet, a few years ago called her a "symbol of defiance." Many called her a maverick. I call her a great parliamentarian and someone who brought civility to Parliament and to parliamentary debate.

Elaine McCoy served at various levels of parliament and in our political discourse with honour and integrity. Even as a cabinet minister in Alberta, she spoke truth to power — even when she was a member of the executive. That's who Elaine McCoy was. She fought for citizens who were the underdog. She fought for those whom she believed did not have a voice and she was that voice. What an ultimate choice Paul Martin made to appoint a great parliamentarian and senator to speak on behalf of those minority voices.

She served, of course, as the last Progressive Conservative senator in the institution. She served in the Canadian Senators Group and in the Independent Senators Group, but she was ultimately the definition of an independent senator: someone who fought for her convictions and principles and was never a follower.

Elaine McCoy understood that her independence came from her tenure and was crafty in how to use that independence to keep — I remember when I was serving in government — government to account and to challenge government on a daily basis. Often she did that alone as the only true independent voice. When I served as Speaker, I learned to admire and respect her. Of course, in opposition, she inspired me as she did so many.

Elaine McCoy. God rest her soul. God bless her soul. None of us should forget that glint in her eye that lit up the Senate of Canada for a decade and a half.

Hon. Terry M. Mercer: Honourable senators, at the end of December, we lost a respected colleague and friend to many of us: Senator Elaine McCoy. An accomplished legal mind and intrepid politician, she was at the forefront of Senate modernization. She advocated for greater independence of senators — as was clear from the start when she styled herself as a Progressive Conservative, a party that no longer existed here in the Senate when she was appointed.

Senator McCoy served as an MLA, cabinet minister and eventually senator, where she continued to proudly represent Albertans. She did this with compassion and strong ideals — ideals she was not shy to share with all those she met.

I remember many conversations with her and our old friend Senator Norm Atkins, which, for me, were indicative of the nature of this place and how we should work together across ideological boundaries to accomplish what is best for our provinces and our country.

If you were never at her Christmas receptions, you have missed quite a collection of guests. Former Liberals, former Progressive Conservatives and, indeed, former prime minister Joe Clark, were always in attendance — and they were quite the shindigs.

A truly independent mind and defender of the Senate, Senator McCoy's four decades of service to her province and to the country will live on, especially by those she leaves behind.

I extend my sincere condolences to her family and friends, and I encourage us all to continue her legacy of independence and advocacy for those we represent. Thank you, honourable senators.

Hon. David Richards: Honourable senators, Senator McCoy was the first senator I met when I came for orientation a month before I entered the Red Chamber, and her office the first senator's office I visited. She shook my hand warmly and motioned to a chair. I will tell you, I didn't know senators had offices — I don't know why I didn't know this. I just didn't. You see, Senator McCoy recognized immediately that I probably knew little else.

She gave me the advice many senators give to new prospects and revealed things I did not know. She revealed the importance of the Senate itself, the obligations senators are sworn to and the necessity in Canadian democracy of the Red Chamber.

She was first — and the best — to tell me why the Red Chamber mattered, why the very institution itself was sacrosanct. She said it as if she knew I was out of my depth at that moment and that it would take some time to get my feet under me.

Like so many Canadians, I did not know the vital workings of the place where I was about to sit. I did not know the facts about legislation and how bills, both private and public, came about or about the committees that debated the bills. She mentioned all of this to me and told me that if I had any problems or wanted to know procedurally how things might work, her door was always open.

• (1440)

Before I left, we began to talk of other things. Elaine said, "I hear you've written a fishing book. I fly-fished for years."

"Well then, we're friends and we'll go fly-fishing together," I answered.

And that is what we planned to do. She would come to the Miramichi and fish for salmon, and I would travel to the Bow River and she would take me trout fishing. That was our plan. And though there were certain motions and bills and amendments that she would ask me to consider, it always came back to fishing for us. And she always said she would go, until, finally, one day, she told me she did not think she would ever be able to make it.

"Look," I said, "I have friends who have guided all their lives. We'll get you to the Miramichi, to the river, to a canoe, to a pool, and you will feel a salmon pull. Senator, you'll never forget what a Miramichi salmon takes."

She smiled at me that soft, crooked smile she had and said, "Sure."

Then the pandemic hit and put a kibosh into everything. She phoned once, a few months back, to ask if I could help locate a friend of hers who lived on the Miramichi. Unfortunately, I wrote and told her I had no luck. I never saw her again.

But that doesn't mean we won't get fishing. We'll get together some day, senator; I guarantee you that. The river will be a grand one, probably quite like the Miramichi, and the fish will run forever beneath our canoe.

Thank you very much.

Hon. Jim Munson: Honourable senators, so many senators have spoken about a person we cared so much about: Elaine McCoy, a Western woman; Elaine McCoy, a free spirit; Elaine McCoy, a fierce debater; Elaine McCoy, a voice of reason.

On the in memoriam page on our Senate website, I love the words from Senator Black, who is also from Alberta:

> This was a woman who just cared. She cared about her friends. She deeply cared about public service . . . .

She never forgot where she came from and that's why I think she was so effective.

Those are very important words from Doug Black: "She never forgot where she came from . . . ." I think we all bring to this chamber a sense of where we come from. We all have a pride of place, and that's a good thing. It is those values we share with others that make this a great country. Elaine McCoy loved to hear other views, but she was never afraid of giving her own.

One of the remarkable things about this place is that you do get to learn from others. As a former reporter, I was always supposed to be objective, but I am a person from the East and when I covered the West, I did not always appreciate the Western voice. You know who helped set me straight? Elaine McCoy. It may have taken a lifetime, but I got to understand the Western view, and it was Elaine McCoy who helped me along the way. Her dissertations on Alberta energy and environment should be read by all Canadians. I walked away with a better understanding of the Western view and, more so, the Western reality.

The original slogan of the Reform Party was, "The West Wants In." Elaine McCoy was not a Reformer but a Progressive Conservative who instinctively understood what the West wanted — respect and to be a player on the national stage. She helped shape that argument during her years in the Peter Lougheed government and, later, here in the Senate.

She did it her way, the McCoy way, with a steely determination. But when the sittings were over, she could be found in her soft-lit Centre Block office with a welcoming smile, a glass of wine or something a little stronger and a desire to keep the conversation going. After all, it was only midnight.

Hon. Senators: Hear, hear.

Hon. Ratna Omidvar: Honourable senators, I, too, rise to pay my tribute to Senator McCoy. When the first seven independents — Senators Lankin, Petitclerc, Pratt, Sinclair, Gagné and Harder and I — were appointed, Senator McCoy was in the process of pulling together the first independent, non-partisan group. I think it is a validation of her vision that, today, just four short years later, there is not just one independent group but three.

Looking back, I appreciate all the hurdles that Senator McCoy faced to establish the independents. She persuaded; she cajoled; she insisted; she convened; and she kept things moving with a focus on getting us off the ground. And here we are today.

There was a defining elegance about her. I once told her that she reminded me, in some ways, of the Duchess of Windsor. She was reed-thin, always beautifully dressed, always with that signature piece of jewellery. Her favourite perch on the weekends, no surprise, was high tea at the Château Laurier, where you found her presiding, almost always with a cocktail in her hand, or something stronger. She would be with one of our group, advising, coaching and sometimes insisting, because we all know that she would be persistent and sometimes stubborn on matters of principle.

But she was also elegant in spirit as well. After my first speech in the Senate — I was horribly nervous — she sent me a copy of that speech wrapped in a red ribbon as a reminder. I still have that in my office.

She coached me when I took on the job of sponsoring a major piece of government legislation through the Senate. Because, as the sponsor, I could not myself table an amendment, she quickly picked it up, studied the subject that she previously did not know much about, and spoke to it with a thoroughly researched brief. When that amendment was accepted by the House of Commons and passed into law, it got a fair bit of media time and became known as the McCoy amendment. She was somewhat bemused by all of this, and she jokingly said to me, "Ratna, you have made me famous."

Truthfully, she deserved fame and reputation on many more fronts — for her vision, for her steely focus on achieving it and for her principled contributions to this chamber. She will be missed.

Rest in peace, dear colleague.

[*Translation*]

Hon. Renée Dupuis: Honourable senators, I rise to pay tribute to our colleague, Senator Elaine McCoy, who passed away recently.

I am grateful to Senator McCoy for giving me such a warm welcome when I was appointed to the Senate in November 2016. She was the facilitator of the Independent Senators Group at the time. Her unreserved welcome made it easier for me to adjust to my new role.

I will never forget her piercing gaze. Over the past four years, I have had the opportunity to see that she gave her all to her role as a senator.

Senator McCoy, your steadfast commitment to public service will never be forgotten.

Hon. Senators: Hear, hear!

[*English*]

Hon. Marilou McPhedran: Honourable senators, in 2016, upon arriving in the Senate, of course I would choose a group led by a woman, the only woman leader at that time, Senator Elaine McCoy — a mentor and a friend known always on my team and in my office as "The McCoy" in the Scottish clan tradition.

I also received my first speech wrapped in a ribbon. Warm smiles and many vibrant debates ensued thereafter — because our offices were near to each other — often ending with that stronger beverage, a good scotch.

I want to quote briefly from one of the last notes I received from Elaine. When I contacted her to ask how she was doing with all of the COVID-19 isolation, she wrote back with a note about her cat:

> Oliver loves having me at home and I love Oliver, despite the fact that he broke my lamp. Ah, well. Love is more to be treasured than artifacts.

So when I heard Sarah's voice on December 29, I knew that the news was not good. I had talked to Elaine just two weeks before, and I knew that there was a struggle. Colleagues, when it is possible, I hope you will join Senator Griffin and me in what we've decided is a very appropriate tribute to our wonderful friend, femmetor and a spectacular senator, with a jot of Famous Grouse.

Farewell, dear femmetor and friend. We are so grateful to have known you and learned from you.

The Hon. the Speaker pro tempore: Honourable senators, out of respect for our deceased colleague the Honourable Elaine McCoy, I ask that you rise and join with me in a minute of silence.

(*Honourable senators then stood in silent tribute.*)

• (1450)

The Hon. the Speaker pro tempore: Thank you, honourable senators.

QUESTION PERIOD

PUBLIC SERVICES AND PROCUREMENT

COVID-19 VACCINE PROCUREMENT

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question today is again for the Honourable Senator Gold.

Senator, a good leader and a good prime minister always has a backup plan in place, and a backup for that as well — plan A, B and C. When it comes to Canada's vaccine procurement, these plans don't exist.

In an interview with CTV last week, Minister Anand's parliamentary secretary admitted that the Trudeau government chose the second-best option in vaccine procurement, opting to rely solely on vaccines manufactured overseas. The U.K. was in the same position we were last year, with limited domestic manufacturing for vaccines. Their government focused on improving domestic vaccine production, and now over 12 million of their citizens have received the first dose.

Leader, our deliveries have been cut for weeks now. We have no domestic supply. What is our backup plan?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question and for raising an issue that is of great importance to all Canadians. This government has a plan, and it is a comprehensive plan.

With regard to your observation about manufacturing capacity — and this is just a sad fact — our underinvestment in vaccine production capacity began many decades ago. Publicly owned Connaught Laboratories was sold off by a previous government, and further cuts were made as well by a successive government. As a result, our domestic manufacturing industry declined from a situation where we were importing less than 20% of our vaccines from the international market to nearly 85% today. Since 2016, the government that I represent has provided more than $10 billion for science and research, including a 2018 investment, the largest single investment in fundamental research in Canadian history, responding to many years of budget cuts in science.

The plan, as has been announced many times, involves diversifying our source of supply to seven different international providers and, more recently, entering into an agreement with Novavax, a major investment of over $125 million to manufacture a vaccine at the new National Research Council Royalmount facility in Montreal, which will begin production toward the end of the year. I can go on, colleagues.

All Canadians are concerned. We are at the beginning of this first quarter and the government remains committed to providing vaccines to all Canadians who want it by the end of September, and remains convinced that it is on track to deliver on that promise.

Senator Plett: Well, leader, you made one very correct statement: It is a sad fact. Now we are blaming previous governments. That is the ultimate, blaming previous governments. This government has been in power for six years. Canadian vaccine manufacturers needed your government's support last year, leader. Your government. But your government had no plan B or a plan C.

Providence Therapeutics is currently conducting human trials with its vaccine. The Trudeau government did not give this company the support it sought last year. Who knows how much further along we would be if that support had been given? PnuVax in Montreal is another Canadian manufacturing facility that your government — not the previous government, leader — ignored.

Leader, what possible reason do you have for the Trudeau government — not previous governments — not supporting COVID-19 vaccine development with Canadian companies? You can't go back in time, you can't blame other governments, but you can stop making the same mistake going forward. Will you engage with these companies now on vaccine development?

Senator Gold: Thank you for your question. I was very careful in my words. I spoke of previous governments, and there have been many governments of different political parties. I did not single out the Mulroney government for its privatization program, or the Harper government. I'm not blaming previous governments; I'm simply stating facts.

With regard to your question, this government is engaged with companies and manufacturing facilities in Canada, assessing their capacity to ramp up and it is making investments appropriately. The fact remains that, faced with a pandemic that came upon the world, this government took the view that it was in the best interest of Canadians to seek supplies from well-established pharmaceutical companies with well-established manufacturing capabilities across the globe so as to mitigate the risk that delays in one would not compromise the overall success of the plan. It remains the position of the government that this will bear fruit for the benefit of Canadians.

FOREIGN AFFAIRS

CANADA-CHINA RELATIONS

Hon. Leo Housakos: Honourable senators, my question is for the government leader in the Senate. Senator Gold, considering China's belligerent behaviour toward Canada, including the arbitrary detention of the two Michaels, their threats against Canadians, including parliamentarians, and their vengeful ban on Canadian canola, why did Prime Minister Justin Trudeau place his entire bet on China for vaccines instead of betting on Canada's best and brightest?

• (1500)

Why does your leader, Justin Trudeau, have more admiration for and faith in the Communist Chinese regime than he does in Canadians?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, but the assumptions and assertions in your question are simply not founded. Canada did not place all its bets in one manufacturing opportunity — quite the contrary: Canada secured contracts for the largest number of doses per citizen and resident than any country in the world.

With regard to the CanSino situation, which I believe is the initiative to which you're referring, once the vaccine task force issued its revised expert opinion, the collaboration was ended with CanSino. It did not involve any transfer of sensitive Canadian technology, nor was any money paid under the agreement.

As I said before, the Canadian approach, which was multifaceted, proceeded to pursue the opportunities that I've already outlined.

Senator Housakos: Senator Gold, your government has secured millions and millions of vaccines, but we haven't seen very many going into the arms of Canadians. China walked away from the CanSino deal shortly after it was struck. They did so after we had already held up our end of the deal and sent them vital information in developing a vaccine.

Why isn't your leader out there every day calling them out for this? Why isn't Justin Trudeau asking for an apology from the Chinese government? Instead, he's issuing apologies to the Communist Party of China for some perceived slight over T-shirts emblazoned with a rap logo.

Senator Gold, why is your government making apologies to China for anything right now, really? At what point do they apologize to us? It's Canadians who deserve an apology from China. For that matter, Canadians deserve an apology from the Trudeau government.

Senator Gold: Senator, this is not the first time — and given your persistence, I suspect it won't be the last — that I find myself at pains to remind this chamber of the complex and multifaceted nature of our relationship with China and the work our government is doing with its allies to advance our interests and those of the free-speaking world. Indeed, in your question, you mentioned the two Michaels. You mentioned our significant export trade in canola: this but scratches the surface of the complexity of our issues.

This government remains committed to working with its democratic allies to address the very serious issues that China's ambitions pose, not only for Canada but for the free world.

JUSTICE

FEMALE GENITAL MUTILATION

Hon. Mobina S. B. Jaffer: Honourable senators, my question is for the government leader in the Senate.

Leader, last Saturday, February 6, was the International Day of Zero Tolerance for Female Genital Mutilation. Last night, 125 women from the University Women's Club of Vancouver came together in Vancouver to discuss how Canada has let us down.

The March 2020 report on the global response to FGM highlighted that Canada is one of only two Western countries where the risk of FGM is high, but no statistical data or analysis exist. In Canada, there has not been one single recorded prosecution for this crime. Over the years, several civil-society organizations published studies indicating that FGM is indeed practised in Canada. Victims with lived experiences have spoken out, and there are thousands of young Canadian girls at risk.

Canada is committed to the United Nations Sustainable Development Goals to end female genital mutilation by 2030. If that is the case, leader, how is it that since 1997, when FGM was criminalized, to today, there have been no prosecutions in Canada against the people who maim our young girls?

Hon. Marc Gold (Government Representative in the Senate): Senator, thank you for your question. The practice of female genital mutilation is an abhorrent assault on the dignity and personhood of women and girls. It is something that must be condemned, as it is criminalized in our Criminal Code.

I do not have information as to the circumstances under which, as you report, there have been no prosecutions. Prosecutions under the Criminal Code fall largely on the attorneys general of the provinces. I certainly will make inquiries whether data has been gathered at a national level from the provinces and territories, and I would be pleased to report back to the chamber. But this government, and indeed all Canadian governments, condemn that practice. We should be doing everything we can to stamp it out.

Senator Jaffer: France has laid 60 charges, the United Kingdom has laid charges, Ireland has laid charges and Australia has also prosecuted a number of people. On Saturday, our Prime Minister made a long statement about female genital mutilation. I will read you one paragraph:

> Here at home, we can help address the issue by improving data collection. We can also offer information and training to health service providers to identify those at risk and to assist survivors through culturally sensitive social support, and health and psychological services.

Nowhere in this statement did he say that he will make sure that the people who are responsible for maiming these girls will be brought to justice. Leader, in that entire two-page statement, not in one place did he talk about protecting these girls. May I ask that you find out why we are not taking a leadership role in protecting our young girls?

Senator Gold: Thank you, senator. I share your abhorrence at the practice, and I understand very well the pain with which you ask the question. It is not the role of the Government of Canada — the Attorney General of Canada or the Minister of Justice, far less the Prime Minister of Canada — to direct provincial attorneys general to prosecute crimes.

Having said that, as I said earlier, I will certainly inquire as to what information and data may have been collected at the national level so as to better understand the situation you have described.

FOREIGN AFFAIRS

HUMAN RIGHTS IN SRI LANKA—CREMATION POLICY

Hon. Mohamed-Iqbal Ravalia: Honourable senators, my question is for the Leader of the Government in the Senate.

Senator Gold, the government of Sri Lanka has introduced mandatory cremations since March 2020 for the victims of COVID-19. This has caused outrage and fury among Muslim and Christian groups in Sri Lanka who are aghast at their traditional funeral rites and practices being disregarded. This is a policy that has no basis in science. In fact, World Health Organization guidelines clearly permit both burials and cremations for COVID-19 deaths.

What steps is our government taking to persuade the government of Sri Lanka to end these forced cremations?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. I will make inquiries, and I would be pleased to report to the chamber as quickly as I receive the answers.

Senator Ravalia: Perhaps I might add to that, leader. The United Nations Human Rights Council meets next month, and this might be an opportune forum for Canada to raise this crucial issue with respect to the abridging of human rights of citizens in Sri Lanka. Thank you, leader.

Senator Gold: Thank you for that suggestion. I certainly will pass it on to the relevant and responsible minister.

[*Translation*]

HEALTH

COVID-19 VACCINE ROLLOUT

Hon. Jean-Guy Dagenais: Honourable senators, my question is for the Leader of the Government in the Senate. Leader, there have now been over 10,000 deaths from COVID-19 in Quebec and the province is still waiting for the vaccines promised by the Trudeau government, which continues to hide the agreements that it signed with pharmaceutical companies.

• (1510)

Yesterday, Canada fell to 37th place in terms of vaccination rates. That is both disgraceful and unacceptable, considering all of Prime Minister Trudeau's self-congratulatory talk about his vaccine procurement.

What worries me even more today is that, for the global statistics compiled by Oxford University, Canada has not supplied its numbers since January 30 and is the only large country that has failed to do so. In other words, your Prime Minister has been hiding the truth about the situation in Canada for 10 days now.

Mr. Leader, when will we get the truth about the vaccination management debacle caused by the Prime Minister's inability to deliver what he promised?

Hon. Marc Gold (Government Representative in the Senate): I thank the senator for his question.

The Government of Canada shares information with all international authorities as it receives that information from the provinces, territories and responsible authorities. I would reiterate the government's position that, despite delays and obstacles, it has confidence in the measures in place, including agreements with companies, and in the possibility that the other vaccines Health Canada is studying will enable us to achieve our objective of vaccinating all Canadians who want a vaccine by September at the latest.

Senator Dagenais: Leader, you keep mentioning the agreements with those companies. Will we ever find out what is written in those agreements? Right now, they still seem to be shrouded in secrecy, since no one will tell us what's in those contracts.

Senator Gold: Thank you for the question.

I will continue in the same vein as the answer I gave yesterday. Every commercial contract comes with certain confidentiality obligations. There is also common sense. It is not always in our interest, as a country that has a duty to protect the health and well-being of Canadians, to disclose the details of our agreements to competitors, to other countries. The government remains confident that the system and agreements it has put in place will ultimately bear fruit and benefit the health of Canadians.

[*English*]

Hon. Jim Munson: Honourable senators, my question is for Senator Gold. I wasn't going to ask a question today, but I went to bed with an image in my head of thousands of group homes with young and older people with intellectual and developmental disabilities. I do know that in some of these homes they got the vaccine early because they are in a setting of priority. But Senator Gold, I couldn't help but think of, for example, the tens of thousands of Special Olympic athletes who live at home, who are independent, and who are vulnerable, as statistics have shown, to COVID-19. And I just can't let this issue go. Yesterday, you talked about making inquiries.

I'm wondering if you or your staff or somebody has made those inquiries to give us some statistical evidence that these people who live at home — young adults who are vulnerable — are getting the vaccine or are in the second tranche of getting the vaccine. In the last three or four weeks we've heard that in long-term care homes that the numbers are going down. That's a good thing. I'm not so sure that those who are living outside of these homes, or even some people in these group homes who have not been vaccinated, have had the same benefit. So on your inquiries, could you help us out a bit more today?

Senator Gold: Thank you for your question and thank you for not giving up on this issue. It's an important issue. I did make inquiries yesterday. I have not gotten a response back. Though I have promised in this chamber and I am doing my best to get timely answers, it won't be quite as quick a turnaround. As I said yesterday, and I say it with no pleasure, the decision as to how to prioritize — what for the moment still remains a limited resource — is made by each province. The Province of Quebec, where I'm from, has prioritized residents in long-term care homes over others, including my 92-year-old mother, who doesn't yet know when she will get her vaccine. Ontario has made different priorities, as other provinces have.

I will continue to press for answers to your questions, honourable colleague, and I will report back as soon as I have an answer. Thank you again.

Senator Munson: Senator Gold, I know you're an empathetic person. I do. I really understand that and I get that. But just to help you along in terms of people giving you some advice, could I suggest there is a National Advisory Committee on Immunization. That's a scientific, external body. They have made recommendations to the Public Health Agency of Canada. Those recommendations were made long before a vaccine was even found. In their recommendations — I've been going through the whole list here, and I see a lot of words and I do see care homes and the rest of it. Nowhere do I see — and maybe I'll be corrected if somebody from that organization is listening — the terms, "those with intellectual disabilities," "developmentally delayed disabilities," or "those with physical disabilities" who are vulnerable to this.

So, in your inquiries, may I humbly suggest that this is a body that would make these recommendations to the federal government, so there is a role with the provinces. I think the more we know the numbers, the better we'll feel and the safer we'll all be. Thank you.

Senator Gold: I'll certainly undertake to do that. Thank you.

PUBLIC SERVICES AND PROCUREMENT

"LOW DEAD SPACE" SYRINGE

Hon. Judith G. Seidman: Honourable senators, my question is for the Government Leader in the Senate. Today, Health Canada approved a label change for the Pfizer vaccine to extract six doses per vial instead of five. To accomplish this, the use of low dead space syringes is required to minimize vaccine wastage. Earlier this month, Minister Anand stated that the government had increased its order of these syringes. The use of low dead space syringes will also require training for health care personnel, with videos to demonstrate the specific technique needed in order to extract six doses reliably.

Senator Gold, how many low dead space syringes does the government estimate will be needed to complete COVID-19 vaccine distribution among Canadians? How many of these syringes have arrived in Canada to date, and have they been delivered to provinces and territories? Finally, how will your government support training for personnel administering the doses? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your questions, important questions. I certainly will make every effort to get the information as quickly as possible. I just don't know the numbers. I was aware of the announcement, as you referenced, and I will inquire with the relevant minister and department, and try to get the answers to this chamber as quickly as possible.

The Hon. the Speaker pro tempore: Senator Seidman, do you have a supplementary?

Senator Seidman: Yes, please.

Leader, as you stated yesterday, the Government of Canada has chosen to not make public its procurement contracts with vaccine manufacturers. Could you make inquiries and let us know for each of the other companies in the government's vaccine portfolio — that is Moderna, AstraZeneca, Medicago,

Johnson & Johnson, Novavax and Sanofi-GlaxoSmithKline — does the contract with these companies specify the use of low dead space syringes to minimize vaccine wastage?

• (1520)

Senator Gold: I'll certainly make inquiries, senator. Whether or not I'm in a position to report will depend on the answers I get, but I will do my very best to get the information.

Senator Seidman: Thank you very much.

HEALTH

COVID-19 VACCINE

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, my question is also for the leader. Canada's COVID-19 vaccination roll-out relies on vaccines manufactured in Europe, and, as we know, the EU did not exempt Canada from its recent vaccine export controls. It is a relief that the EU has not disrupted our supply so far, but Canada still has a long road ahead to get everyone vaccinated. A recent statement from the European Commission regarding its vaccine export control system said ". . . we will use it only in very limited cases."

Leader, the Prime Minister and Minister Ng admit they did not press their European counterparts to have a written exemption for Canada. At the very least, did anyone in your government ask the European Commission for a written explanation of what these very limited cases might be?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. The government has been in very close contact with its counterparts, both in the EU and its member states. I've been advised that in his conversations with his counterparts, the Prime Minister has been assured by the EU that the exportation mechanisms will not affect vaccine shipments to Canada.

That is the only information I have at this juncture. I think Canadians should have confidence that our relationships with the EU and its member states, long-standing as they are, will be successfully exploited to ensure that our deliveries are not compromised.

Senator Martin: The *Toronto Star* reported yesterday that Canada's supply from Moderna has been cut due to the EU's export controls, creating problems for the company in terms of sourcing materials. If the story is correct, it would appear that Moderna supply disruptions could be more long-lasting than your government admits. Would you agree, senator? If so, why does Minister Anand claim the delays in vaccine shipments are largely behind us, as you claimed yesterday?

Senator Gold: Thank you, senator. The disruptions to the Moderna supply chain are unfortunate and certainly beyond our control, but the minister is the one who is in touch with her counterparts, and she has stated that she believes that this will not have a negative effect, ultimately, on the shipments we should be getting each and every trimester.

DELAYED ANSWERS TO ORAL QUESTIONS

(*For text of Delayed Answers, see Appendix, p. 882.*)

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

The Hon. the Speaker pro tempore: Honourable senators, before we resume debate on Bill C-7, let me remind you that today we will begin dealing with the bill by theme. Today we will start by debating issues relating to mental illness and degenerative illness. As you know, speeches and amendments are to only deal with that theme. A senator can speak only once to the third reading motion during debate on this theme, but can also speak once to any amendment or subamendment moved.

A speech on the main motion for third reading is limited to 10 minutes, but if the senator provided an amendment before 5 p.m. yesterday and intends to move it, the speaking time is extended to 15 minutes. The speaking time for amendments and subamendments is 6 minutes.

If there is a request for a standing vote the bells will ring for 15 minutes, and the vote cannot be deferred. Any whip or liaison may, however, extend the time for the bells to 30 minutes.

Once debate on the first theme concludes — either today or at a subsequent sitting — debate on the next theme can begin. It is not possible to revert to an earlier theme.

Let me thank you once again, senators, for your cooperation.

[*English*]

CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Petitclerc, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-7, An Act to amend the Criminal Code (medical assistance in dying).

Hon. Stan Kutcher: Honourable senators, it is a privilege to speak to Bill C7 at its third reading.

Like many members of this chamber, I am deeply concerned about the health inequalities and human rights concerns that discussions of this bill have once again brought to light. While this bill, which is narrow in focus — it amends the Criminal Code of Canada — cannot adequately address these important issues, I hope that all of us in this chamber will continue to vigorously pursue effective remedies to these challenges, such as improving the lives of persons with disabilities and investing in better care for those living with a severe and persistent mental illness.

I will focus my remarks on the mental illness exclusion clause and will propose an amendment at the end of my speech. I believe the application of a sunset clause repealing the exclusion clause 18 months after receipt of Royal Assent for Bill C-7 is necessary.

I did not decide to challenge this clause lightly. I have spent over 30 years taking care of people with severe and persistent mental illnesses, and teaching hundreds of others to do the same. I have spent many sleepless nights because I was worried about my patients and their families. I have competently assessed the decisional capacity and suicide risk of thousands of people. I have also fought countless battles with administrators, physicians, governments, funding bodies and others to champion the rights of those with a mental illness to be respected, not discriminated against, and treated similarly to those with any other illness. I also have my own personal story, with all its joys and tragedies. The fact that I am private about it does not mean I do not have it.

There are two main reasons to amend this clause, and I will address each in turn.

First, mental illness is not defined in the bill, thus raising serious clinical and regulatory challenges, including the threat of criminal liability for MAID providers.

Second, the exclusion cause is stigmatizing, discriminatory, and thus likely unconstitutional.

First, a definition of mental illness is not contained in the bill, and this is unacceptable. Without a clear and rational definition of mental illness, this provision will be open to multiple different interpretations, cause confusion for clinicians who provide MAID and will compromise the ability of medical regulators to do their work. With multiple interpretations, patients seeking MAID may be compelled to travel to parts of the country in which the interpretation used by providers better fits their needs. Patients with the same condition within one province or territory may be considered eligible or ineligible depending on how any individual practitioner defines mental illness.

Persons with neurocognitive disorders, such as dementias, could be denied assessment for MAID. International diagnostic systems such as the *Diagnostic and Statistical Manual* and the *International Classification of Diseases* consider these to be mental disorders, and persons with them are frequently treated by a health care team of which psychiatrists are often in the role of the most responsible physician. The same goes for patients who have other somatic conditions such as fibromyalgia and chronic pain. With this exclusion clause, persons with these and other conditions could be denied access to a MAID assessment.

The only source of an authoritative definition of a term not explicitly defined in the legislation is the courts. This takes time, it is very expensive and favours those with the resources to litigate. This is unjust.

Finally, with regard to definition, without clarity, clinicians carry an exceptionally heavy burden, facing the threat of criminal liability based on getting it wrong while having no idea what wrong is. Provincial and territorial colleges also won't know what definition to use when regulating and disciplining, which could potentially undermine the professional standards and safeguards that have been put in place. That all would be a travesty.

• (1530)

Second, the mental illness exclusion clause is stigmatizing, discriminatory and, thus, likely unconstitutional.

In the circumstances of the removal of the reasonably foreseeable death eligibility criteria for persons whose profound suffering arises from physical disorders or from combined physical and mental disorders, it would be discriminatory and, thus, unconstitutional to exclude persons whose sustained profound suffering arises solely from mental disorders.

The Canadian Psychiatric Association in their brief on November 2020 noted the exclusion clause:

> . . . propagates a false distinction between mental health and physical health, and the impact will be increased stigma for those who live with psychiatric illnesses.

The Canadian Psychiatric Association's brief went on to call this clause "vague, arbitrary and overbroad," evoking a breach of section 7 of the Charter. The Association des médecins psychiatres du Quebec stated it was unjustified on clinical grounds and called attention to the inconvenient truth that this bill permits MAID for those have a mental disorder co-morbid with another illness, such as depression and Parkinson's, but denies MAID for those who suffer from a sole mental illness. This, in the absence of any demonstrable justification, speaks to probable failure to meet the test under section 1 of the Charter.

MAID is not about what diagnosis a person has. It has been developed and implemented to recognize the autonomy of Canadians who decide to relieve their intolerable suffering associated with a medical condition when they can no longer go on and where all legal criteria for MAID are met.

Intolerable suffering is a subjective personal experience. It cannot be negated or delegitimized by anyone else's valuation of that suffering, no matter who that person is — and that includes health care providers.

Let me be very clear: Irremediable and intolerable suffering is person-specific and necessarily subjective. It is not diagnosis-dependent.

Persons who have intolerable suffering from a mental disorder do not have a second-class type of suffering. Their suffering must be taken just as seriously as we take the suffering of those who request MAID for any other medical condition.

The Canadian Psychiatric Association, in their position paper of February 2020, stated:

> Patients with a psychiatric illness should not be discriminated against solely on the basis of their disability, and should have available the same options regarding MAiD as available to all patients.

The Association des médecins psychiatres du Québec and the Ordre des psychologues du Quebec concluded that persons with a mental disorder as their sole underlying condition should be entitled to access MAID, similarly to persons who have enduring and intolerable suffering that is based on a physical disorder or on a physical disorder co-morbid with a mental disorder, provided they fulfill all legal criteria.

Let's be clear on this stigmatizing and discriminating reality. With Bill C-7's exclusion clause, a person with a physical illness plus a mental illness who is suffering intolerably but may have years to live can choose MAID, while a person in the same situation who has a mental illness alone cannot even ask for their suffering to be relieved.

The overwhelming weight of opinion from constitutional experts that we have heard has noted that the mental illness exclusion clause is unconstitutional and contravenes both section 7 and section 15 of the Charter and it can't be saved under section 1. They have pointed out that *Carter* did not exclude persons with a sole mental illness from receiving MAID, and the Supreme Court of Canada judgment was followed by other cases in which this was argued and upheld.

In my opinion, the Senate should not try to anticipate what the courts will decide, but surely our role is not to intentionally pass legislation that would force people into court again because we did not sufficiently take Charter rights into consideration and because we ignored what the courts already ruled. Mental illness exclusion was before the court in *Carter*, and the court ruled against it. It also accepted the competency of physicians in this domain:

> . . . it is possible for physicians, with due care and attention to the seriousness of the decision involved, to adequately assess decisional capacity.

In the case of *E.F.*, it was argued that those with psychiatric conditions were expressly precluded from MAID, and the Alberta Court of Appeal rejected that argument. This was repeated once more in *Truchon* and again rejected. None of these cases were appealed to the Supreme Court. Yet here we are with the government trying once again, this time through Bill C-7, to exclude mental illness as a sole underlying medical condition, in contrast to all the courts who have already ruled otherwise.

Yesterday, Senator Woo argued that the Senate can't prejudge, and we need evidence. We already have both solid judgments and voluminous court-tested evidence on this area. We are not sailing in uncharted waters.

Colleagues, many of us believe we have a duty to address and revise legislation that we consider violates the Charter, especially when we have the weight of evidence before us.

Now I will address the sunset clause period. Eighteen months allows for a number of necessary initiatives to be undertaken. As raised during the study of Bill C-7, it became apparent that the data currently being collected by Health Canada on MAID must be substantially improved. This includes, as Senator Jaffer has argued, data that must be available to permit race-based analysis. Health Canada must consult with participants from various communities, disciplines, cultures and locations and those with expertise in both qualitative and quantitative methods. Eighteen months would provide time for this consultation.

During committee study, a few concerns with assessment processes were raised. Yet expert psychiatrists and leading national educators, such as Dr. Donna Stewart and Dr. Justine Dembo, who actually perform MAID assessments, vehemently and empirically opposed this opinion. Speaking now as a previous examiner for the Royal College, I am confident that psychiatrists who conduct MAID assessments certainly do have the ability to assess decision-making capacity and suicidality in persons with mental disorders who are seeking MAID. As the AMPQ has clarified:

> Assessing capacity and suicide risk are fundamental clinical skills shared by all psychiatrists. This is not a matter of opinion.

Actually, this is a matter of fact. Indeed, assessment of decision-making capacity and suicidality is part of the Royal College of Physicians and Surgeons of Canada's training requirements for all psychiatrists. One cannot qualify as a psychiatrist without these competencies.

However, better comfort in these competencies for all MAID assessors would be welcomed by Canadians. This can be accomplished through an accredited professional development program. An 18-month sunset clause would provide enough time

for this to be developed, accredited and made widely available. This would help support the standardization of MAID assessment and provision across Canada.

I am pleased to be able to inform this chamber that a national MAID training program, to be accredited by the Royal College of Physicians and Surgeons and the College of Family Physicians of Canada, is already being organized. I understand it will be informed by best available evidence on all aspects of MAID assessment and provision, will ensure attention is given to issues relevant to mental illness as a sole underlying condition, incorporate Indigenous perspectives and practices and be culturally contextualized and safe. The national umbrella organization for medical regulators has been invited to participate.

Furthermore, since the Criminal Code of Canada is not an appropriate place to regulate delivery of health care, this clause would provide provincial and territorial governments time to initiate the development of Bill C-7-related professional standards and safeguards for MAID assessment and provision. For example, in Quebec, the AMPQ has already proposed additional safeguards. This would also provide time for the promised parliamentary review. Respect for the Charter rights of persons with mental illness should not be left dependent on the timing and political challenges of starting and finishing a parliamentary review. The burden must be on Parliament, not on individuals. The sunset clause puts the timing and the burden where it should be — on Parliament.

In sum, we can recognize the concerns that have been raised. We can respond with effective measures established where they constitutionally belong — outside the Criminal Code and at the provincial/territorial level — and we can avoid lending weight by this body to the stigmatizing and discriminating language and the effect of the mental illness exclusion clause.

MOTION IN AMENDMENT ADOPTED

Hon. Stan Kutcher: Therefore, honourable senators, in amendment, I move:

That Bill C-7 be not now read a third time, but that it be amended:

(a) in clause 1, on page 3, by adding the following after line 7:

"**(2.1) Subsection 241.2(2.1) of the Act is repealed.**";

(b) on page 9, by adding the following after line 30:

"**Coming Into Force**

5 Subsection 1(2.1) comes into force 18 months after the day on which this Act receives royal assent.".

Thank you. *Meegwetch*.

[*Translation*]

The Hon. the Speaker pro tempore: Let's move on to the debate on the amendment.

• (1540)

Hon. Claude Carignan: Honourable senators, I rise in support of Senator Kutcher's amendment. In the speech I made yesterday and the one I made in December, I spoke at length about how the provision in Bill C-7 discriminates against persons with mental disorders. Obviously, this will once again force the less fortunate and vulnerable to appeal to the courts to declare this bill unconstitutional. In fact, this bill will clearly be ruled unconstitutional based on Supreme Court case law.

We must avoid placing the burden of court challenges on the less fortunate. The advantage of having a sunset clause is that during that period, the federal government, the provincial governments, and professional associations will be able to establish standards and determine how to proceed and how to assess whether to authorize medical assistance in dying for persons with mental disorders, in order to reach a consensus. I personally would have suggested a period of 12 months, not necessarily 18, but I am still comfortable with that amount of time.

In Quebec, we have seen progress. As a result of *Truchon*, not only was the concept of reasonably foreseeable death removed from the federal legislation, but an equivalent end-of-life criterion was also removed from the Quebec law. Instead of asking for the law to be suspended, Quebec immediately began working with the Association des médecins psychiatres du Québec to establish assessment criteria and processes together with the Collège des médecins du Québec. Guidelines are already being established. I've seen correspondence between the health minister, Mr. Dubé, and the justice minister, Mr. Jolin-Barrette, which has been shared with their federal counterparts and in which they propose to contribute to the exercise and to share the results of their research.

The 18-month period will therefore be important in order to implement the elements required to meet this objective without causing the most vulnerable to suffer. There is another advantage to this 18-month period because, if people are allowed to challenge this law, it will be declared unconstitutional, and it is very likely that the court will grant an extension to put things in place.

This would ensure that a person suffering from mental illness would not be able to access MAID quickly in any event. I believe that the 18-month period will ensure that we strike a balance between the rights of individuals and the implementation of a system that will protect the public and respect everyone's rights.

I will therefore be supporting Senator Kutcher's amendment, and I congratulate him for moving it.

Hon. Senators: Hear, hear.

Hon. Pierre J. Dalphond: I will build on what Senator Carignan was saying, because I completely agree with him.

[*English*]

As you all know by now, Bill C-7 proposes to deny access to MAID to those with enduring and intolerable suffering because of mental illness, even if their condition is grievous and irremediable. The government justifies this automatic exclusion as necessary to protect those suffering from a mental illness because capacity assessments are more difficult to conduct when a mental illness is present and a desire to die is a symptom of some mental illnesses. That's the rationale of the government.

There are many problems with this general exclusion, as the excellent brief of Senator Joyal shows. I had the honour of distributing it to all of you on Sunday.

At committee, we heard numerous experts explain how mental and physical conditions often merge together, how conditions of the mind can affect the body and vice versa.

We have also heard that it does not make sense to exclude Canadians suffering solely from mental illness while allowing access for those who may suffer both from a mental and physical illness. In these cases, capacity assessments must also be performed, and it seems it can be done without much difficulty in practice.

In reality, as many witnesses have said, the proposed exclusion reinforces, perpetuates or exacerbates myths and biases about mental illness, including that the suffering of those with mental illnesses is somewhat less legitimate than that of physical conditions and that people with mental illnesses lack the agency or capacity to make decisions about their own suffering.

Recently, in *Attorney General of Ontario v. G.*, the Supreme Court found that the automatic exclusion of all individuals with mental illnesses to be discriminatory and explained:

> Though the early 19th century's most abhorrent treatment of those with mental illnesses has been left behind, stigmatizing attitudes persist in Canadian society to this day . . . . While discriminatory attitudes and impacts against those with mental illnesses relatively persist, they must not be given the force of law.

The Supreme Court also stated that to be valid, the exclusion should include the process that provides for individual assessments. In other words, a broad automatic exclusion doesn't work; you need to provide for the possibility of case-by-case assessments.

In committee, we heard from experts that MAID assessment for individuals suffering from mental illness can be — and, in fact, has been — done safely on a case-by-case basis. Thus, a blanket exclusion overreaches what is necessary to protect those suffering from mental illness.

[*Translation*]

I would rather remove the exclusion clause altogether. However, I understand that it will take time for the medical profession to implement standards across the country in response to the requirements set out in Bill C-7. I therefore support the idea of inserting a sunset clause, as proposed by Senator Kutcher.

I want to point out that this sunset clause isn't designed to give psychiatrists time to receive training on assessing a patient's capacity to provide consent or on suicidality. As the Association des médecins psychiatres du Québec has pointed out, psychiatrists are already experts on these matters, which are part of their basic training.

The Association des médecins psychiatres du Québec, one of the most progressive organizations in Canada on this issue, says that the system could be up and running within 12 months in Quebec. I understand that this may not be the case all across Canada, so I think an 18-month period would be reasonable.

We must not rule out the possibility that the government might choose to adjust the safeguard measures before the end of the exclusion period. If the government and Parliament were to do that, especially in the current context, it could require more than 12 months.

• (1550)

[*English*]

In conclusion, I thank Senator Kutcher for bringing this amendment forward, and I invite all senators to join me in supporting it. Thank you.

Hon. Marty Deacon: Honourable senators, I rise on debate in support of Senator Kutcher's worthy amendment, a needed sunset clause on the exclusion of those with a mental illness from being able to access MAID.

Before I elaborate, I would like to take this opportunity to thank all of those who have worked hard to ensure witnesses and submissions were well received by the Legal Affairs Committee. A special thanks to the chair, Senator Jaffer, and deputy chair, Senator Batters; this has been incredible, informative and a privilege to virtually observe each day. Words cannot do justice.

I also wish to thank the many Canadians who have emailed with passion their concerns on all aspects of Bill C-7. I also wish to acknowledge the organizations that I've had the honour to meet with virtually, that continued to inform my thinking.

This exclusion is just one of a long list of examples of how Canadians with a mental illness have for some time been dismissed, as if their suffering is not understood or somehow is not real. I believe this stems from an inability to empathize with what they are going though. We can understand some of the apparent and visible physiological conditions that would lead someone to consider an assisted death, and though many of us are uncomfortable with it, we are able to put ourselves in their shoes. For me, this bill is all about putting ourselves in someone's shoes.

However, this is often not the case for mental illness. Unless you have suffered or are suffering or know someone who has suffered or is suffering, it is difficult to identify with what they are going through. It's why for so long those suffering from mental illness were told to suck it up, regroup, get a grip or get over it. Society dismissed their real struggles because we could not see or empathize with their conditions. So many suffering from mental illness fight every hour of every day to stay alive, to try to manage their symptoms and to develop strategies that help them move through their day. Like many of you, I observe this on a daily basis.

We have come far in some ways in how we approach and treat mental illness. That is why it is disheartening to see this legislation as written. It suggests that their suffering doesn't warrant every possible option in our health care system; better options and support, including the option to end their life with peace and dignity through MAID.

With this amendment, I believe Senator Kutcher has found a compromise on the issue. The sunset clause strikes an appropriate balance, saying that on the one hand, Canadians suffering from chronic, untreatable mental illness should not be excluded from the right of having access to MAID, and on the other hand, giving some runway to develop the safeguards needed for those with mental illness considering MAID. These safeguards must be developed in consultation with those who suffer the most. This requires time, listening, diverse expertise, respect, the collection of relevant data and the development of accessible training.

This amendment also addresses my fear that while we are at the moment wringing our hands over how to best protect the segment of our population who suffer from these types of afflictions, we will quickly move on to other things if and when this legislation is passed. With the time afforded to us by a sunset clause, we need to rethink on how to best help and treat those suffering from these kinds of ailments.

I would remind my colleagues that roughly one quarter of Canada's homeless population suffers from mental illness. These are individuals who have been abandoned by society with little to no access to appropriate care and treatment. If we are serious about protecting this segment of the Canadian population so that MAID is an option of last resort, well, let's make sure they have the options. Let's work to ensure that all individuals have access to the kinds of support and resources needed to live healthy, dignified lives; that only once every avenue has been exhausted and they still find they are living through inalienable suffering, only then can MAID be considered a viable option.

Lastly, colleagues, I think it's important that we remind ourselves of the distinction that medical assistance in dying is not suicide. Twice, I alone have come upon someone who had just committed suicide. It is not peaceful. It is not a choice. By excluding those with a mental illness, we are dismissing their very real and valid concerns, and in some rare cases, could lead them to consider taking their lives by their own hand.

With Senator Kutcher's amendment, we can help them. We can do our best. We can take time to be diligent from coast to coast to coast, but if at the end of the day their suffering is just too unbearable and they have satisfied the many safeguards in place, MAID is their choice. To deny them this right, in my mind, is cruel, and I would ask that you support this amendment before us today. Thank you, *meegwetch*.

Hon. Denise Batters: Honourable senators, I rise today to speak against this amendment to place a sunset clause on the mental illness exclusion in Bill C-7. The term "sunset clause" is just a euphemism for the sunsetting of vulnerable people's lives. This will mean that after a short period of time — 18 months — mental illness will be grounds for being put to death. I cannot make it plainer than that.

Some senators may see the proposal of a sunset clause as a middle ground, a compromise position that seems safe if you are feeling ambivalent about the issue of mental illness and MAID.

Honourable senators, this is no middle ground. A sunset clause would mean the mental illness exclusion would automatically be removed at the end of the time period specified, so that people with mental illness as a sole underlying condition would be able to obtain assisted suicide in 18 months, likely before we've even had the parliamentary review of the issue the Trudeau government has promised since 2016; potentially in less time than it would take someone with severe mental illness to see a psychiatrist.

In Canada, one of the basic criteria for accessing assisted suicide is that one's condition or illness must be irremediable; that is, unresolvable and irreversible. At our Legal Committee, we heard from many medical experts who testified that mental illness would not fit that criterion. Dr. John Maher told us:

> Determining whether a particular psychiatric disease is irremediable is impossible; people recover after 2 years and after 15 years. I have repeatedly had psychiatrists refer patients to me where I am told they will never get better, yet they have all had improved symptom control and reduced suffering when they finally get intensive care. Inadequate care causes remediable illnesses to appear irremediable.

Dr. Trevor Hurwitz put it simply: ". . . mental illness that drives patients to suicide is not irremediable."

Proponents say that these few short months would give the medical community time to come to a consensus on the irremediability and predictability of mental illnesses. That is nonsense. The Council of Canadian Academies, a group of the foremost medial and legal minds in this country, met for 18 months to try to come to a consensus on whether to allow people with mental disorders as a sole underlying condition to access MAID. They could not come to an agreement.

Two of the largest national mental health organizations in Canada — the Canadian Mental Health Association and the Mental Health Commission of Canada — haven't even formulated their official position on the mental health exclusion in Bill C-7. Expert psychiatrists testified that the lack of consensus on irremediability is due fundamentally to a lack of evidence.

Dr. Mark Sinyor said:

> . . . I wish that data were in existence as then we could have an informed conversation about how to move forward. Unfortunately, this includes a nascent area of research which has been presented to you as one where the answers are already well understood and resolved. They are not.
>
> We can all have opinions, but as a country we must support science over rhetoric, no matter how cleverly or vehemently delivered.

Expert psychiatrist Dr. Sonu Gaind agreed, dismissing the idea of a sunset clause altogether. He said:

> Some are suggesting the issue is simply lack of consensus and propose a sunset clause on the exclusion of mental disorders to allow time to develop standards. The issue is not lack of consensus; the issue is lack of evidence about whether irremediability in mental disorders can even be predicted. . . . a sunset clause would be putting the cart before the horse without even knowing if the horse exists.

When I asked Dr. Harvey Schipper about a sunset clause, he replied bluntly:

> No, I couldn't begin to support it on my last day on earth . . . . A sunset clause, frankly, strikes me as politically dishonest.

Some proponents of a sunset clause use it as a way to circumvent the irremediability debate. Dr. Karine Igartua of the Quebec Psychiatric Association AMPQ told us:

> Nothing substantial will be learned about the prognosis or treatment of mental illness in the next few years that would alter this delicate situation. Therefore, we strongly advocate that the mental illness exclusion be immediately removed from Bill C-7 and that barring that, a sunset clause is added so that the exclusion expires without further legislation needed.

• (1600)

Nothing will be learned about the prognosis or treatment of mental illness in the next few years? Really? Says who? Therefore, we should move ahead as fast as possible to allow assisted suicide for mental illness before those issues are resolved? That's ludicrous and dangerous. It sounds so innocuous. A sunset clause?

Honourable senators, don't be fooled. This means that at least some Canadians will have their lives ended before they can access the treatments or options that could very well relieve their suffering and give them years to live. Even one life lost unnecessarily is too many. Take it from someone who knows.

Dr. John Maher offered our committee some advice on this issue. He said:

> . . . With the "reasonably foreseeable death" criterion removed, the use of the irremediability criterion is being changed in practice from "definitely irremediable" to "possibly irremediable." Is "possibly" good enough when what is at stake is not six months but 60 years? The applicable moral maxim is this: When in doubt, don't do it.

This is sage advice, honourable senators. When in doubt, don't do it. I'm asking you, please, don't do this. Thank you.

Hon. Tony Loffreda: Honourable senators, I speak today to support Senator Kutcher's amendment that addresses the ineligibility of Canadians who request medical assistance in dying, or MAID, and whose sole underlying condition is a mental illness.

I have had a speech prepared since last fall on Inquiry No. 10 on immigration and Canada's prosperity. I wanted my maiden speech to be on this topic that is very personal to me, but Bill C-7 is too important and I could not pass up this opportunity.

After much thought and review, I have come to the conclusion that a person suffering from a mental illness as a sole underlying condition should be eligible for MAID. Not only is it fair, but it's the right thing to do.

Let me be clear: I believe in life, I believe in living with dignity and I believe in dying with dignity. Above all, I believe we have an obligation to better support those who suffer from a

mental illness. MAID should not and never undermine our society's commitment to suicide prevention and improving the accessibility of mental health services.

On MAID, the Association des médecins psychiatres du Québec, the AMPQ, explains that, "Establishing a regime that permits MAID" where a mental disorder is the sole underlying medical condition "must be accompanied by a societal and health-system commitment to providing therapeutic options to these persons."

Of course, MAID should be used as a last resort, when all other treatments have been explored and have been unable to treat an illness at a level that would allow the patient to live an acceptable life. Individuals are best positioned to determine what is an acceptable life to them.

The Ordre des psychologues du Québec agrees and says that "The experience of suffering belongs to the suffering person."

With the mental illness exclusion in subsection (2.1) of Bill C-7, it's clear that the government is not yet ready to consider mental illness as an illness, disease or disability, as per the MAID criteria. However, I think Senator Kutcher's amendment, which would give the government 18 months to further consider this issue and implement additional safeguards, if necessary, is an adequate compromise.

If MAID is eventually expanded to include mental illness as a sole condition, the current safeguards must be reviewed and enhanced if needed. The AMPQ has put forward some ideas on possible new safeguards, including that the treating physician is not involved in the decision making and there be a minimum duration of active treatment and experience with the condition.

Health professionals are already working together on a multidisciplinary professional education program under the authority of accrediting bodies to create standardized assessments for MAID that will include components addressing mental disorders. The sunset clause in this amendment gives us time to come up with the best program.

We must not forget that patients must continue to meet other eligibility criteria, including that their illness must be causing them enduring physical or mental suffering that is intolerable to them and cannot be relieved under acceptable conditions. Safeguards ensure that MAID is not easily accessible and comprehensive reviews with strict eligibility criteria will always be performed.

MAID is not for people in crisis. As many practitioners have reminded us, it's for people who have been trying to get better for years, if not decades. It's for people who have tried various programs, therapies or prescriptions.

In December, the OPQ wrote:

> Just like people with physical disorders, people with mental disorders can experience suffering that is enduring and intolerable. It is therefore just as legitimate to request relief from psychological suffering. . . .

The OPQ adds:

> To prohibit access to MAiD for persons with mental disorders as their sole underlying medical condition would constitute an infringement of their rights, disrespect for their dignity and a violation of the principle of equity . . .

The Canadian Bar Association agrees and argues that the exemption for mental illness in Bill C-7 infringes on equal rights and submits that the provision will likely be constitutionally challenged.

Beyond these issues, I also feel that the government is discriminating against those who have a mental disorder by excluding them in Bill C-7. This perpetuates the stigma around mental illness.

MAID assessments cannot be perfect. Assessing someone's suffering is never perfectly measurable. The common thread throughout the entire assessment process must be trust. I often say trust is the currency of every relationship. Our democracy is based on trust.

As a society, we put our confidence in medical professionals for other life-and-death matters, and we trust that they are providing their patients with accurate, knowledge-based advice. Why would MAID be any different?

Honourable senators, as I conclude, I am reminded of something Dr. Gus Grant from the College of Physicians & Surgeons of Nova Scotia said before our Legal Committee when referring to the Canadian Medical Association Code of Ethics and Professionalism: Medical professionals must "Consider first the well-being of the patient; always act to benefit the patient and promote the good of the patient."

The code further adds that doctors must:

> Always treat the patient with dignity and respect the equal and intrinsic worth of all persons.
>
> Always respect the autonomy of the patient.

And:

> Never exploit the patient for personal advantage.

I have faith and trust in those who have taken this oath, which is why I support Senator Kutcher's amendment. I believe we should expand MAID for those who have a mental illness. I feel this amendment is the first step towards that inclusion. Mental health patients who meet all requirements deserve an equal opportunity to alleviate their suffering.

Thank you. *Meegwetch*.

Hon. Peter M. Boehm: Honourable senators, I rise to add my voice to the debate on Bill C-7 and to support the amendment moved by our colleague Senator Kutcher.

First, I must say that every speech I have heard on this bill has been excellent and heartfelt. I admire the courage of senators to share their thoughts. For me, as for many of us and our fellow Canadians, this is deeply personal.

Each of us, in one form or another, will confront our own mortality some day. Many will also need to confront that inevitability for loved ones by making or assisting in end-of-life decisions. Even if those decisions are made and plans are in place well in advance, reaching that stage is hard. More difficult still is that "end of life" does not necessarily mean "old."

I am the son of two parents, each in their ninety-third year, and I'm also the father of a non-verbal son with autism spectrum disorder who is 32 years old. My personal and challenging experience with mental illness and my involvement in mental health causes has led to my support for Senator Kutcher's amendment, which would, 18 months after Royal Assent, repeal the exclusion provision in Bill C-7.

The exclusion of mental illness as an acceptable basis to pursue a medically assisted death has been one of the most contentious and emotional points of debate since Bill C-7 was introduced in the other place last year. People with mental illness deserve to be treated just as any other person before the law. That is not, colleagues, just a humanist ideal. It is, in fact, the law. The Canadian Charter of Rights and Freedoms states in section 15.(1):

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination . . . .

It does not take a Charter expert — and there are several in this chamber — to see that the mental illness exclusion in Bill C-7 poses a serious problem. At the same time, I do otherwise support the bill. It is not perfect. No bill ever has been or ever will be, but it will help to alleviate the profound distress felt by Canadians and their loved ones who are suffering so badly that they feel a medically assisted death is their only option. That is why I support Senator Kutcher's amendment, which I see as a reasonable compromise.

• (1610)

If the amendment is adopted, once Bill C-7 receives Royal Assent, the mental illness exclusion would remain in place for 18 months, at which point it would be repealed. The effect of this amendment is to make clear that Canadians with mental illness must be treated equally before the law as the Charter dictates, and that having a mental illness doesn't necessarily mean that one lacks the capacity for free and informed consent and to understand the irreversible consequences of MAID. The amendment would ensure that the rights to autonomy and self-determination of all Canadians are respected and that all have equal access to MAID, assuming they've been properly assessed as having the capacity to provide consent.

High-quality education and training on assessing capacity and administering MAID would be created by medical experts, including national medical and nursing professional organizations, during the 18-month period between Royal Assent and repeal of the exclusion provision. In fact, as Senator Kutcher said in his remarks, this program is already being worked on and will be accredited by the Royal College of Physicians and Surgeons, and by the College of Family Physicians. The major impact of this element of the amendment is that all Canadians, regardless of which province or territory they call home, will have equal access to a standard level of high-quality care when it comes to MAID, both in terms of assessment and administration.

Bill C-7 is an amendment to the Criminal Code, which is not the obvious avenue for legislating health care. As such, the 18-month period will allow time for health authorities, including MAID assessors and practitioners in every jurisdiction across our country — including, crucially, in Indigenous communities — to adapt the coming national standards to their own regional realities while maintaining the same high level of care and access for all Canadians. This is important, not just in terms of equality, but also in terms of protecting patients and health practitioners. While keeping the exclusion in place for now is not ideal, I strongly believe it is a fair and reasonable compromise to a difficult problem.

There are too many Canadians enduring terrible pain and suffering without proper access to MAID. They deserve to choose how and when to end their lives and to do so with the dignity inherent to all human beings. Bill C-7 should be passed, colleagues, but it can be improved in a profound way by adopting Senator Kutcher's amendment. I urge you, honourable senators, to vote in favour of this amendment and in favour of Bill C-7. Thank you.

Hon. Kim Pate: Honourable senators, like most of you, I rise today to speak with my mask on out of respect for the safety of staff and colleagues in the chamber, and to model the safety precautions to which we are expecting all Canadians to adhere.

Since my appointment shortly after Bill C-14 came into force, our office has received too many calls and letters from people in prison requesting that I intervene to assist them in receiving medical assistance in dying. Some are terminally ill or suffering intolerably and have been unable to access mechanisms for transfer to hospitals, hospices or compassionate release that are available according to the law, but which decision making by correctional authorities has rendered almost non-existent in practice. Many of them would be folks targeted specifically by this amendment. They are not dying, but are suffering intolerably as the result of mental health issues created or exacerbated by their conditions of confinement. Many of us have now witnessed

firsthand the punitive and restrictive conditions of segregated prisons within prisons, where prisoners with mental health issues too often languish.

Although Bill C-83 was meant to put an end to the practices of solitary confinement or segregation, as we have seen, the practices may have been renamed but the conditions persist, as do the resulting irreversible physical, psychological and neurological harms. With the onset of COVID, whole prisons have been subjected to conditions amounting to segregation for weeks and months for nearly a full year.

When he appeared before the legal committee, the Correctional Investigator testified that medical assistance in dying is currently easier to obtain than any other measures, particularly compassionate release for health reasons, and pointed to cases of prisoners seeking medical assistance in dying as the alternative. Moreover, there is no requirement that such access be reported or that the decisions be reviewed. Consequently, in addition to calling for a moratorium on access to medical assistance in dying in prisons, he cautioned us to be aware of these realities as we consider extending MAID to conditions beyond physical illness.

For women and men subjected to conditions recognized under international law as amounting to torture, unable to see their families and loved ones, how can we say non-end-of-life medical assistance in dying is a choice, when the alternatives are cruel conditions of confinement with completely inadequate health and mental health care? What about those in the community who live with psychological suffering and are unable to afford access to mental health care, to medication and to necessities of life for mental and physical well-being, such as safe and adequate housing? Or those who, in the absence of such supports, too often end up on the streets or in prison because it is the only institution that cannot refuse them following mental health crises? In other words, those for whom this amendment would hasten to offer death, despite the fact that Canada has never invested fairly in their lives.

Insisting that non-end-of-life medical assistance in dying is a matter of individual choice obscures the stark reality that it is really only a matter of choice for those privileged to have access to resources that provide care options. It also obscures the lack of access to the same wide variety of choices that has disproportionately characterized the lives, and now perhaps the deaths, of those who are marginalized as a result of systemic ableism, racism, sexism and poverty. I struggle with how we can justify prioritizing putting in place more rights for those most privileged without the same insistence on putting in place the health, mental health, social, housing and economic supports necessary to ensure that all of us have meaningful opportunities to exercise choice. That, honourable colleagues, is my dilemma.

Meegwetch. Thank you.

Hon. Frances Lankin: Honourable senators, I appreciate the opportunity to speak to this amendment. I want to make it clear that I support this wholeheartedly. I'd like to thank Senator Kutcher for the work he has done, along with other honourable senators who have been worked on this. I want to thank those honourable senators in other groups who I reached out to in order to discuss this issue and their thoughts about it. It has helped me very much with the development of my own thinking.

First, I am very convinced by the arguments that we must take our role seriously around assessing the constitutionality and compliance with the Charter. That has led me to believe — as I have looked at the debates prior to Bill C-14 and Bill C-7 and at the evolving court decisions and directions — that there is every likelihood that this may well become an issue that is challenged in the courts and successfully challenged.

I have also been discomfited by the discussion and debate that I have heard, particularly from those in the psychiatric profession. I won't go into that in depth. I think Senator Batters covered a good deal of that in her presentation.

It seems to me that the idea of a sunset clause is not just a compromise. For me, it is a necessary accompaniment to the belief I have that this would be ruled unconstitutional. I think it is important to challenge and give time, support and resources to the development and establishment of adequate guidelines. I want to remind us that when someone applies to be considered for MAID, they're not applying to get MAID and just get it. There is a process of assessment. There is a process of ensuring there are guidelines to be met and the right effort goes into that.

• (1620)

As Senator Loffreda said — and I believe very strongly in the professional ethics of health practitioners across a variety of disciplines that come together to support this process.

What I've really been upset about, maybe because I didn't know this, is that there are not national standards that have been brought about in terms of the application of the assessment of MAID and the application of guidelines and protections. I do realize very much the provincial jurisdiction with respect to the delivery of health care, but I think that something of this nature — and when we're dealing with, again, a Criminal Code amendment, not health care policy in and of itself — needs work on health care policy to develop these guidelines. I am most encouraged by the movement to the development of accreditation standards and the professional development educational programs that are being developed right now. I believe the 18 months are critical for that work to progress, for that work to be solidified, in the practice of assessing and approving MAID.

It is for that reason that I very strongly support this proposal for the sunset clause.

I hope, as we proceed in our deliberations, we work hard to identify those challenges that we will need to look at during the reviews that I — as all of us do — regret have not taken place as were planned, and as had been intended by many of us who had concerns about Bill C-14 and its constitutionality.

I won't go on any further. I just want to thank people for their tremendous contribution in the debate and for the work that has gone on. All of us, irrespective of how we feel about any particular amendment or the bill itself, have worked very hard to deepen our understanding and to wrestle with some of these issues. I'm comfortable that at the end we will, with wisdom, take the best direction as we can at this point in time for all Canadians.

Hon. Tony Dean: Honourable senators, I support Senator Kutcher's proposed amendment. It would both recognize the constitutionality of MAID's application to mental illness and provide the psychiatric profession with sufficient time to complete its ongoing work in the area of patient competency, standardized approach to assessment and the development of standardized training for professionals involved in MAID.

Senator Kutcher's amendment deserves support because it's consistent with major court decisions and the principle of equality under the Canadian Charter of Rights and Freedoms, and its proposal for an 18-month delay is respectful of the complexity associated with assessments and decision making in this area. The amendment also recognizes that, while this would open the door to MAID for those competent to make these weighty decisions, it might potentially do this at the expense of vulnerable people. In other words, access must be accompanied by safeguards.

Colleagues, many of these safeguards exist already. They're embedded in medical ethics, professional training, professional standards, codes of practice and well-established protocols and procedures of the sort likely found in palliative care settings, which by their nature, of course, are also terminal. But more work is needed. The availability of MAID to the field of mental illness would be far from a cold start, and it would be a long way from a slippery slope. The psychiatric profession, including those specializing in medical ethics, has been developing MAID protocols since 2015. These are already rigorous, but they will require more development and collaboration between medical experts across the country with a view towards developing national standards for determining competency, and the assessment of applicants with severe mental illnesses. This process could be completed within a year, we are told, so an 18-month period for preparation should be sufficient for this purpose.

As in the case of assessing major physical health issues, mental illness assessments would require examination of the potential for amelioration of very severe symptoms in relation to the likelihood of ongoing or even more severe suffering. These assessments would be much more rigorous than examining just suicidal risk. In fact, the presence of suicidal ideation, we are told, would likely raise questions about the competence of an applicant to make reasoned decisions about assisted dying.

It's hard for many of us to imagine the degrees of suffering involved here or the complexity and nuances of assessment processes. So at the invitation of Senator Kutcher, two highly qualified psychiatrists, with backgrounds in medical ethics, have described some instructive examples of the sort of MAID applicants who might likely meet what is likely to be a high bar for medically assisted death.

Mona Gupta is a psychiatrist and researcher in philosophy and ethics at the University of Montreal. She is a principal investigator of a CIHR-funded research project exploring clinical assessment processes for MAID requests. Dr. Justine Dembo is a psychiatrist at Sunnybrook Health Sciences Centre. She's been a MAID assessor since the *Carter* decision in 2015, and has researched the intersection of MAID and mental disorders since 2009.

The doctors describe their work and experience in assessing candidates for MAID. Each presented separate case histories involving one of their patients. While having quite different biographies, each patient has suffered lifelong psychiatric illness following traumatic experiences that go back to childhood. This is involved, unbearable and intractable suffering over decades, and that has worsened in their senior years. Both have experienced multiple and lengthy periods of hospitalization — 40 hospitalizations in the case of one person. One candidate made multiple suicide attempts, although none in the past 10 years. Both patients have accepted an extensive range of therapeutics, including several classes of pharmaceuticals, electroconvulsive therapy and various forms of behavioural therapy, none of which have been successful in ameliorating long-term and severe suffering. Both are now unable to work or enjoy activities they would otherwise find meaningful. They are each confined to their homes and are described as being in states of relentless, unbearable suffering, pain and distress, which cannot be ameliorated by any known therapy.

Colleagues, the characteristics shared by these patients are considered likely to qualify them for support in obtaining a medically assisted death. If not these two candidates, colleagues, it's hard to see who would qualify. Notable, also, are the lengthy and detailed assessment processes involved here, which —

The Hon. the Speaker pro tempore: Senator Dean, I have to interrupt you. Your six minutes is over.

Senator Dean: I support the amendment. Thank you.

Hon. Brent Cotter: Honourable senators, thank you to the senators who are participating in this profound and profoundly human debate. I have, as a member of the Standing Senate Committee on Legal and Constitutional Affairs, had the opportunity to listen, and listen closely, to witnesses — dozens of witnesses — and read the submissions of those witnesses with some care.

I don't intervene lightly on questions of such import, especially when the subject matter is well beyond my own expertise, and that is certainly true with respect to the issues of health and health care that this bill and this amendment raise. But as many senators have stated, the vagueness, and in particular, the exclusion from access to MAID where mental illness is a person's sole underlying condition is, in my view, likely unconstitutional.

• (1630)

So this raises a serious dilemma for me and, I think, for other like-minded senators. What Senator Kutcher's amendment does, though, is to bridge that gap. It bridges the gap in a way that — if I may borrow a repeated metaphor from remarks I delivered in December — provides a bridge over troubled water for Canadians suffering grievously from mental illness. In that sense, I think it resolves the concerns I have in both constitutional and human terms. It produces a process and a regime by which it respectfully facilitates, through the sunset clause — or what I would prefer to refer to as a sunrise clause, since it provides a route for those who are suffering grievously to contemplate a death with dignity — and provides a route for health professions the ability and time to prepare appropriate decision-making processes and training to serve these Canadians well.

If, on the other hand, mental illness remains outside the scope of MAID, as many of you will know, I have been considering an amendment that would call for the exclusion of mental illness as a sole underlying condition, to be resolved by a reference to the Supreme Court of Canada. But I will say this: For many reasons, this is a less satisfactory approach. A considered transition into MAID through the amendment that Senator Kutcher proposes is much more satisfactory.

In this respect, while I do not agree with all of what I heard Senator Woo say yesterday, I do agree with his point that if there are mechanisms by which we can make the right decisions, we should do so. It is, therefore, far superior for us to get it right, which I think Senator Kutcher's amendment would do — not unlike what the Senate attempted to do, unsuccessfully, in 2016 with a "death not reasonably foreseeable" amendment. I am going to support this amendment and I hope you will too. Thank you very much.

Hon. Yuen Pau Woo: Honourable senators, we spent 45 minutes earlier today paying tribute to the first facilitator of the ISG, who was described as independent-minded and a maverick. Perhaps I'm paying the best tribute to her now in offering an independent and, perhaps, maverick view.

Let me start by saying that it would be unfair to make a presumption that any one of us speaking on any side of this issue lacks empathy or seeks to stigmatize or somehow is not in touch with people who have mental illness. Senator Boehm and others have talked about personal experiences that we've all had. Let's go on the assumption that we have those sentiments at heart and feel it very deeply, however we might vote on this amendment and on the bill in general.

I thank Senator Kutcher for his proposed amendment because it is, in fact, a bridge from one place to another that tries to find a middle road through a very difficult issue.

Colleagues, there are two reasons to support this amendment. Both reasons, in and of themselves, are sufficient to support the amendment, and they are as follows: The first reason is if you believe strongly that the exclusion of mental health is unconstitutional; the second reason is if you believe, with a high level of confidence, that the medical profession already has the tools and knowledge to do capacity assessment. If you feel strongly about one or both of these conditions, not only can you support the amendment, but you should support getting rid of the exclusion altogether. We heard as much from Senator Carignan and to some extent from Senator Dalphond as well.

If you hold a softer view of the second condition, which is that medical professionals have well-established competencies to do the assessment and so on, then you open the door to this idea of a phase-in period, which is precisely what Senator Kutcher is offering us.

But you have to ask yourself what this phase-in period is trying to do. If you already believe that medical professionals have the competencies and it is just a question of, say, training more people, then why would you not go all the way to excluding mental health right now? The competencies are established. Why would we cause more suffering — to use the words of some senators — by delaying it further?

If, on the other hand, your view of the medical profession's ability to do capacity assessment is that "it's not quite there yet, there are still some standards or protocols or rigour that need working on," then it's not exactly clear what this waiting period is doing, this sunset period. If your view is that there is work left to be done, then you have to realistically ask the questions: How much work is left to be done? And is, in fact, 18 months the right period of time?

We've heard use of the term "sunset clause," or "sunrise clause," and a variety of other language. Perhaps it's more akin to an aircraft taking off. Senator Kutcher, with his knowledge and expertise — which I regard very highly — is proposing that the runway be 18 months long. But what if the plane is not ready to take off in 18 months? What if the problem is not about training more people or aligning standards, but it's about sorting out difficulties and challenges that the profession itself has in coming to terms with how they do capacity assessment?

Senator Kutcher does not agree with this view. I am simply pointing out the way we need to think about this amendment and how we go about voting for it. If you are persuaded already that it is unconstitutional, if you are persuaded that the profession has the tools, skills and competencies to, in fact, assess mental health as a sole underlying condition, then there is nothing to stop us from removing it altogether. If you have doubts, as I do, that there may be more work to be done, then perhaps the runway is not long enough, and perhaps we should keep the exclusion for the time being. Thank you, colleagues.

Some Hon. Senators: Hear, hear.

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, I wanted to ask a question to Senator Kutcher rather than rise on debate, because I was not prepared to enter here. But perhaps this is a small tribute to our former colleague the late Senator Elaine McCoy. She was so good on her feet. Based on what I'm hearing, I feel compelled to be a voice for someone I spoke to this past week, as well as simply putting this on the record.

First, I want to thank everyone for what they have prepared and said to date, and to thank Senator Kutcher for the work he has done. I know he has spent a lifetime in his profession and he is very good at what he does.

For the record, I would like to caution our chamber to consider what this amendment proposes. This is taking us into a whole other debate. I feel like we are not dealing with the Bill C-7 we had before, as we are suddenly talking about a greater expansion. I am not saying that those Canadians who suffer from mental illness as the sole underlying reason do not have rights. I have listened to the debate and I appreciate what everyone has said. I wanted to put the following concerns on the table as to why we should take our time and perhaps not come to this now but a little later. I don't know what would satisfy those who support this as "a little later," but these are the comments I wanted to make.

With regard to what Senator Kutcher said about national training that all will be organized, I question the timing of that. In this COVID-19 reality, with our expansive country, the urban-rural divide, the concerns expressed by our witnesses, the lack of consultation and certain health professionals expressing their concern about including those with mental illnesses in the regime, I think this runway of 18 months is still not long enough. A year would certainly not be long enough. We have not even done the five-year review. I wish we could have done that first before we even looked at what safeguards to remove or add.

• (1640)

Many senators have said that we could adopt this motion and then that would give us 18 months to consider the regulations and safeguards. But we're also debating about removing safeguards, so I'm confused as to whether we are actually opening it up to even greater risks without being fully prepared.

I'm trying to get my bearings at this moment with this first amendment and all the speeches I have heard.

I did speak to Gabrielle Peters, who lives with a disability and with poverty. Her testimony through Spring Hawes and Dignity Denied was extremely compelling at the committee. I accepted a call with them, and I am going to speak later in another debate and include her words to me, just to be her voice and the voice of those who are so concerned about what we are doing here, even with Bill C-7.

Senator Lankin mentioned national standards and training, which Senator Kutcher mentioned. I believe that any time you add the word "national," the challenge in our country is to actually take it to the nation in the way it must be done. And adapting to Indigenous standards — I'm not sure, without even having these standards yet, how all of this will be adapted. We heard from witnesses that there was not enough consultation with Indigenous communities. We heard from the majority of Canadians living with disabilities that they have these concerns. We have heard from physicians about their conscience rights.

So while we have yet to look at a five-year review to fully assess and make the kinds of amendments we are proposing, we are now asked to consider this amendment, which is very alarming. On a personal level, I have family members, people who are very close to me, who are living with mental illnesses. We have not looked at the pharmacology of what happens. To those who have not had the chance to witness first-hand, if these individuals I love dearly were given the option of MAID during a time when the medication they were taking made them feel like a piece of wood trapped in a room for a whole year — and another former colleague who talked about that same drug that made him suicidal — I know we would not have these individuals with us now.

I caution our chamber to take some time. Let us continue with Bill C-7. Although I know there is a sunset clause and time that is being proposed, I want to say that, based on everything we've heard — and, in Vancouver, with an opioid crisis where we cannot even deal with the mental health issue, let alone what would happen if we looked at opening up MAID in 18 months — that is alarming. We have had years of an opioid crisis — not enough detox beds or rehab space — and it's a growing concern throughout our country, not just in B.C.

For all of these reasons, I want to caution all of us to carefully consider and to take our time. I do not believe 18 months is enough time based on everything that has happened to date and the fact that we don't even have the five-year review. Thank you.

Hon. Senators: Hear, hear.

[*Translation*]

Hon. Chantal Petitclerc: I, too, would like to share my thoughts on this amendment. First, I would like to thank Senator Kutcher for all of the work that he has done over the course of his career, for the attention he is giving to this issue and for the amendment before us.

[*English*]

Senator Kutcher, as you know, I appreciate the intention behind your amendment, which is imposing a deadline to ensure that safeguards are examined and put into place quickly. However, as you know, I'm also thinking about the Council of Canadian Academies' report on MAID for mental illness.

As we have heard from mental health experts at the committee during the pre-study, they are significant. There are differences of opinions, convictions and strong arguments as to whether MAID is ever appropriate or when it is appropriate where the only medical condition is mental illness, and if so, what kind of safeguards would be sufficient or adequate to make sure that a person's life is never prematurely ended when their quality of life could have been improved.

I have shared with you more than once that I struggle. While I support that we cannot discriminate or isolate a group, and while I am 100% in agreement that mental illness can bring intolerable suffering, what I heard in committee left me still struggling, although confident in the competence of our professionals.

In my view, it would be a cautious approach for Parliament to retain the mental illness exclusion, as it is proposed in Bill C-7, until MAID for mental illness can be safely provided and after considering what safeguards are needed in the Criminal Code.

But if this chamber is to support a sunset clause, we must ensure that Parliament and the government have adequate time to review, consult and put together a regime for mental illness as a sole underlying condition that answers all the complexities of the issue. Thank you.

Hon. Senators: Hear, hear.

Senator Batters: I have a question for Senator Petitclerc. Being the bill's sponsor, this is obviously an important part of your bill. I will give you a little more time to stand up for this important part of your bill.

Senator Petitclerc: I am not sure I understand the question.

Senator Batters: Please take a little more of your time. You are the sponsor of this bill. This is an important part of your bill. Please take a little more time to stand up for those with mental illness and for this part of your bill.

Senator Petitclerc: I said what I wanted to say in that regard and I stand by it. Thank you.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: In amendment, it was moved by the Honourable Senator Kutcher, seconded by the Honourable Senator Dalphond, that Bill C-7 be not read a third time but that it be amended — May I dispense?

Some Hon. Senators: Dispense.

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

Some Hon. Senators: Nay.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker pro tempore: There will be a vote at 5:03 p.m. after a 15-minute bell.

Call in the senators.

• (1700)

The Hon. the Speaker pro tempore: Honourable senators, pursuant to the order of December 17, 2020, there has been a slight adjustment in the voting process for senators participating by Zoom. You will now appear on camera as your name is called. I would ask you to be aware of this and to ensure that both your face and your card are visible. If you get any pop-up messages during the vote, please simply ignore them.

Once your name has been called, you can lower your card.

Motion in amendment of the Honourable Senator Kutcher agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Bernard	Griffin
Black (*Alberta*)	Harder
Black (*Ontario*)	Hartling
Boehm	Jaffer
Boisvenu	Keating
Boniface	Klyne
Bovey	Kutcher
Boyer	Lankin
Brazeau	Loffreda
Busson	Marwah
Carignan	Massicotte
Christmas	Mégie
Cordy	Mercer
Cormier	Mockler
Cotter	Moncion
Coyle	Moodie
Dalphond	Munson
Dasko	Oh
Dawson	Patterson
Deacon (*Nova Scotia*)	Ravalia
Deacon (*Ontario*)	Saint-Germain
Dean	Seidman
Downe	Simons
Duncan	Smith
Dupuis	Verner
Forest	Wallin
Forest-Niesing	Wells
Frum	Wetston—57
Galvez	

NAYS
THE HONOURABLE SENATORS

Anderson	McPhedran
Ataullahjan	Miville-Dechêne
Batters	Ngo

Dagenais	Omidvar
Greene	Plett
Housakos	Poirier
MacDonald	Richards
Manning	Stewart Olsen
Marshall	Tannas
Martin	Woo—21
McCallum	

ABSTENTIONS
THE HONOURABLE SENATORS

Bellemare	LaBoucane-Benson
Gagné	Pate
Gold	Petitclerc—6

• (1710)

Senator Pate: Honourable senators, I would like an opportunity to explain my abstention.

The Hon. the Speaker pro tempore: Yes.

Senator Pate: Thank you. I abstained from this vote on the grounds that I believe it is irresponsible to rush to expand access to non-end-of-life medical assistance in dying in the name of upholding individual autonomy and choice, without having first — or at least also — insisted with the same urgency and conviction on equitable and meaningful access to health care and mental health care, as well as social, economic and housing supports.

These measures are vital in order to ensure everyone can access the supports that create meaningful choices about how to alleviate suffering, including suffering related to mental health issues. Thank you, Your Honour.

• (1720)

[*Translation*]

Senator Dalphond: Honourable senators, I am proposing an amendment to prevent consequences not intended by the government that could result from using the exclusion of mental illness as the sole underlying condition as grounds for denying access to medical assistance in dying to people with neurocognitive disorders, such as Alzheimer's, Parkinson's, Huntington's and dementia.

Eligibility for medical assistance in dying is established based on the criteria set out in subsection 241.2(1) of the Criminal Code, which Bill C-7 does not propose to amend. In order to get access to medical assistance in dying, a person must have a grievous and irremediable medical condition, which means that the person must have a serious and incurable illness, disease or disability.

Bill C-7 proposes adding that "mental illness is not considered to be an illness, disease or disability," and with the amendment that we adopted, this exclusion would continue to apply for 18 months. If the House of Commons accepts our proposal, then the mental illness exclusion would still apply for the next 18 months. The practical effect of this exclusion is to restrict access to medical assistance in dying for people suffering solely from a mental illness for as long as the exclusion is in effect.

In addition to the concerns we discussed a few minutes ago regarding stigma and discrimination, many experts spoke about the uncertainties that even the use of the term "mental illness" raises.

Dr. Mona Gupta, a psychiatrist and chair of the Association des médecins psychiatres du Québec's advisory committee on medical assistance in dying, which was asked to examine the issue by the College of Physicians, told the Standing Committee on Legal and Constitutional Affairs the following, and I quote:

> . . . the expression "mental illness" is not clear. In standard psychiatric terminology, we speak of mental disorders. It's a very broad area.

[*English*]

Fleur-Ange Lefebvre from the Federation of Medical Regulatory Authorities of Canada added:

> First, there is a lack of clarity. "Mental illness" is not a precise medical term. In medical terms, "illness" refers to the patient's individual experience with a disease.

The lack of precision casts a doubt and may lead to debate, in practice and possibly before the courts, as to whether or not neurocognitive disorders like Parkinson's and Alzheimer's constitute a mental illness for the purposes of the exclusion. Dr. Timothy Holland, a MAID physician provider and assessor explained:

> Mental illness, and the definition of illness itself, is something that has been in debate within medicine and philosophy. So many people will define mental illness as a specific set of diseases that are housed within the mind and within the DSM5 criteria — anxiety, depression. Other folks might argue it may be Parkinson's or Alzheimer's.

The uncertainty is further exacerbated by the fact that all forms of dementia and other neurocognitive disorders can be found, alongside other mental disorders, in the two main classification manuals used in psychiatry, as Professor Donna Stewart from the University of Toronto explained:

> The American Psychiatric Association and the World Health Organizations have independently developed a classification of diseases. The American one, which is called the DSM-5 — which stands for *Diagnostic and Statistical Manual of Mental Disorders*, fifth edition — includes all the dementias in their list along with a number of other neuropsychological conditions. The International Classification of Diseases, the ICD-10, of the World Health

> Organization also includes the dementias. Both are extremely broad, and both include the whole area of mental disorders under those classifications.

It is important to note that people with neurocognitive disorders, like dementia, can and have met the eligibility criteria set by Bill C-14. As Professor Jocelyn Downie from Dalhousie University explained:

> People with dementia can meet the eligibility criteria under Bill C-14. In fact they can meet the fourfold criteria. You can have capacity and still already have met the criteria for reasonably foreseeable, serious and incurable advanced state of irreversible decline and capability, and enduring intolerable suffering. So we have people with dementia getting MAID now under the current system.

An uncertainty in the Criminal Code on the meaning of mental illness may therefore lead to a real regression in the rights of people with neurocognitive disorders. There is a real risk of a chilling effect in practise. To avoid any potential criminal charges, physicians may choose to err on the side of caution and deny MAID requests from patients with neurocognitive disorders who would otherwise qualify for MAID.

[*Translation*]

Appearing before the committee, the Minister of Justice, David Lametti, tried to alleviate uncertainty by referring to the explanations in the "Legislative Background: Bill C-7: Government of Canada's Legislative Response to the Superior Court of Québec *Truchon* Decision," a background document published by the Department of Justice. The document reads as follows:

> Despite the absence of a single clear definition of mental illness, in the context of Canadian discussions on MAID, this term has come to be understood as generally referring to those conditions which are primarily within the domain of psychiatry . . . . In the context of the federal MAID legislation, the term "mental illness" would not include neurocognitive or neurodevelopmental disorders, or other conditions that may affect cognitive abilities, such as dementias, autism spectrum disorders or intellectual disabilities, which may be treated by specialties other than psychiatry . . . or specialties outside of medicine . . . .

In his testimony, Minister Lametti added, and I quote:

> Let me be clear: The exclusion is not intended to capture neurocognitive disorders that are due to Alzheimer's or Parkinson's disease . . . .

Notwithstanding the minister's comments and the explanations in the background document, that clarification does not appear in the text of the bill. Unfortunately, I am concerned that this could cause problems for practitioners.

There were also questions about what weight the background document might have when courts are called upon to interpret the expression "mental illness." In response to a question from Senator Carignan, Professor Patrick Taillon of Laval University explained, and I quote:

> . . . it is not uncommon for interpretation to be informed by documents other than acts and regulations, but in criminal law, it seems less likely, or at least less frequent, especially for mental health issues.

[*English*]

The issue here is a lack of clarity in Bill C-7. In the absence of a legislated definition, there will likely be uncertainty and debate on whether the mental illness exclusion is meant to include neurocognitive disorders. These individuals may find themselves excluded from the MAID framework even though this is not the government's intention. That unintended consequence can be avoided by a simple change to the language proposed in Bill C-7.

• (1730)

Before the committee, Fleur-Ange Lefebvre stressed the importance of clarity and the language used, and I would like to quote her again:

> . . . I'm sure we will all agree there must be clarity of legislation. The language cannot allow for divergent interpretations or uncertainty. Patients, families, the public, physicians, other health care professionals and law enforcement must all share the same understanding of the legislation.

Honourable senators, it is important, for the sake of clarity in the law, to ensure there is no regression in terms of access to MAID for Canadians with neurocognitive disorders.

MOTION IN AMENDMENT ADOPTED

Hon. Pierre J. Dalphond: Therefore, honourable senators, in amendment, I move:

> That Bill C-7, as amended, be not now read a third time, but that it be further amended in clause 1, on page 3, by replacing line 6 with the following:
>
> > "ness, other than a neurocognitive disorder, is not considered to be an illness, disease, or disabili-".

The end result would be that the whole clause would now read as follows:

> For the purposes of paragraph (2)(a), a mental illness, other than a neurocognitive disorder, is not considered to be an illness, disease or disability.

Thank you.

[*Translation*]

Hon. Diane Bellemare: Madam Speaker, I have a question for Senator Dalphond.

The Hon. the Speaker pro tempore: Yes, Senator Dalphond has three minutes left. Would Senator Dalphond take a question?

Senator Dalphond: Gladly.

Senator Bellemare: Senator Dalphond, my question is this: Why not wait for a full review of the legislation to be done, either next year or sometime soon, before proposing this kind of amendment?

I understand it and I agree with you, but I'm not sure that Bill C-7 is the best way to make all these changes. What are your thoughts on that?

Senator Dalphond: Thank you for the question, Senator Bellemare.

This amendment doesn't change the government's intentions. Rather, it confirms its intentions regarding the mental illness exclusion, which is new and wasn't included in Bill C-14. It confirms what the minister told the committee and what the government's explanatory document also says.

If we had to wait a year and a half to revisit the issue, uncertainty would abound and Canadians would be denied access to medical assistance in dying. Unfortunately, their psychiatrists would conclude that they don't qualify because they have Alzheimer's or Parkinson's, which are classified as mental illnesses in psychiatric manuals.

I hope that answers your question.

[*English*]

Hon. Frances Lankin: Senator Dalphond, will you take another question?

Senator Dalphond: Of course.

Senator Lankin: I support the intent of your amendment and what the government's stated intention is. I want to know from a legislative drafting point of view, when you specifically name certain disorders — neurological disorders in this case — that will not be included in a definition of mental illness, are we at risk of some other types of disorders being read to be included because they were not specifically excluded, and has that been looked at in your drafting of this? I'm just looking for clarity to ensure this is not creating a potential new problem.

Senator Dalphond: Thank you for this excellent question.

I'm not a psychiatrist and I will leave it to Senator Kutcher to explain psychiatry better than I can. But I can tell you for the last few weeks I have been working with the Quebec Association of Psychiatrists, Dr. Gupta, Dr. Green from outside Quebec and many other psychiatrists to find, first, a definition of mental illness. It became impossible to define, but they were clearly in agreement with the exclusion which is being proposed as achieving what is in the practice and what the government is trying to do.

[*Translation*]

The Hon. the Speaker pro tempore: Do any other senators have any questions? The motion in amendment is as follows:

> That Bill C-7, as amended, be not now read a third time, but that it be further amended in clause 1, on page 3, by replacing line 6 with the following:
>
> > "ness, other than a neurocognitive disorder, is not considered to be an illness, disease, or disabili-".

Hon. Pierre-Hugues Boisvenu: Honourable senators, I support the amendment proposed by my colleague, Senator Dalphond, and I will explain why.

As was reiterated many times during committee discussions, the mental illness exclusion is one aspect of the bill that many witnesses consider to be unconstitutional and discriminatory. It also does not clearly identify the persons affected by this exclusion. As Professor Downie of Dalhousie University stated when she appeared before the committee, clinicians do not draw a sharp line between the mental and the physical. The bill is also unclear when it introduces the exclusion clause without really providing a precise definition of the subject.

I believe that the issue of people suffering from neurocognitive disorders is extremely important and I will be proposing an amendment on that later. Neurodegenerative or neurocognitive diseases are on the blurred line between a physical and a mental illness. We know that there is a physical aspect associated with the degeneration of brain cells and that there can also be a mental aspect where the cognitive loss affects the patient's intellect.

When I spoke with Joanne Klineberg, Acting General Counsel at the Criminal Law Policy Section of the Department of Justice, she assured me that neurodegenerative diseases are not excluded if the patient meets all the criteria for medical assistance in dying.

We must all recognize that the term "mental illness" is quite broad and the definition provided by the Department of Justice is not clear where it states that the exclusion concerns conditions "that are primarily within the domain of psychiatry."

As Senator Dalphond indicated in his explanation:

> The uncertainty is not mitigated by the explanation we find in the legislative background to Bill C-7. According to the Association des médecins psychiatres du Québec:
>
> > This statement is disconcerting because neurodevelopmental disorders are not subject to the exclusion clause. Neurodevelopmental disorders include such conditions as attention deficit hyperactivity disorder, or ADHD, learning disorders and stuttering. It would be counterintuitive for clinicians that such conditions would be eligible for requests for medical assistance in dying but much more serious conditions such as schizophrenia or bipolar disorder would be excluded. This could cast doubt on who exactly the government intends to exclude with the mental illness exclusion provision.

This lack of precision in the bill could have repercussions on requests for medical assistance in dying for persons with neurocognitive disorders. Health practitioners might exclude certain requests — out of caution or hesitation — because of this grey area that is maintained by the current legislation and the lack of clear definition of mental illness.

Based on this uncertainty, I believe Senator Dalphond's amendment makes sense. It would clarify the wording of the bill, which I think is necessary before it comes into force. With this clarification, the Senate is doing its job and making sure that the bill will be clear and that it will apply in the intended instances.

• (1740)

I therefore fully support Senator Dalphond's amendment.

[*English*]

Hon. Stan Kutcher: I also support Senator Dalphond's amendment. I think it's important for clarity. It's now much clearer. This language was not in the bill, but we were told by the minister that this is what he understood the bill to address. It's very important to bring clarity into the bill.

This amendment is a clarification that will help ensure no one loses a right to MAID assessment on the basis of a diagnosis over the next 18 months. In my opinion, it also is a step forward in better understanding and talking about mental disorders because the language it uses is clinically recognizable. Because we can look at the clinically recognizable criteria, we all know better what Bill C-7 is talking about.

This improved clarity will be important for persons who are considering MAID. It will be very important for MAID providers, clinicians and regulators. Should there possibly be a court challenge or a court ruling on this issue during the next 18 months, this will assist the courts who are tasked with making a ruling.

I thank Senator Dalphond for this amendment, and I urge our colleagues to support it. Thank you.

[*Translation*]

Hon. Renée Dupuis: I have a question for Senator Kutcher.

[*English*]

The Hon. the Speaker pro tempore: Senator Kutcher, would you answer a question from Senator Dupuis?

Senator Kutcher: Certainly. How much time do we have?

The Hon. the Speaker pro tempore: You still have three minutes.

Senator Kutcher: Thank you so much.

[*Translation*]

Senator Dupuis: Senator Kutcher, your proposed amendment uses the term "neurocognitive disorder." Can you confirm whether the term "neurocognitive deficits" is also used? Do you think that this includes major neurocognitive deficits as well as minor ones?

[*English*]

Senator Kutcher: I think this bill clarifies the diagnostic categories that currently are subsumed under neurocognitive disorders. They would be diseases such as Alzheimer's, the other various types of dementia and those kinds of disorders.

[*Translation*]

Hon. Dennis Dawson: Before I begin my brief comments in support of my colleague Senator Dalphond's amendment, I want to thank the members of the committee who spoke today and who kept us informed throughout the process.

I will support this bill and I intend to support the amendments proposed by Senator Kutcher and Senator Dalphond. However, even if their amendments are defeated, in either the Senate or the House, I will continue to support the bill, because I think it addresses a need.

The train has left the station. Medical assistance in dying is a recognized right. In Canadians' minds, this bill is meant to improve the current legislation, not to reopen the debate. We cannot go backwards. Canadians across the country, and in particular in Quebec, are hoping for clarifications, but I think they will continue to support Bill C-7 much like they supported Bill C-14.

I think that Senator Dalphond's amendment provides some clarity and certainty about the notion of mental illness, to assure people with illnesses affecting their cognitive abilities, such as Alzheimer's or other forms of dementia, that they will be able to make a decision before they become cognitively impaired by their illness.

Many of you spoke about the letters they received, and one of the reasons I'm speaking today is that this issue is personal for me.

[*English*]

I'm probably the only one in this debate who has participated in the execution of a right to die. After we had passed Bill C-14, my sister-in-law was diagnosed with cancer. Part of her problem was that she could still reason.

[*Translation*]

The cancer had metastasized to her brain, and if she waited too long, it would take away her freedom to make her own choice.

After receiving her diagnosis in the summer of 2019, she decided to accept the fact that she was going to die, but she wanted to die with dignity. She wanted to do it in the way she wanted at the time she wanted.

[*English*]

We had passed Bill C-14, and she used the power that legislation gave her. We gave her that power. She could have waited according to her diagnosis. She could have waited to use her right to delay, but she had brain tumours, and as I mentioned before in French, wanted to exercise her rights. She would have lost cognitive function and the ability to decide. She was lucid and proud of her decision. Her husband — my brother — as well as her children respected her decision.

It was done in an atmosphere, as my friend Pierre said in his speech yesterday, with a little glass of wine in the morning. We were celebrating her life. Friends and family were in the room, and a few minutes before the execution of the decision, we were asked to leave the room. Only my brother and the children stayed in the room. Two minutes later, we walked into the room.

She had decided to exercise her right to die. It was not done in a clinical or cold manner; it was done with love. It was not a sterile medical act. It was an act of love, done and shared by friends, family and loved ones. She did it according to her will. She did it with a smile and with dignity.

[*Translation*]

She was not going to live, so she wanted to die on her own terms. That is what she did, and it remains one of the most touching moments of my life.

I voted in favour of Bill C-14, and I was proud to do so. At that time, I understood that this was a right that we could not deny Canadians.

My good friend Serge Joyal raised certain objections to Bill C-14. He said that the bill was not perfect, to which I responded that the perfect is the enemy of the good. If we had continued to debate the bill, it likely would not have been passed and my sister-in-law would not have had the right to exercise what is now a vested right.

I am saying that, yes, I will support certain amendments, but I want it to be clear that I will always support the bill, even if the amendments are rejected in the other place.

I support Senator Dalphond's amendment, which points out that the exclusion of mental illness does not apply to people with neurocognitive disorders that would deprive them of the privilege of making their own decisions.

[*English*]

I want to thank everyone who has worked on this bill. You have done a wonderful job. This will probably be my only intervention. I am quite emotional on this issue since I have participated in the exercise of the rights given by this law. I'm still very emotional about it. Thank you very much.

[Senator Dawson]

• (1750)

Hon. Senators: Hear, hear.

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

> That Bill C-7, as amended, be not now read a third time, but that it be further amended in clause 1, on page 3, by replacing line 6 with the following:
>
> "ness, other than a neurocognitive disorder, is not considered to be an illness, disease, or disabili-".

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

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed to the motion in the Senate Chamber, please say "nay."

Some Hon. Senators: Nay.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

(Motion in amendment of the Honourable Senator Dalphond agreed to, on division.)

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, during our study of Bill C-7, our committee heard more than 100 witnesses from every walk of life, who gave informative, enriching and often very moving testimony. Experts, families and associations helped us better understand certain aspects of medical assistance in dying and where Bill C-7 falls short.

Let's not forget that the purpose of this bill is to correct the shortcomings of Bill C-14, which was adopted in 2016 even though it did not fully respond to *Carter*. In 2019, the Superior Court of Quebec decision in the Truchon and Gladu cases confirmed the need to review the medical assistance in dying legislation. I want to note that the Senate had already made recommendations in 2016 in the context of the study on Bill C-14 in order to avoid the situation we find ourselves in today.

Unfortunately, the government opted for speed over substance.

I have said in the past that medical assistance in dying appeals primarily to our personal values instead of our collective values, which makes our debates difficult, highly emotional and very moving at the same time. Passing such deeply human legislation is a major legislative challenge, especially when the right to die with dignity, which is guaranteed by certain sections of our Constitution, collides with religious, cultural or community values that do not recognize this right.

Ever since we embarked on this debate, it has been my hope that the passage of Bill C-7 would not leave other suffering individuals behind as Bill C-14 has done for the past five years.

In addition to the constitutional issue and Bill C-7's other flaws, which I mentioned in my speech at second reading, I think this bill disregards the suffering of patients struggling with serious illnesses, including degenerative brain diseases such as Alzheimer's and dementia.

When a person is diagnosed with a degenerative disease, massive uncertainty, confusion and insecurity take over their life.

Neurodegenerative diseases, also known as neurocognitive disorders, have an irreversible effect on patients. Their quality of life deteriorates slowly and painfully, and they experience a gradual loss of independence, both physical and mental. Loss of knowledge of oneself and of one's condition is one of the most problematic aspects of brain degeneration. That is why patients with this kind of disease, which is both psychiatric and physical, must be given the option to make an advance or proxy request for medical assistance in dying.

Subclause 3.2 of amending clause 1 in Bill C-7 appears to open the door slightly to advance consent, but the conditions are poorly defined and don't address the complexity of the situations experienced by people with neurodegenerative diseases.

Worse still, in the context of the bill before us, some witnesses pointed out that individuals with this type of illness could resort to suicide as a means of hastily ending their life for fear of losing the capacity to consent to MAID. This situation could cut their lives short by a few months or even a few years. Bill C-7 therefore imprisons these individuals by depriving them of their right to die with dignity surrounded by their families.

For instance, Alzheimer's is a progressive disease that affects each individual differently. A person can live with Alzheimer's disease for years without knowing when they will actually lose control of their cognitive abilities or when they will be unable to consent to MAID. Advance consent would allow such individuals to live with peace of mind, knowing that when the time comes, they and their families won't have to endure the terrible suffering of late-stage Alzheimer's. The bill maintains a grey area as to how such individuals could access medical assistance in dying, and the Minister of Justice has been clear that the bill doesn't allow proxy requests.

It is therefore incomprehensible that the government didn't introduce more comprehensive legislative measures with respect to neurodegenerative diseases when it had four years to draft legislation on this issue.

I was touched this week to hear testimony from many people who are affected by brain degeneration. Sandra Demontigny, a mother with three children aged 14, 18 and 22, received the crushing diagnosis of Alzheimer's disease at the age of 39. This young 41-year-old mother and author of the book *L'urgence de vivre : ma vie avec l'Alzheimer précoce* decided to speak out to convince those responsible for studying MAID that it is important to expand the eligibility criteria. She wants people like her, who are diagnosed with an irreversible degenerative disease like Alzheimer's, to be able to make an advance or proxy request for MAID. This way, they would still have the right to access MAID when the time comes even if they no longer have the mental capacity to make the request.

I want to share a quote from Ms. Demontigny about her father, who died from Alzheimer's at age 53:

> Near the end, he was lying in a hospital bed, restraints around his torso, legs and arms . . . . It was horrific. My brother and I can still see those images. We could see the agony in his eyes. He was frightened, distraught, he could no longer move, he no longer recognized anyone . . . . We can still hear the sound of him crying.

She also said:

> I want to be able to give advance directives, I want to be able to say, "When I reach the point where I no longer recognize my children, I want to be given medical assistance in dying." Sort of like a protection mandate . . . .

I was put in contact with Sandra Demontigny by Véronique Lauzon, a journalist with *La Presse*.

I had the privilege of speaking with this courageous woman about her journey, and I was able to offer my support for her efforts to ensure that the bill we are currently studying in the Senate meets the needs of patients like her.

Moreover, Quebec, which was preparing to amend its own law on medical assistance in dying to include advance directives, is currently waiting for the outcome of the federal government's parliamentary work. The passage of Bill C-7 as drafted would be a step backwards for Quebec.

That is why I would like to move an amendment so that Parliament can review the act, within 90 days of Royal Assent, for persons with neurodegenerative diseases in order to make recommendations on legislative changes.

In closing, I want to send my best wishes to all families with a loved one suffering from this terrible disease. On behalf of Sandra Demontigny and everyone suffering from this disease, I plan to move an amendment to the bill in order to bring them hope.

I sincerely believe that a person receiving such a diagnosis has the right to choose when they want to stop living so that they can die with dignity, surrounded by their family.

• (1800)

I sincerely hope that Minister Lametti's pledge to seriously consider the Senate's amendments will not turn out to be mere lip service, as was the case when the first medical assistance in dying bill, Bill C-14, was passed in 2016.

If that is the kind of prison in which this bill will condemn these people and their families to suffer for years, with science powerless to do anything about it, it is our responsibility to find the key to set them free. I only hope that history will not repeat itself with this government and that it will not allow sick people to go on suffering for years while it ignores a right that the Supreme Court recognized in 2015.

MOTION IN AMENDMENT—DEBATE

Hon. Pierre-Hugues Boisvenu: Therefore, honourable senators, in amendment, I move:

That Bill C-7, as amended, be not now read a third time, but that it be further amended on page 9 by adding the following after line 30:

"**Review**

5 (1) Within 90 days after the day on which this Act receives royal assent, a comprehensive review of access to medical assistance in dying for persons who suffer from a neurodegenerative disease must be undertaken by any committee of the Senate, the House of Commons or both Houses of Parliament that may be designated or established for that purpose.

(2) The committee must, within one year after the review is undertaken, submit its report on the review, including a statement of any legislative changes that the committee recommends, to the House or Houses of Parliament of which it is a committee.".

Thank you.

The Hon. the Speaker pro tempore: In amendment, it was moved by the Honourable Senator Boisvenu, seconded by the Honourable Senator Carignan, that Bill C-7 be not now read the third time but that it be amended —

Hon. Senators: Dispense.

[*English*]

The Hon. the Speaker pro tempore: We shall continue our debate. Pursuant to the order adopted yesterday, the sitting must now be suspended for an hour. Therefore, the sitting will resume at 7:03.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT NEGATIVED—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Petitclerc, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), as amended.

And on the motion in amendment of the Honourable Senator Boisvenu, seconded by the Honourable Senator Carignan, P.C.:

That Bill C-7, as amended, be not now read a third time, but that it be further amended on page 9 by adding the following after line 30:

"**Review**

5 (1) Within 90 days after the day on which this Act receives royal assent, a comprehensive review of access to medical assistance in dying for persons who suffer from a neurodegenerative disease must be undertaken by any committee of the Senate, the House of Commons or both Houses of Parliament that may be designated or established for that purpose.

(2) The committee must, within one year after the review is undertaken, submit its report on the review, including a statement of any legislative changes that the committee recommends, to the House or Houses of Parliament of which it is a committee.".

The Hon. the Speaker pro tempore: Resuming debate on the amendment of Senator Boisvenu.

Hon. Claude Carignan: I am pleased to support Senator Boisvenu's amendment, which seeks to give parliamentary committees the authority to undertake, as soon as possible, a review of the access to medical assistance in dying for people who suffer from neurodegenerative diseases.

Bill C-7 is somewhat confusing in the way it addresses this critical issue. Subclause 1(2) adds a new subsection to the Criminal Code, subsection 241.2(2.1), which stipulates that, in order for paragraph 241.2(2)(a) to apply, mental illness is not considered to be an illness, disease or disability.

In the Department of Justice's support document, as we saw earlier with Senator Boisvenu's amendment, the concept of mental illness does not include neurocognitive or neurodevelopmental disorders.

Senator Boisvenu's proposed amendment, therefore, prominently raises the issue of advance directives. We thought about making amendments to Bill C-7 with regard to advance directives, but that is becoming so increasingly complex and detailed that I would even venture to call it micromanagement of the Criminal Code.

As I have often said, in the case of Bill C-7, we need to amend the Criminal Code and we need to determine what is criminal and what is not. However, the more detail we get into, the more likely we are to declare less significant behaviours to be criminal or to infringe on provincial jurisdiction.

It is important to leave it to the federal government, the provincial governments and the professional organizations to determine together the best possible process when it comes to mental illness and advance directives in particular.

Senator Kutcher's amendment proposes an 18-month time limit on the mental health exclusion provision. We're discussing that amendment now and I support it because in three months we might be telling the government that not only does it have a deadline, a period of 18 months during which it will have to apply the mental health provisions, but it has three months before it will be asked to immediately start reviewing the situation and taking a closer look at the issue of advance directives.

I think this is important. When people talk about mental illness they often refer to Alzheimer's and say that they want to be able to indicate in advance that when they no longer recognize their children, when they are in a situation where they have all sorts of conditions, that they want to have access to medical assistance in dying. People currently no longer have access to MAID because they no longer have the capacity to consent to it at the time when it has to be administered.

I very much support Senator Boisvenu's amendment and I invite you to support it as well.

Hon. Lucie Moncion: Would Senator Carignan agree to take a question?

Senator Carignan: Yes, of course.

Senator Moncion: Could you tell me why you support such short time frames, namely, 90 days for the creation of this committee and just one year for the study? I find these to be quite short.

Senator Carignan: Three months is how long it will take to set up the committee. I think that's a rather long time. The minister has committed to conducting the study. This is also true for the review of Bill C-14. June 2020 was the timeline decided on for this study of Bill C-14. However, it has yet to begin. With the passage of this bill, the time frame is 90 days. This is reasonable given that this obligation already exists in Bill C-14, at least in part. This gives it the importance its deserves.

As for the 12-month period, I think that's reasonable when you consider that, in the context of the 18-month exclusion that was applied earlier, this allows for six months to put the training and necessary measures in place. I see this as a reasonable and sensible timeline.

[*English*]

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I want to take just a few minutes to address this amendment that our colleague Senator Boisvenu has brought forward. I don't think it will come as a surprise to anybody in this chamber, or probably anywhere in the country, that I am not supportive of this legislation as a whole. I am certainly not supportive of legislation that will further allow people with mental illnesses to qualify. This amendment certainly touches on that.

• (1910)

The Hon. the Speaker pro tempore: Senator Plett, we seem to have difficulty with translation. Sorry, Senator Plett.

Senator Plett: I trust, Your Honour, that we'll just start over. I probably won't need six minutes, but I trust, if I do, you will indulge me.

As I said, it will not surprise anybody that I am inherently opposed to the entire legislation. I am opposed to expanding it to people with mental illnesses. I am opposed to the amendment that clearly was already passed. However, I believe that if we cannot defeat legislation, we have to try to improve it. That is why I have participated in some of the things that I'm taking part in.

Although I don't agree with my colleague and friend Senator Boisvenu on some of his reasoning, I do agree with what he is doing with the amendment. We live in a wonderful country, and we can disagree and still be friends. I'm happy about that, and I think Senator Boisvenu and my relationship will continue fine.

Colleagues, I support this amendment. The reason I support the amendment is that in the 10 and a half years that I have been in the Senate, I do not remember ever voting against sending a bill to committee. I have voted against many bills at third reading. I have even occasionally said "on division" with a bill going to a committee, but I don't think I have ever voted against. If I have, there are people who occasionally like to correct me when I have made comments, and I'm sure they will correct me in that. But I believe a bill should be studied at committee; I really do. I can come up with reasons why the legislation should come forward or not. That's why we had over 150 witnesses at the Legal Committee studying this bill.

What Senator Boisvenu is trying to do here is to have another study. We have heard from witness after witness that we do not know enough about this legislation and that we need to know more. The only way we can find out more is by striking a committee that will tell us more. Although I do not support the concept of this legislation — I do not support the concept of people with mental illnesses being included as candidates for assisted suicide — I do support the concept of a bill being studied more. That's what Senator Boisvenu is doing here. Senator Moncion made a good point a minute ago in saying, "Is 90 days enough?" I'm not sure it is, but it is in order to strike a committee. The committee then has a year.

We all know that governments will take at least what they are given and maybe a little bit more. Senator Moncion, even though we are giving them 90 days, I have a feeling they will take more than 90 days. Nevertheless, hope springs eternal and maybe they will get it done. Colleagues, for that reason, I do support the amendment that my colleague has brought forward, and I will be voting in favour of it. Thank you.

The Hon. the Speaker pro tempore: Senator Plett, Senator Lankin would like to ask you a question. Will you take a question?

Senator Plett: I'll take the question, certainly.

Hon. Frances Lankin: I am not entering at this point in time, Senator Plett, to remind you of the time you voted against something before it went to second reading. I'm asking a question that is probably unfair to ask of you, but I couldn't ask Senator Carignan in a timely fashion.

I want to be sure the language in the amendment as I read it accomplishes what Senators Boisvenu and Carignan set out as the timeline. The 90 days in the amendment proposes that a review be undertaken — that a review be undertaken within 90 days — and the committee report be out within a year. It's not clear to me that it is easily understood that the review doesn't have to be completed in the 90 days. The language is vague on that. Perhaps I'm not interpreting it correctly, but I think to insist on the review starting within 90 days is absolutely appropriate. To insist that it be completed within 90 days — and depending on whether or not this is combined, on the government initiative, with the other reviews that are overdue and that were set out in Bill C-14 — that timeline may not work.

Maybe someone else, if you're unable, Senator Plett, could respond to that. I would like to know before being asked to vote. I would like to have the clarity of knowing if the proposed amendment is ambiguous about whether or not the review would have to be both undertaken and completed within 90 days.

Senator Plett: I didn't want to name any names here, but you weren't here so I could say, "Let me look at her and whistle" when I talked about who would call me out on my comment about not having voted. Nice seeing you on the screen, senator.

Let me just read the second paragraph. Maybe, in the meantime, Senator Boisvenu can text someone over here so they can rise on debate to clarify this.

The second clause says, "The committee must, within one year after the review is undertaken, submit its review . . . ." I would assume that one year would be from when the committee starts their review. That is the way I would understand it, but I certainly didn't write it. I will only say that. If that isn't correct, maybe we can get somebody to send us a note.

The Hon. the Speaker pro tempore: We are resuming debate.

[*Translation*]

Hon. Pierre J. Dalphond: I heard the speech given by my colleague, Senator Boisvenu, the substance of which was very interesting. We share the same opinion on the issue at hand, that is, advance directives in the context of diseases that cause gradual degeneration of the brain and the loss of the capacity to consent. Quebec is way ahead on this issue, and I think there is a growing consensus that we should adopt a regime of advance directives.

However, I still have some questions about the solution that is being proposed.

[*English*]

What is being proposed is that we set up a committee — this house, the House of Commons or a joint committee — and this committee will report within a year, which I suppose means 15 months from now. I suspect we may have an election within 15 months from now. It is likely, and we'll have to adjust. That concerns me.

My second concern is that the current law, Bill C-14, provides, as the currently proposed Bill C-7 in its preamble states:

> . . .whereas the law provides that a committee of Parliament will begin a review of the legislative provisions relating to medical assistance in dying and the state of palliative care in Canada in June 2020 —

— we know we missed that —

> — which review may include issues of advance requests and requests where mental illness is the sole underlying medical condition . . . .

Because of the way Bill C-7 was drafted, all of the witnesses we heard from did not address the issue of an advance directive. It was not part of the bill. We had a few witnesses who referred to it. Certainly, it's a complex issue.

In Belgium, for example, where there are advance directives, there is a commission that must supervise and review on a five-year basis. They ask, "You signed that five years ago. Do you still agree?"

• (1920)

It is complex machinery that has to be developed. I think the parliamentary committee could look at that. But I have a concern of having this on one side and, as Senator Gold and the Minister of Justice invited us to do before, setting up a committee as soon as possible to do an overall review of Bill C-14 and the regimes. If there were two tracks going more or less in parallel, one committee more specialized on the issue of advance directives and another committee doing everything else, how could this recoup the work of the other committee? So I think we should work on pressures to have a committee looking at all these issues together in the context of the review of the bill.

I understand the purpose of what Senator Boisvenu wants to achieve and I share that. But I think I'm confident that the undertakings that Senator Gold, in this house, and the Minister of Justice made are real commitments and in the coming months we will look at the whole review. Thank you.

Hon. Stan Kutcher: Senator Dalphond, would you take a question?

Senator Dalphond: Yes, please.

Senator Kutcher: You spent some time discussing with various psychiatrists language for your amendment and you chose "neurocognitive disorders." Here the language is "neurodegenerative disorders." I would like to know what you think about that. Neurodegenerative disorders include Alzheimer's, ALS, Friedreich's ataxia, Huntington's disease, Lewy body dementia, et cetera. There is a whole host of them that are traditionally called neurodegenerative. However, I want to raise the issue that more recently schizophrenia and even depression — there has been a lot of work suggesting that they too may be considered to be neurodegenerative diseases; for example, multiple studies in depression have found atrophy or neural loss in various parts of the brain, including the cortex and the hippocampus, and there is increasing scientific thought that

these diseases are also neurodegenerative. Do you think the language could be tightened up if it's looking primarily at neurocognitive disorders?

Senator Dalphond: It is kind of tough answering questions from an expert who is asking what you think about his expertise.

I would be inclined to defer to his expertise. But I must say that through the consultations I made, psychiatrists told us we should use "neurocognitive" rather than "neurodegenerative" concepts because it's not exactly the same thing, as our expert just pointed out. That is why in my motion I was referring specifically to neurocognitive disorders.

Senator Kutcher: Thank you very much, Dr. Dalphond — or, rather, Senator Dalphond.

Hon. Marc Gold (Government Representative in the Senate): Thank you, Senator Boisvenu, for the amendment and your thoughtful speech. I want to share some concerns, however, that I have with this particular amendment. Some of them have been hinted at and addressed by Senators Lankin and Dalphond. I will be brief.

First, this phrase in the amendment — "access to medical assistance in dying for persons who suffer from a neurodegenerative disease" — is unclear at least in its intent as it sits in this amendment. For example, does it mean that we should be focusing on advance requests for MAID for persons who are diagnosed with such conditions? It is a legitimate question. Or might it be focusing on how persons with such diseases are being dealt with under the current law?

Colleagues, as we know, under the current MAID regime, persons suffering from neurodegenerative diseases can be eligible for MAID if they otherwise meet the eligibility criteria in the current law. Bill C-7 doesn't change that. So that clarity is important, as we've heard on more than one occasion in this debate.

Second and equally of concern is that the 12-month deadline after which or by which time a report would have to be submitted may simply be too short to enable the necessary work to be done properly. The committee needs to take the time to do its work, and things may get in the way. The pandemic may get in the way. There may be an election within the 12 months. There is certainly a summer period. If there is an election, there is a caretaker period. It's not clear that the 12 months would be sufficient for the work to be done properly as it must indeed be.

Finally, and this was a point other colleagues made, there is an additional challenge because this review and study would overlap with the parliamentary review that is contemplated and required under Bill C-14 and to which the government is committed, as I've stated on more than one occasion in this chamber. That larger review would be at the same time looking at this and other issues if so contemplated.

These reasons — the lack of precision of what it actually is intending to do and the challenges of actually accomplishing that in a timely fashion and the potential overlap or competition with the parliamentary review that will be in place between now and then — lead me to be unable to support this amendment. I would respectfully ask colleagues to oppose it as well.

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

Some Hon. Senators: Question.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Boisvenu, seconded by Senator Carignan, that Bill C-7 not be read a third time but amended — may I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker pro tempore: If you are opposed to adopting the motion in amendment, please say "no."

Some Hon. Senators: No.

The Hon. the Speaker pro tempore: Those in favour of the motion who are in the Senate chamber, please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed to the motion and are in the Senate chamber, please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

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

Senator Plett: We ask for a 30-minute bell.

The Hon. the Speaker pro tempore: We will have a vote at 7:57. Call in the senators.

• (1950)

[*Translation*]

The Hon. the Speaker pro tempore: Honourable senators, pursuant to the order of December 17, 2020, there has been a slight adjustment in the voting process for senators participating by Zoom. You will now appear on camera as your name is called. I would ask you to be aware of this and to ensure that both your face and your card are visible. If you get any pop-up messages during the vote, please simply ignore them.

Once your name has been called, you can lower your card.

[*English*]

Honourable senators, the question is as follows:

It was moved by the Honourable Senator Boisvenu, seconded by the Honourable Senator Carignan:

> That Bill C-7, as amended, be not now read a third time, but that it be further amended on page 9 by adding the following after line 30:
>
> "**Review**
>
> **5 (1) Within 90 days after the day on which this Act receives royal assent, a comprehensive review of access to medical assistance in dying for persons who suffer from a neurodegenerative disease must be undertaken by any committee of the Senate, the House of Commons or both Houses of Parliament that may be designated or established for that purpose.**
>
> **(2) The committee must, within one year after the review is undertaken, submit its report on the review, including a statement of any legislative changes that the committee recommends, to the House or Houses of Parliament of which it is a committee.**".

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Ngo
Batters	Oh
Black (*Alberta*)	Patterson
Boisvenu	Plett
Brazeau	Poirier
Carignan	Richards
Frum	Seidman
Greene	Simons
Griffin	Smith
Housakos	Stewart Olsen
MacDonald	Verner
Marshall	Wallin
Martin	Wells
Mockler	White—28

NAYS
THE HONOURABLE SENATORS

Anderson	Gold
Bellemare	Harder
Black (*Ontario*)	Hartling
Boehm	Jaffer
Boniface	Keating
Bovey	Klyne
Boyer	Kutcher
Busson	LaBoucane-Benson
Cordy	Lankin
Cormier	Loffreda
Coyle	Marwah
Dalphond	McCallum
Dasko	Mégie
Dawson	Mercer
Deacon (*Nova Scotia*)	Miville-Dechêne
Deacon (*Ontario*)	Moncion
Dean	Moodie
Downe	Omidvar
Duncan	Petitclerc
Dupuis	Ravalia
Forest	Saint-Germain
Forest-Niesing	Wetston
Francis	Woo—47
Gagné	

ABSTENTIONS
THE HONOURABLE SENATORS

Bernard	Munson
Cotter	Pate
Manning	Tannas—6

• (2010)

Hon. Paula Simons: Honourable senators, this evening I want to tell you the story of a real Albertan woman. She was a 58-year-old wife and mother from the Red Deer region, and for years she had lived with untreatable pain. Involuntary muscle spasms radiated from her face and head into her shoulders. Her eyelids had spasmed shut, leaving her effectively blind. She suffered constant migraines. Her digestive system had all but shut down. She'd lost so much weight and muscle mass that she could no longer walk, and her pain was so unremitting she could only sleep when heavily medicated. And so, with the support of her husband and her adult children, the woman, known as "E.F.," petitioned the court for medical assistance in dying. This was April of 2016, after the Supreme Court's *Carter* decision but before the passage of the bill then known as Bill C-14.

An Alberta judge granted her petition. The Alberta government did not contest that ruling but the federal government forced her to the Alberta Court of Appeal, arguing against allowing her to end her life.

Now you may wonder why the Trudeau government fought so hard to keep E.F. alive and in agony, especially after *Carter*. True, her death was not reasonably foreseeable, but that was not the Crown's primary concern. The government opposed her application because of the cause of her illness. She had been diagnosed with a severe conversion disorder, a psychiatric condition in which the body responds to stress or trauma by

exhibiting physical symptoms with no clear organic or neurologic cause. The Crown argued that E.F. could not receive medical assistance in dying because her physical torments had their origins in a psychiatric condition.

But her sufferings were absolutely real, even if they had their genesis in her brain and not some less-complicated organ. E.F. was not deemed clinically depressed. She wasn't delusional nor psychotic. Her doctors deemed her competent. But she was in unbearable torment and none of her neurologists, psychiatrists or internists could cure her.

The Alberta Court of Appeal agreed that she was entitled to all the rights laid out in *Carter* because, they said, "Persons with a psychiatric illness are not explicitly or inferentially excluded . . ." from access to MAID by the Supreme Court. Justices Peter Costigan, Marina Paperny and Patricia Rowbotham wrote:

> The decision itself is clear. No words in it suggest otherwise. If the court had wanted it to be thus, they would have said so clearly and unequivocally. They did not.

The judges continued:

> The court's decision was premised on competent individuals being entitled to make decisions for themselves in certain circumstances. The court recognized that there was a need to protect the vulnerable from abuse or error, but determined that a properly administered regime is capable of providing that protection.

And so, E.F. was able to slip away, peacefully, with her family around her: her body, her choice, her freedom.

Yet now we have Bill C-7, which specifically denies equal treatment under the law to those whose irremediable suffering is deemed to be solely due to mental illness. What is a mental illness? Bill C-7 never deigns to define the term, and even after today's amendments things are still murky. Does it include patients with Lewy body disease, someone with symptoms caused by an inoperable frontal lobe tumour or traumatic brain injury, or someone with intractable hereditary schizophrenia? If we can pinpoint a cause — something we can see on a scan or diagnose with a test — is it still mental illness or is it just, well, an illness?

We are still captive to a 19th-century paradigm that sees diseases of the mind as a kind of spiritual weakness. Even today, we discuss them as though they are something that can be cured by talk therapy or yoga, rather than something caused by a biochemical imbalance, brain insult or neurological malfunction.

While the amendments we have accepted today do improve the bill, I want to go on the record, inspired by Senator Woo, to underline my profound opposition to the mental health exclusion even after the amendments.

Section 15 of the Charter says every individual has the right to equal protection and benefit of the law without discrimination based on mental or physical disability. However, Bill C-7 explicitly denies equality and autonomy to Canadians with certain particular illnesses because of archaic prejudice.

It is established Canadian law that people with mental disorders who are judged competent have the right to make choices about their medical care. In 1991, in *Fleming v. Reid*, the Ontario Court of Appeal put it this way:

> Mentally ill persons are not to be stigmatized because of the nature of their illness or disability; nor should they be treated as persons of lesser status or dignity. Their right to personal autonomy and self-determination is no less significant, and is entitled to no less protection than that of competent persons suffering from physical ailments.

We surely can't reverse 30 years of legal precedent now. The unreasonable discrimination of C-7 cannot be saved by section 1 of the Charter. It fails the Supreme Court's own *Oakes* test on three counts. The Crown's goal in crafting this legislation is clearly pressing and substantial, but denying MAID to an enumerated class of Canadians based solely on an anachronistic misclassification of their medical condition is not rationally connected to the purpose of the law. It's an irrational perversion of the law's avowed goal.

• (2020)

Nor does the exemption count as minimal impairment. It's the maximal impairment conceivable. Nor is the effect proportionate. Safeguards could and would be put in place to ensure that a patient was mentally competent, that they were not delusional nor suffering from a treatable or temporary depression, nor under social or economic duress. Instead, without any effort to strike a balance or find reasonable accommodation, the Crown intended to deprive an entire class of Canadians of their security of the person simply because they claimed it's too hard to uphold their *Carter* and Charter rights.

Not every person with a mental illness has the necessary capacity to make life-and-death decisions. Any psychiatric patient requesting medical aid in dying would need careful, individual assessment. But mental illness is not an all-or-nothing category. As then Chief Justice Beverley McLachlin put it in the landmark *Starson* case, "Mental illness without more does not remove capacity and autonomy." No one with clear capacity should have their autonomy automatically denied without recourse. Such discrimination is not saved by arguing that we are doing it to protect the vulnerable, that we have to act in their best interests because we, paternalistically, know best.

Senator Gold told us in December that we must protect vulnerable persons from being induced, in his words, to ". . . commit suicide at a time of weakness." But MAID is the antithesis of suicide, and people are not weak because they no longer choose to bear the unbearable.

The Government Representative has told us:

> Bill C-7 is based upon the assumption that persons suffering from mental disorders can, in fact, improve; that their suffering, though intolerable in the present, may be alleviated in the future through treatment; and that their medical condition, though grievous, may not in fact be irremediable.

But we can't hold suffering Canadians hostage because of the faint hope or the vain hope of some imagined therapy in some imagined future.

There has been so much passionate, heartfelt debate here about protecting the vulnerable, but surely the most vulnerable people of all are those who are trapped in agony, asking to die with dignity — the very right Sue Rodriguez fought for — out of bravery, not weakness — in 1993.

I understand concerns that allowing MAID for people who are not terminally ill could send a message that the lives of those with disabilities are deemed not worth living, but we should all support the principle of autonomy. No one, especially a person with a disability, should want to live in a world where the state can assert control over our bodies or discriminate on the basis of disability. We must respect the capacity and liberty of all Canadians. We must do more to ensure authentic autonomy to those living with disabilities, ensuring their right to proper economic, social and medical resources. At the same time, we must respect the decisions of competent people who determine — of their own free will and without coercion, overt or subtle — that their suffering is unbearable to them.

These two goals need not be antithetical. They are both grounded in our shared belief in personal liberty and the right to self-determination. Our bodies and our minds belong to us, not to the Crown. If we cannot be sovereign over our own lives and our own souls, then we are enslaved indeed.

Thank you, *hiy hiy*.

Some Hon. Senators: Hear, hear.

Hon. Denise Batters: Honourable senators, I rise today to voice my concerns about the expansion of assisted suicide in Bill C-7 and the potential ramifications for Canadians suffering with mental illness.

Currently, people suffering with mental illness as a sole condition are excluded from accessing MAID under Bill C-7 — at least, that was the case until earlier today. I submit this prohibition must remain intact. Already, several other parliamentarians have indicated a willingness to begin to push that boundary with a sunset clause that would lift the mental illness exclusion after only a few months and, in fact, shockingly, this was passed in the Senate today.

So, to the government and to members of the House of Commons, I am pleading with you not to do this. We cannot — we must not — move toward the offering of assisted suicide to people suffering from severe mental illness. There are simply too many unknowns and the risks are too great.

During our Legal Committee hearings on the matter, some pro-MAID advocates argued that the mental illness exclusion was discriminatory, given that people with intolerable physical suffering are allowed to access MAID. Many medical practitioners disagreed. Among them was psychiatric expert Dr. Sonu Gaind, who said:

> Some have suggested the unpredictability of mental disorders is no different than that of physical disorders. This is simply untrue. . . . we do not understand the pathophysiology of almost any mental disorder. It is a false equivalence to equate the unpredictability of illnesses like cancer, neurodegenerative diseases, or disorders with known underlying biology, with mental illnesses that we lack fundamental understanding of.

Dr. Gaind went on to say that not only is there a lack of consensus in the psychiatric field on the irremediability and predictability of mental illness but also a lack of evidence.

He stated:

> Pretending there are no differences between mental illness and physical illness for the purposes of MAID borders on — and I think I am qualified to say this — delusional. It is not about infantilizing anyone or removing their autonomy. People themselves wish to continue living when they improve. It is about avoiding discrimination by ensuring we don't set evidence-free policy, exposing our loved ones to arbitrary assessments with no standards, that can lead to their premature deaths.

I also wanted to clarify one issue we encountered during the Legal Committee's study of Bill C-7. When I asked our former colleague the Honourable Serge Joyal what mental illnesses he considered irremediable, he paraphrased CAMH witness Dr. Tarek Rajji as having told the committee that:

> . . . 30% would be in a situation which could be cured; 30% would be in between, where they might be cured but we don't know; and 30% of people we know can't be cured. Those are irremediable.

That is, in fact, incorrect. Dr. Rajji had something quite different. Dr. Rajji actually said, in reference to mental illnesses, ". . . 30% of people go into remission, 30% stay the same and 30% get worse." Obviously, just because a mental illness gets worse does not mean it is irremediable. There are many people whose mental illness gets worse but then, thankfully, gets considerably better.

The total lack of consensus on the irremediability of mental illness is not a matter that will be resolved within a matter of months, even where a sunset clause is proposed for 18 months. The Council of Canadian Academies, drawing together the top experts in the fields of law and medicine, could not find any consensus on this issue in 18 months. Several medical experts at our Legal Committee spoke to the fluctuating nature of mental illness and warned against extending assisted dying for that reason.

Dr. Harvey Chochinov testified before our Legal Committee that suicidality had a tendency to waiver, stating, ". . . this idea that someone makes up their mind today and it is steadfast, the data does not bear that out."

Dr. Scott Kim agreed. Regarding legalizing psychiatric MAID in Canada, he said:

> There would be significant risk of wrongly ending lives of many patients because either they are not competent and/or . . . who would have changed their minds about MAID with time and treatment, and maybe regained a will to live.

Clearly, approving psychiatric patients with intolerable emotional suffering for assisted suicide runs an unacceptable risk of ending a life in error or prematurely.

Dr. Mark Sinyor noted the irony that, if the mental illness exclusion were to be removed:

> . . . it will result in a large number of premature deaths, the outcome which the original *Carter* ruling was explicitly rendered to prevent.

Our Legal Committee heard the moving testimony of Mark Henick, a mental health advocate who has experienced both treatment-resistant depression and attempted suicide. I asked Mark if he thought he would have taken advantage of assisted suicide during his darkest moments of depression if MAID had been available to those solely with mental illness at the time. He responded:

> I absolutely would have. The suffering was so grievous that I couldn't see anything outside of it. . . .
>
> So I hope I never fall into that place again where I can't see outside of my own blinders — the blinders that the illness has put on me — because I don't think this should be an option. I've had a beautiful life since I was able to get to the other side of that mountain.

There are some medical experts and academics who are pushing to extend assisted suicide to those suffering with mental illness. We've heard from a few of them at committee but, by and large, this is a small but vocal group within the community. Some of their views tend toward the extreme. Professor Jocelyn Downie, for example, said at committee that there should be no legislated minimum age for children to access assisted suicide. I think most medical practitioners — and Canadians — would disagree.

Yet another, Dr. Derryck Smith, touted his ability to assess capacity and consent of psychiatric patients for MAID. He revealed proudly that he was the psychiatrist who provided the assessments of E.F. — the case that Senator Simons just referenced — a woman with a rare psychiatric condition who was approved for MAID in 2016 by the Alberta Court of Appeal. Dr. Smith admitted that he made that assessment only by reviewing her medical file. He did not examine her, nor did he ever meet her before approving her death. It is shocking that this pro-expansionist MAID advocate believes his assessment meets his profession's standard of care.

As noted, some senators proposed amending Bill C-7 by placing a sunset clause on the carve-out of mental illness as a sole underlying condition. I could not be more opposed to this idea, given the difficulties I've already described regarding the unpredictable nature of mental illness.

• (2030)

But there also seems to be a misunderstanding about what a sunset clause would achieve. It would not just postpone the question of whether to include mental illness as a sole underlying cause until a consensus on the matter of irremediability of mental illness could be found, if ever. At the expiration of a sunset clause, psychiatric MAID would automatically be allowed. It would be a sunset clause to actually sunset the lives of vulnerable Canadians. I think that is an incredibly dangerous idea, and I would encourage the federal government and members of the House of Commons to think twice about considering it.

Honourable senators, we need to reflect extremely carefully on any expansion of assisted suicide. There are always unanticipated risks when boundaries are moved. Take, for example, the effect it would have on women. Given that psychiatric MAID is enacted in only a few countries around the world, data is largely limited to international sources, but Dr. Scott Kim presented evidence that ". . . a robust, consistent finding across countries over time" showed that 70% of people who seek psychiatric MAID are women, and this is in keeping with the higher number of women who attempt suicide. Currently, women are two to three times more likely than men to attempt suicide, while men are three times more likely to die by suicide because they use more lethal means.

Extending MAID for psychiatric reasons alone, however, would increase the risk of death by suicide for women because it would give them direct access to the guaranteed lethal means of suicide.

What message does expanding MAID to include mental illness send to society at large, to the medical community and especially to the vulnerable people who struggle with mental illness? To them, it says, "There is no hope for you." It says, "Give up; it's just not worth it anymore." This flies in the face of everything we know about suicide prevention, and it thwarts any medical standard of care to keep a suicidal patient safe. It normalizes suicide and, given the current branding of medical assistance in dying as a peaceful, beautiful and empowering choice, to a person in emotional distress, it might even seem a more attractive alternative than the exhausting struggle to find a successful treatment.

Allowing people with mental illness to access assisted suicide will change the relationship of trust between patient and physician. If you are suicidal with intolerable psychological suffering, your psychiatrist tells you that there is no longer any hope for you and that assisted suicide is a "rational" option, what reason do you have to hope that things will get better for you? A suicidal person already wants nothing more than for their emotional pain to end, and now their doctor has just given them a fail-safe way to make that happen. It is well known that access to the means to suicide is a significant risk factor for its completion.

Fellow parliamentarians, there are no do-overs with the final act of assisted suicide. There is no room here for mistakes. If there is any chance we are allowing the premature termination of the life of someone who suffers from mental illness rather than providing them with the opportunity to find a treatment that works, we have failed them as legislators. We simply must err on the side of caution and maintain the mental health exclusion in Bill C-7. Thank you.

[*Translation*]

Hon. Julie Miville-Dechêne: Honourable senators, I rise to express some serious reservations about extending MAID to individuals suffering solely from mental illness. Mental disorders can cause extreme intolerable suffering, just like physical illness. Moreover, psychological suffering is often more difficult to alleviate. It would be impossible for me, however, to ignore the necessary balance between the individual rights of people with psychiatric illness and our duty as a society to protect the most vulnerable of them. The Charter protects the individual right to non-discrimination, but that protection is not absolute, and Parliament has room to manœuvre. After all, we are not a court; we are legislators.

The individual choice to receive MAID is made in a social context that, for many sick people, is marked by scarce psychiatric resources, poverty and isolation. We must therefore ask ourselves if it is truly always a free and informed choice.

Like other members of this place, I'm intimately familiar with mental illness. I have a brother who battles his demons, and my sister and I have been looking after him for a long time. His most intense periods of suffering are intolerable. He truly suffers constantly, and it's up to us, his family, to bring him back to reality, to life's simple pleasures, because psychiatry hasn't helped much.

My personal experience has contributed to shaping my views. In my opinion, there is no absolute truth in the field of mental health and there is very little irrefutable scientific evidence when it comes to the trajectory and evolution of a mental illness. On the contrary, reputable Canadian psychiatrists have many different opinions, all sensible and informed. Because there is no broad consensus, I believe that we need to err on the side of caution.

No matter what some may think, there are also divisions in Quebec. According to a survey conducted by the Association des médecins psychiatres du Québec, 54% of psychiatrists are open to practising MAID, at least under certain circumstances, while 36% are against doing so. A dissident group of psychiatrists and psychiatry professors in Quebec sent a brief to the Senate and spoke to the media about this. They said, and I quote:

> As experts working for the good of our patients, we believe that supporting medical assistance in dying for patients with mental disorders is a very bad idea at this time. First, it is inappropriate because the desire to die and refusal of care are often an integral part of the illness and they improve with treatment of the mental disorder. It is also dangerous because the desire to die fluctuates, corrects itself, improves; the prognosis is uncertain, never irreversible and even often favourable, and this desire declines over years rather than days or months.

The solid report by the Council of Canadian Academies said the following:

> Most people with mental disorders have the capacity to make treatment decisions, but evidence shows that some mental disorders can impair decision-making and increase the risk of incapacity.

Dr. Tarek Rajji from the Centre for Addiction and Mental Health at the University of Toronto confirms that there is no evidence to predict the course of mental illness and therefore each evaluator of medical assistance in dying could have their own interpretation of the criteria related to the irremediability of the illness. It seems premature to me to be considering medical assistance in dying for patients with mental disorders. In fact, the report by the Association des médecins psychiatres du Québec notes the following:

> For MAID [for patients with mental illness] to be humane, consistent and fair, we must propose certain steps and resources regarding access to care . . . .
>
> As a group, persons with mental disorders experience much greater socio-economic difficulties than the general population. . . . they face enormous challenges when they try to access their fair share of health resources . . . . Even access to primary mental health care can be limited and highly uneven.

In short, if a patient can't see a psychiatrist quickly, why should we focus on their right to medical assistance in dying? Why focus on the possibility that the bill is unconstitutional, when we are dealing with fundamental problems of access to care and services?

I have doubts, very serious doubts, about our priorities. I am certain that the lack of access to psychiatric resources will not be fixed quickly. In any case, how can a federal bill address this issue, which is clearly an area of provincial jurisdiction? Psychiatrist John Maher's testimony at committee was disconcerting. I quote:

> My patients are asking: "Why try to recover when MAID is coming and I will be able to choose death?" Some of my patients keep asking for MAID while they are getting better but can't recognize that yet.

Dr. Maher added:

> . . . if 100 psychiatrists assess a person with uncertain decisional capacity, 35 will have one opinion and 65 will have another. Different psychiatrists have different skill sets and levels of experiences.

Many other practitioners, both Indigenous and non-Indigenous, including Tyler White, Dr. Mark Sinyor and Dr. Rod McCormick, pointed out that access to medical assistance in dying could undermine suicide prevention efforts. This is particularly troubling when we think of the scourge of suicide in

Indigenous communities, as Scott Robertson stated in committee. Would a delay in expanding MAID to psychiatric patients make it possible to consider these serious social problems and improve access to health services? I doubt it. Furthermore, we are in a pandemic, so everything takes time, much more time than usual.

If we move forward, we will be the fourth country in the world, only the fourth, to go so far down the road to providing access to euthanasia.

• (2040)

Psychiatrist Mark Komrad has studied the Belgian system, which has been in place for 18 years. According to him, one of the most common motivations for psychiatric euthanasia is being tired of living or loneliness. These observations led to the creation of recovery groups as another choice for psychiatric patients who have been approved for euthanasia.

A new speciality is emerging in Belgium: psychiatric palliative care. This speciality involves more intensive psychiatric care to provide relief for patients who are suffering unbearably. This goes without saying but, ideally, these initiatives would have been implemented before euthanasia came into force.

There was also a momentous trial in Belgium involving the three doctors who had authorized the euthanasia of Tine Nys, a woman who was not suffering from an incurable illness, as required by law, but who was suffering from stress and the consequences of a separation. She had suffered from depression and drug addiction in the past. She had not received psychiatric care in 15 years and had just been diagnosed with as yet untreated autism. Her sisters are the ones who filed a complaint. The doctors were ultimately acquitted on the basis of reasonable doubt, but this case added to the controversy surrounding this practice.

As a society, we need to ensure that we're taking time to think about the conditions for expanding access to MAID to people with mental illness. This is a serious issue and I don't think we're quite ready. Thank you.

Hon. Senators: Hear, hear.

Hon. Renée Dupuis: Honourable senators, today I rise to discuss the mental illness exclusion introduced in Bill C-7.

Let me say that the 145 or so witnesses who appeared before the Legal and Constitutional Affairs Committee in recent weeks gave us a better understanding of the issues around medical assistance in dying. Their testimony had an impact on us all. Over several days, people shared markedly different opinions with us. One might even say that the meetings highlighted a gap between the reality of medical assistance in dying in Quebec and that in the rest of Canada.

We observed that nearly all of the witnesses from outside Quebec said they didn't know how Quebec's medical assistance in dying system works. The meetings helped us learn more about that system thanks to what we heard from many witnesses from Quebec, including people with disabilities, general practitioners, medical specialists, nursing staff who administer medical assistance in dying or evaluate requests for MAID, legal experts, lawyers, professors and a former minister.

These witnesses provided us with information about the MAID system overall, and specifically talked about the work of the Collège des médecins that began in 2008, the broad citizen consultation conducted by a bipartisan parliamentary committee in various towns and cities across Quebec over several years, the Quebec MAID legislation that passed in 2014 and its ensuing regulations, the guidelines, the reports of the Quebec commission on end-of-life care and the data collected, and, lastly, the research of experts and regulatory bodies on the practice of MAID.

I would remind the chamber that, at the request of the Collège des médecins, the Association des psychiatres du Québec released a report last November on the specifics of MAID in cases of persons suffering from psychiatric disorders. Representatives of several organizations expressed a willingness to work with their counterparts in other provinces. It should be noted that the Ordre des psychologues du Québec also released a report in December 2020 on issues related to MAID in the context of mental health in which it advocates for the right to access MAID in cases where a mental disorder is the sole underlying condition.

We also heard witnesses from outside Quebec, who described the conditions in which they provide or evaluate the requests for MAID. None of these witnesses tried to minimize the fact that these are complex and singular situations, which doesn't mean that patients shouldn't be treated fairly and with dignity until the end.

Based on what we heard from these witnesses, it seems that the mental health exclusion introduced in Bill C-7 contradicts the principles set out in the Supreme Court of Canada decision in *Carter* in 2015. The government presents Bill C-7 as a government response to the *Truchon* decision, which was delivered in fall 2019 by Justice Baudouin of the Superior Court of Quebec, a federal trial court. From that perspective, Bill C-7 represents an unacceptable step backward. In fact, *Truchon* is an example of the *Carter* ruling being applied.

It is important to provide some context for *Carter*. This was one in a long series of Supreme Court decisions that came after the Charter of Rights and Freedoms was entrenched in the Canadian Constitution in 1982 and focused on the relationship between the autonomy of persons and the state's intervention in people's lives, especially when the state intends to define what constitutes a crime and what penalties apply when one is found criminally responsible. Defence lawyers pointed this out at committee.

Truchon recognized that "the case law on the principles of self-determination, autonomy and human dignity was evolving," starting with *Jones* in 1986, which affirmed for the first time the principle that the autonomy of the individual is expressed through the notions of dignity, liberty and security.

In 1988, *Morgantaler* reaffirmed the principle of the autonomy of the individual by making a direct connection between human dignity and bodily autonomy, free of state interference. The

Supreme Court reiterated in *Blencoe* in 2000, *Chaoulli* in 2005 and *PHS Community Services Society* in 2011, the principle whereby freedom is the right to make fundamental personal choices about bodily integrity and medical care without state intervention.

In reversing the 1993 *Rodriguez* ruling, and I quote Justice Baudouin:

> . . . *Carter* reaffirms the scope of the individual rights of life, liberty and security of the person and lays the foundation for the legalization of medical assistance in dying throughout Canada.

Carter establishes the principle that the right to life, liberty and security, which is protected under section 7 of the Canadian Charter of Rights and Freedoms, "is rooted in their [some people's] control over their bodily integrity."

According to the court, the prohibition against MAID for competent adults with grievous and irremediable medical conditions that cause them enduring and intolerable suffering infringes on the rights to liberty and security of the person.

In its decision, the court set out the following subjective criterion:

> . . . a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual . . . .

That applies regardless of the source of that person's suffering or the diagnosis they have been given.

We're therefore talking about what the person in question thinks about their health problems, not what anyone else, even a doctor, thinks about them.

A doctor testifying in committee said that medical paternalism has evolved, and the Supreme Court recognized this in *Carter*. Bill C-7 is inconsistent with this subjective criterion. A number of my colleagues have spoken about this notion, which isn't established in the medical community. This addition therefore constitutes a major step backwards because it could create ambiguity around some of the concepts that already exist in the act and that have proven to be difficult to regulate, according to the witnesses who appeared in committee.

The Senate took a small step forward in passing the two amendments today. We must ensure that we continue to move forward to protect individual decision-making autonomy, regardless of the stage or cause of an illness. Most importantly, we must recognize that individuals have the right to express their wishes in an advance directive, which will enable them to continue to live in dignity right up to the moment they have chosen as the end of their life. Thank you.

Hon. Senators: Hear, hear.

(On motion of Senator Martin, debate adjourned.)

• (2050)

[*English*]

JUDGES ACT
CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Dalphond, seconded by the Honourable Senator Galvez, for the second reading of Bill C-3, An Act to amend the Judges Act and the Criminal Code.

Hon. Pierre J. Dalphond: We are ready for the question.

Hon. Donald Neil Plett (Leader of the Opposition): Your Honour, I would like to move the adjournment of the debate of this, please.

The Hon. the Speaker pro tempore: It is moved by the Honourable Senator Plett, seconded by the Honourable Senator Martin, that further debate be adjourned to the next sitting of the Senate. If you are opposed to the motion, please say, "nay."

An Hon. Senator: Nay.

The Hon. the Speaker pro tempore: If you agree to the motion, please say, "yea."

Some Hon. Senators: Yea.

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

Hon. Yuen Pau Woo: Will you ask the question again, please?

Senator Plett: I think it was pretty clear, Your Honour. We can't ask for you to repeat it.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Plett and seconded by the Honourable Senator Martin that the debate be adjourned. If you are opposed, say "no."

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed in the Senate chamber say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Two senators indicate they wish a standing vote. Do we have a bell?

Senator Plett: Six minutes.

Senator Gagné: No.

Some Hon. Senators: Now.

Senator Mercer: Let's have some sanity. I would rather move the adjournment of the Senate.

The Hon. the Speaker pro tempore: It is an hour bell because there is no agreement. Is it agreed for a six-minute bell?

An Hon. Senator: Agreed.

The Hon. the Speaker pro tempore: The vote will occur at 8:59. Call in the senators.

• (2100)

The Hon. the Speaker pro tempore: Honourable senators, the question is as follows: It was moved by the Honourable Senator Plett, seconded by the Honourable Senator Martin, that further debate be adjourned to the next sitting of the Senate.

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Oh
Batters	Patterson
Bernard	Plett
Boisvenu	Poirier
MacDonald	Richards
Manning	Seidman
Marshall	Smith
Martin	Wallin
Mockler	Wells—19
Ngo	

NAYS
THE HONOURABLE SENATORS

Anderson	Keating
Black (*Ontario*)	Klyne
Boehm	Kutcher
Boniface	LaBoucane-Benson
Bovey	Lankin
Boyer	Loffreda
Brazeau	Marwah
Busson	McCallum
Cordy	McPhedran
Cormier	Mégie
Coyle	Mercer
Deacon (*Nova Scotia*)	Miville-Dechêne
Dean	Moncion
Duncan	Munson
Dupuis	Omidvar
Forest	Pate
Forest-Niesing	Petitclerc
Francis	Saint-Germain
Gagné	Simons
Gold	Wetston
Harder	Woo—43
Jaffer	

ABSTENTIONS
THE HONOURABLE SENATORS

Dalphond	Griffin—2

• (2110)

[*Translation*]

Senator Dalphond: I'd like to explain why I abstained.

I know that many Canadians are currently watching and have been able to appreciate the gravity of the questions and arguments that have been debated in this chamber over the course of the day and since yesterday. However, I'm sad that this evening is ending on a partisan note, and that is why I refused to vote and participate in what I feel is a regrettable end-of-day proceeding. Thank you.

(*At 9:11 p.m., pursuant to the orders adopted by the Senate on October 27, 2020 and December 17, 2020, the Senate adjourned until 2 p.m., tomorrow*.)

APPENDIX

DELAYED ANSWERS TO ORAL QUESTIONS

FEDERAL GOVERNMENT LAND

LAND DECONTAMINATION ORDER

(*Response to question raised by the Honourable Claude Carignan on October 1, 2020*)

Indigenous Services Canada, Environment and Climate Change Canada (ECCC) and Quebec's ministère de l'Environnement et de la Lutte contre les changements climatiques (MELCC) are working together to ensure that G&R Recycling meets environmental requirements. Following inspections carried out by the federal and provincial governments in September 2020, MELCC revoked its authorization on October 5. On November 18, ECCC issued a directive under the *Fisheries Act* identifying measures to be implemented by the company.

The owners of the company hold a right of possession of the land, called Oka Letters, and are responsible for remediating the land. The company is subject to various federal and provincial enforcement measures. Support is provided to the First Nation to oversee the company's operations and implement mitigation measures.

The *Kanesatake Interim Land Base Governance Act* sets out the framework for Mohawk jurisdiction over the land base and the powers to be exercised by the Mohawk Council of Kanesatake over that land base. The use of these lands is therefore the responsibility of the Council, which adopted a resolution in 2014 allowing the company to operate on the site.

PAROLE BOARD OF CANADA

RIGHTS OF VICTIMS OF CRIMINAL ACTS

(*Response to question raised by the Honourable Pierre-Hugues Boisvenu on October 28, 2020*)

The Parole Board of Canada is committed to respecting victims' rights under the *Canadian Victims Bill of Rights*. The *Corrections and Conditional Release Act* requires Parole Board members to take into consideration all relevant and available information in their decision-making, including written statements by victims, which can be presented in various formats at a hearing.

We have implemented technological and procedural enhancements in order to provide victims, as an interim measure, the ability to participate at hearings by videoconference or teleconference.

We are happy to report that, as of January 1, 2021, victims across Canada are now able to attend parole hearings by videoconference.

FOREIGN AFFAIRS

EXPORT OF DEFENCE TECHNOLOGY TO TURKEY

YEMEN—HUMANITARIAN AID

(*Response to question raised by the Honourable Leo Housakos on October 29, 2020*)

Export of Defence Technology to Turkey

Following Turkey's October 2019 military incursion into northeastern Syria, Canada suspended on October 11, 2019, the issuance of all new export permits to Turkey. As of April 16, 2020, Canada notified exporters that restrictions on the issuance of permits would continue to apply to Group 2 (military) exports to Turkey, and that Canada will consider on a case-by-case basis whether there are exceptional circumstances, including but not limited to NATO cooperation programs.

Exporters who were issued permits for the export of such items to Turkey prior to October 11, 2019, may continue to export against those permits during their period of validity.

However, all permit applications for controlled items — regardless of destination — are reviewed under Canada's risk assessment framework. The Minister of Foreign Affairs may issue, deny, amend, suspend, cancel or reinstate any export permit.

A number of relevant export permits to Turkey have been suspended following allegations made regarding the possible use of Canadian technology in the Nagorno-Karabakh conflict. A review is ongoing.

Yemen—Humanitarian Aid

Canada is deeply concerned by the situation in Yemen, the deterioration of modest gains made in recent years and the humanitarian impact on civilians, particularly women and children, who continue to bear the brunt of the conflict and its consequences.

Canada recognizes the dire humanitarian situation in Yemen. Since 2015, Canada has provided over $220 million in humanitarian funding, including $40M in 2020, to support food assistance, clean water and sanitation, shelter, protection and health care, including sexual and reproductive health services.

In addition to our humanitarian support, Canada is also investing in peace and stability in Yemen. Canada remains supportive of the efforts of the UN Special Envoy of the Secretary-General for Yemen, Mr. Martin Griffiths, to achieve a lasting ceasefire and inclusive and sustainable peace, as well as the December 2018 UN-sponsored peace

consultations on Yemen. Since December 2018, Canada has provided over $22 million in peace and security assistance in Yemen to support the UN-led peace process.

Canada calls on the parties to engage in negotiations to reach a peaceful solution to the conflict.

AGRICULTURE AND AGRI-FOOD

FERTILIZERS REGULATIONS

(*Response to question raised by the Honourable Diane F. Griffin on November 3, 2020*)

Canadian Food Inspection Agency

The *Fertilizers Act* and *Regulations* require that all regulated fertilizer and supplement products imported into or sold in Canada must be safe for humans, plants, animals, and the environment. They must also be properly labelled to ensure safe and appropriate use.

The final amendments to the *Fertilizers Regulations* were registered on October 26, 2020, and published in the Canada Gazette, Part II, on November 11, 2020.

These amendments further align with international norms, improve fertilizer business competitiveness, reduce administrative burdens, and maintain strong requirements for the safety of products entering the Canadian marketplace and the environment.

The changes provide more flexibility to industry through a risk-based approach that focuses on product safety and environmental protection.

There is a three-year transition period, until fall 2023, during which industry can comply with the old or the updated regulations on a product-by-product basis.

The Canadian Food Inspection Agency worked with manufacturers, importers, and others, including the Canadian Fertilizer Products Forum, in developing the regulatory amendments.

CANADIAN HUMAN RIGHTS COMMISSION

FEDERAL HOUSING ADVOCATE

(*Response to question raised by the Honourable Kim Pate on November 3, 2020*)

Canada Mortgage and Housing Corporation (CMHC)

On November 22, 2020, the Government of Canada released the Notice of Opportunity for the Federal Housing Advocate position. The Notice of Opportunity, available on the Governor in Council appointments website, is open for applications until December 30, 2020. A selection committee will evaluate and interview prospective candidates and recommend a short list of the most qualified candidates to the Minister responsible for the *National Housing Strategy (NHS) Act*, the Minister of Families, Children and Social Development.

The NHS Act introduced new accountability measures in keeping with a human rights-based approach to housing. The Federal Housing Advocate will report annually to the Minister responsible and make recommendations to address systemic housing issues. The Minister will table both the Advocate's report — and the Government's response to the report — in Parliament. In addition, the Minister will table a triennial report, beginning in March 2021, on the effectiveness of the National Housing Strategy (NHS). This report to Parliament is in addition to regular NHS progress reporting on the CMHC webpage, quarterly reporting on Infrastructure Canada's Investing in Canada plan, the annual report of Canada Mortgage and Housing Corporation, and ad hoc reports by the Auditor General of Canada, the Parliamentary Budget Officer and other means.

TRANSPORT

NEW BRUNSWICK—FERRY TRAVEL

(*Response to question raised by the Honourable David Richards on November 5, 2020*)

Transport Canada

The seasonal ferry service between Deer Island, New Brunswick, and Campobello Island, New Brunswick, is provided by a private operator, East Coast Ferries Ltd. This ferry service generally operates from late-June to September, though the 2020 service has been extended to December 1.

The Government of Canada removed itself from the direct operation of ferry services with the introduction of the 1995 National Marine Policy, through which the federal government placed the management of marine infrastructure and services on a commercial footing.

The Policy also indicates that the Government of Canada would continue to support Constitutionally-mandated ferry services and services required by remote communities. Under this Policy, Campobello Island is not classified as a remote community or a constitutional obligation, as access to the island is available year round by land through the state of Maine.

In light of this, Transport Canada's role is regulatory to ensure the safety and security of the seasonal ferry service between the mainland of New Brunswick and Campobello Island.

Recognizing the provincial nature of this issue, the Government of Canada encourages local organizations such as Accessible Campobello to continue working with the Government of New Brunswick to examine long-term solutions.

INDIGENOUS AND NORTHERN AFFAIRS

NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

(*Response to question raised by the Honourable Marilou McPhedran on November 18, 2020*)

The Government of Canada is supporting the work of federal departments such as Women and Gender Equality Canada, Health Canada, and Employment and Social Development Canada, and agencies such as the First Nations Information Governance Centre, to ensure the safety of and accessibility of services for Indigenous women, girls, and Two-Spirit LGBTQQIA people with disabilities. This support includes funding for research tailored to the experiences of Indigenous women, girls, and Two-Spirit LGBTQQIA people with disabilities, recognizing their greater potential to experience some form of abuse (physical, mental, emotional, or sexual), health risks, financial hardships, and barriers to accessing services.

In response to the National Inquiry into Missing and Murdered Indigenous Women and Girls, the Government is continuing to work with partners to develop the National Action Plan, which is led by Indigenous women and includes components specific to the protection of Indigenous women, girls, and Two-Spirit LGBTQQIA people with disabilities.

PUBLIC SAFETY

FIREARMS BUYBACK PROGRAM

(*Response to question raised by the Honourable Donald Neil Plett on December 2, 2020*)

Public Safety Canada (PS)

1. In collaboration with its partners, my department is in the process of defining requirements and developing options for program implementation and design. As such, the full costs associated with implementing a buy-back program have not yet been finalized. Cost estimates will be refined in the coming months as program design work matures. It is the Government's intent to share these final estimates with Canadians in due course.

2. The Government is committed to offer fair compensation to affected owners and businesses while making sure implementation and management of a program are done in a cost-effective manner. To assist in meeting this dual objective, my department, following a competitive process, has awarded IBM Canada a contract for the provision of advice on options and approaches to further inform and build upon ongoing efforts to develop the buy-back program. Specifically, this advice will focus on firearms pricing models, as well as on the design, implementation and management of a buy-back program for recently prohibited firearms.

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

CANADIAN BROADCASTING CORPORATION

(*Response to question raised by the Honourable Leo Housakos on December 2, 2020*)

In 2018, the Government of Canada appointed an external Panel to review Canada's broadcasting and telecommunications laws. The Panel's terms of reference included an examination of the role of the Canadian Broadcasting Corporation.

The Panel received submissions from interested parties many of whom expressed views regarding the role of the Canadian Broadcasting Corporation. The Panel delivered its final report in January 2020, which contained recommended amendments to the *Broadcasting Act* including with respect to the Corporation's mandate, powers, governance and funding model.

On November 3, 2020, the Government introduced Bill C-10 which modernizes the *Broadcasting Act*, ensuring that both traditional and online broadcasters who operate in Canada contribute to the creation, production, and promotion of Canadian content. This Bill sets out the broadcasting policy for Canada, and the role and authorities of the Canadian Radio-television and Telecommunications Commission. C-10 also introduces amendments to the mandate of the Canadian Broadcasting Corporation.

Bill C-10 is a first step in broader legislative reform, and the Government recognizes that further action is needed eventually to include consideration of Canadian Broadcasting Corporation's mandated objectives. The Government is of the view that a Parliamentary inquiry is not required at this time.

AGRICULTURE AND AGRI-FOOD

LIVESTOCK PRICE INSURANCE

(*Response to question raised by the Honourable Donald Neil Plett on December 3, 2020*)

Agriculture and Agri-Food Canada (including the Canadian Pari-Mutuel Agency)

The Western Livestock Price Insurance Program (WLPIP) is a provincially-administered program, allowing producers to purchase price protection on cattle and hogs. Federal assistance has been provided through two key mechanisms:

deficit financing loans and providing a 60 percent cost-share of WLPIP administrative costs through the AgriRisk (ARI) program. Federal-provincial-territorial (FPT) government costs for business risk management (BRM) program payments and administration are shared 60:40, unless noted otherwise. As WLPIP is being offered through support from the ARI program, it concludes at the end of the Canadian Agricultural Partnership, which is similar to other programs under the framework.

An expansion of WLPIP to include Maritime provinces would require commitments from Atlantic provinces as insurance offerings fall under provincial jurisdiction and must be agreed upon and delivered by the provinces. There are ongoing efforts between the sector and provinces towards outlining how such a program would work, and the federal government continues to facilitate and engage in these discussions.

TRANSPORT

F.-A.-GAUTHIER FERRY

(*Response to question raised by the Honourable Claude Carignan on December 3, 2020*)

Transport Canada

Transport Canada is aware of the situation regarding the *F.-A. Gauthier* vessel and is closely monitoring the file.

Under the Constitution, the Government of Canada has powers over interprovincial ferry services. Inter-regional services are under the responsibility of the province concerned.

In the case of the Matane─Baie-Comeau─Godbout ferry route, it is the *Ministère des Transports* of Québec and the *Société des traversiers du Québec* who have the authority to deliver the service to users.

Transport Canada's mandate is to ensure that the vessels in service operate safely and fully meet Canadian regulations.

Transport Canada remains in communication with the *Société des traversiers du Québec* in order to provide assistance in this file.

Questions on the procedures and requirements related to the COVID-19 vaccination campaign in the province of Québec should be addressed to the Public Health Agency of Canada or the *Institut national de santé publique du Québec*.

INDIGENOUS SERVICES

NON-INSURED HEALTH BENEFITS

(*Response to question raised by the Honourable Margaret Dawn Anderson on December 3, 2020*)

Since March 2020, Non-Insured Health Benefits (NIHB) has initiated its Business Continuity Plan (BCP) which includes contingencies for waiving pre-approvals for certain medications, including inhalers.

As prescribers and pharmacies have adapted to this, NIHB has cautiously started to return medications to limited use status. For inhalers, NIHB consulted the Drugs and Therapeutics Advisory Committee, an advisory body of health professionals, some of whom are First Nations, who advise the NIHB Program. This body recommended that limited use criteria be returned to inhalers based on concerns regarding patient safety, outlining that open benefit inhalers should be used before trials of these more complex inhalers. Currently, only one inhaler containing a combination of three different medications has been returned to limited use status. Eight others remain open benefit: Foradil / Oxeze / Zenhale / Onbreze / Serevent / Breo Ellipta / Advair / Symbicort. These inhalers could be returned to limited use status as NIHB reverts back drugs opened during BCP.

The listing changes invoked through the BCP were communicated as temporary measures to pharmacists and clients. As with other Canadian public drug plans, listing criteria for NIHB eligible drug benefits are recommended by the Canadian Agency for Drugs and Technologies in Health.

INFRASTRUCTURE AND COMMUNITIES

DISASTER MITIGATION AND ADAPTATION FUND

(*Response to question raised by the Honourable Claude Carignan on December 8, 2020*)

The Government of Canada recognizes that communities now more than ever need support to adapt to the intensifying weather events associated with climate change. That's why the Disaster Mitigation and Adaptation Fund (DMAF) was launched on May 17, 2018. DMAF is a $2-billion national

merit-based program that supports large-scale infrastructure projects to help communities better prepare for and withstand the potential impacts of natural disasters, prevent infrastructure failures, and protect Canadians and their homes.

To date, the Government of Canada has announced over $1.8 billion through DMAF to communities across the country for projects that will increase communities' long-term sustainability and resilience to natural hazard risks and impacts.

In April 2019, the Minister of Infrastructure and Communities invited communities who were impacted by the 2019 spring floods to submit project applications for the DMAF.

All DMAF project applicants were provided with information regarding the DMAF's eligible activities and costs and the municipalities of Ste-Marthe-sur-le-Lac and Deux-Montagnes submitted applications during this intake. I am pleased to report that these projects were approved in August and September 2019 with a federal contribution over $49 million total for three projects in these communities.

CONTENTS

Tuesday, February 9, 2021

CONTENTS

Tuesday, February 9, 2021