SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 44th PARLIAMENT • VOLUME 153 • NUMBER 181

OFFICIAL REPORT
(HANSARD)

Monday, February 26, 2024

The Honourable RAYMONDE GAGNÉ,
Speaker

CONTENTS

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

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

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

THE SENATE

Monday, February 26, 2024

The Senate met at 6 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

LINCOLN ALEXANDER, P.C., O.C., O.ONT.

Hon. Wanda Thomas Bernard: Honourable senators, I rise today during Black History Month to recognize Lincoln Alexander Day, albeit a little late.

Last month, the Dalhousie School of Social Work hosted a Lincoln Alexander event, where they invited me to present the findings of the Standing Senate Committee on Human Rights report *Anti-Black Racism, Sexism and Systemic Discrimination in the Canadian Human Rights Commission*. A panel of social work students discussed the report, which was followed by a conversation prompted by critical questions asked by students.

The evening opened with the following spoken-word tribute by one of the students. It is my pleasure to share that with you today. It is called "A Legacy Resounds" by Erika Downey Campbell:

> In the crucible of courage, where injustice meets the fire of resolve, There stood Lincoln Alexander, a titan in the struggle to evolve. With confidence as his compass, he sailed uncharted seas, Championing racial equity with the wind of determination in his pleas.
>
> In the Royal Canadian Air Force, a wireless operator he became, Yet, in Vancouver's bars, a bitter chord struck in racism's name. Refused service for the color of his skin, he faced the cruel song, But in his heart, the melody of perseverance was strong.
>
> A symphony of humility, in an honorable discharge, he found, As he quit the Air Force, on justice's battleground. "Turned a blind eye," he said of those who couldn't see, The need to shatter discrimination's discordant decree. Through corridors of power, where privilege built its gate, He challenged, with resilience, the discriminatory fate. A face of Black empowerment in a changing nation's tide, He advocated for education, inclusion, dignity side by side. "Determination fueled by education," he passionately declared, A path to limitless possibilities, the legacy he shared.
>
> From schoolyard battles to the dean's racial slur, His anti-racism work, a lifelong concerto of courage. In the jazz of his life, where hard work harmonized, Lincoln Alexander's melody, a beacon that still guides. An anthem of equality, a symphony for the free, His legacy resounds in the chorus of opportunity.

Asante.

FEDERAL HOUSING ADVOCATE

Hon. Joan Kingston: Honourable senators, I rise before you today to draw your attention to a very important issue that is the subject of the final report of the Office of the Federal Housing Advocate, which was released on February 13, entitled *Upholding dignity and human rights: the Federal Housing Advocate's review of homeless encampments*. The report outlines specific calls to action to address ongoing homeless encampments across Canada, including a national response plan.

Encampments, or tent cities, are established by people who are sleeping rough, usually on public property or privately owned land, and often without permission. According to the final report, an estimated 20% to 25% of homeless people across the country live in tent encampments, affecting not just big cities but also rural regions, including northern Saskatchewan, Labrador, Nunavut and the communities in my home province of New Brunswick. This percentage is consistent with our experience in the Fredericton area.

While encampments have been a feature of homelessness in Canada for many years, even in less populous areas like New Brunswick, since the COVID-19 pandemic, encampments have become more numerous, more densely populated and more visible across the country. The absence of effective coordination between the many non-profit agencies, departments and jurisdictions involved limits the effectiveness of responses to the homelessness crisis. Provinces and territories must work closely with municipalities and First Nation communities, and the federal government must play a leadership role.

As the Federal Housing Advocate points out:

> . . . the encampments exist only because of a larger, systemic failure to uphold the right of all people to adequate housing without discrimination. . . .
>
> Forced encampment evictions make people more unsafe and expose them to a greater risk of harm and violence. . . .

Shelters are important. They're there for emergencies; they're not a place for people to live. What people experiencing homelessness want is their own door that locks and a place where they can feel safe.

Without proper housing supports in place, mental health and addictions can create significant barriers to finding and maintaining housing. At the same time, the circumstances of sleeping rough make mental health and addictions challenges impossible to overcome. Physical environment and social supports are important social determinants of health.

Greater integration and coordination are needed between community-based housing and homelessness services and mental health and addictions support. This should include the creation of integrated response teams, including clinical supports made

available to individuals living in encampments and those accessing the 24/7 year-round drop-in centres recommended by the federal advocate.

A harm-reduction approach, coupled with low barriers to accessing services, is key. The report states that:

> In the absence of available adequate housing, all governments and service providers must work to address the structural barriers that result in existing emergency shelters not being accessible or appropriate for all people who might choose to use them.

I echo the federal advocate's advice:

> Change depends on all of us working at all levels, starting in our own communities.

Thank you, *woliwon*.

UKRAINE—RUSSIA'S ACTIONS

Hon. Peter M. Boehm: Honourable senators, I rise today to mark the second anniversary of Russia's illegal and egregious invasion of Ukraine on February 24, 2022. I also wish to acknowledge the killing of Alexei Navalny, the brave and dedicated opposition leader and voice against the injustice and corruption of Vladimir Putin's revanchist regime. Because of his ceaseless activism to better his country for his family and fellow Russians, Navalny was killed by Putin and the Russian state. That Navalny was killed is a testament to his impact.

I attended the recent Munich Security Conference where, on February 16, Navalny's widow, Yulia Navalnaya, stood before us shortly after the world learned of her husband's murder. Ms. Navalnaya's brave message was clear: Putin and his cronies "will be brought to justice, and this day will come soon."

In recent years, February has become a significant month in the bloody history between Ukraine and Russia. In 2022, Russia invaded Ukraine again after its previous February invasion in 2014 that resulted in Russia's illegal annexation of Crimea on March 18 of that year. On February 16 of this year, we learned of Navalny's killing in a Russian prison, and on February 27, 2015, another noted opposition leader and fierce Kremlin critic, Boris Nemtsov, was assassinated in Moscow.

• (1810)

The deaths of these activists — and the killings and attempted murders of others — further exacerbate the human toll of Russia's longstanding aggression toward Ukraine. I know we all share concern for the health and safety of our friend Vladimir Kara-Murza imprisoned in Russia since 2022.

Colleagues, after attending the Munich Security Conference, I participated, along with our colleague Senator Wells, in the Winter Meeting of the OSCE Parliamentary Assembly in Vienna. While the tone was dark, reflecting the sombre state of world affairs, I can attest to the palpable sense of solidarity among global leaders to bring an end to the war in Ukraine and to Putin's reign.

A sustainable Ukrainian victory relies on two principles: first, ensuring that Ukraine has all it needs to defeat Russia on the battlefield; and second, a viable plan to rebuild Ukraine to ensure its prosperity and security after the fighting stops. As the war grinds into its third year, Russia is counting on Western support for Ukraine to decline. I know that Canada, for one, will continue to stand with Ukraine on all fronts.

Colleagues, as I said in my statements in the hours after the invasion in 2022 and on its first anniversary last year, Canada, and all democracies around the world, must remain united in both condemning and opposing Russia's actions and in our steadfast support for Ukraine and its strong, resilient people. On that, we must not falter. Thank you.

Hon. Senators: Hear, hear.

SEAL HARVEST

Hon. Iris G. Petten: Honourable senators, sealing has been a vital industry in Newfoundland and Labrador for centuries. To the Labrador Inuit in particular, the seal was, until recently, a staple component of a way of life. The meat was eaten or fed to the dogs, the fat was rendered into oil for light and food, the skin was used for clothing, boots and a myriad of other purposes in addition to trade with European merchants. The demand for seal products led to the development of both inshore and offshore fisheries, driving economic growth.

In 1965, Canada initiated its first seal protection regulations requiring humane harvesting practices and licensing for all harvesters, alongside increased monitoring efforts by Fisheries and Oceans Canada. The government later implemented a seal harvest management plan with continued emphasis on sustainability, scientific oversight and humane practices, reflecting a commitment to the integral role of the seal harvest in a rural economy with zero tolerance for any inhumane practices.

Issues such as seal overpopulation is more and more in the news as of late. We know that the excessive numbers of pinnipeds along Canada's three coastlines are not only creating an imbalance within our marine ecosystems, but it is also causing detrimental effects on the health and conservation of fish stocks.

I recently heard from a community member who said that this issue has two dimensions of equal importance. First is the survival and continuance of properly managed fur, sealing and fishing industries, thus ensuring the ability of rural communities to succeed. Then there is the issue of destroying the propaganda that has defined us as murderers and, somehow, a lesser people — this message really struck me.

We are also just under a month away from what some refer to as the "International Day of Action Against Canadian Seal Hunting." Just the name of this day demonstrates the need to work together to ensure disinformation, as it relates to the sealing industry, is being countered at all levels of government. Let us

fight these misleading campaigns with educational campaigns. Let us promote Canadian seal products as the sustainable, high-quality and eco-friendly options that they are, including for omega-3 oil, meat, accessories and more.

The harmful rhetoric spread by some organizations cannot be permitted to be the only voice on national and international stages. We must unite our voices in support of our fisheries from coast to coast to coast. Thank you.

Hon. Senators: Hear, hear.

ROUTINE PROCEEDINGS

CANADA-UKRAINE FREE TRADE AGREEMENT IMPLEMENTATION BILL, 2023

NOTICE OF MOTION TO PLACE BILL ON ORDERS OF THE DAY FOR THIRD READING ON FEBRUARY 29, 2024, SHOULD IT BE REPORTED ON THAT DAY WITHOUT AMENDMENT

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding rule 5-5(b), if the Standing Senate Committee on Foreign Affairs and International Trade reports on Bill C-57, An Act to implement the 2023 Free Trade Agreement between Canada and Ukraine, without amendment on Thursday, February 29, 2024, the bill be placed on Orders of the Day for third reading later that day, provided that if the committee reports the bill without amendment on that day after the point where the Senate would normally have dealt with the bill at third reading, it either be taken into consideration at third reading forthwith or, if the report is presented while another item is under consideration, it be placed on the Orders of the Day for third reading after the end of proceedings for the day on the item under consideration at the time of presentation; and

That the committee's report on the bill may be presented after the end of Routine Proceedings that day without leave being required.

[Senator Petten]

[*Translation*]

THE SENATE

NOTICE OF MOTION TO AFFECT THIS WEDNESDAY'S SITTING AND AUTHORIZE FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order adopted by the Senate on September 21, 2022, the sitting of Wednesday, February 28, 2024, continue beyond 4 p.m., if Government Business is not completed, and adjourn at the earlier of the completion of Government Business or midnight; and

That the Standing Senate Committee on Foreign Affairs and International Trade be authorized to meet after 4 p.m. on that day for the purpose of considering Bill C-57, An Act to implement the 2023 Free Trade Agreement between Canada and Ukraine, even though the Senate may then be sitting, with rule 12-18(1) being suspended in relation thereto.

[*English*]

Hon. Donald Neil Plett (Leader of the Opposition): Point of order, please. I would like Senator Gold to read that Notice of Motion in English. The translation was very poor at the start of it, and I could not understand.

Senator Gold: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order adopted by the Senate on September 21, 2022, the sitting of Wednesday, February 28, 2024, continue beyond 4 p.m., if Government Business is not completed, and adjourn at the earlier of the completion of Government Business or midnight; and

That the Standing Senate Committee on Foreign Affairs and International Trade be authorized to meet after 4 p.m. on that day for the purpose of considering Bill C-57, An Act to implement the 2023 Free Trade Agreement between Canada and Ukraine, even though the Senate may then be sitting, with rule 12-18(1) being suspended in relation thereto.

QUESTION PERIOD

PUBLIC SAFETY

ARRIVECAN APPLICATION

Hon. Donald Neil Plett (Leader of the Opposition): Government leader, my question concerns, again, the failed $60 million "ArriveScam" app. Last week, two senior officials who have been suspended in relation to the "ArriveScam" told a committee of the other place that there is an ongoing cover-up related to this scandal.

Liberal MPs have shut down committee meetings into "ArriveScam," including a meeting last fall, just as the Auditor General was about to testify. Last week, Liberal MPs filibustered a motion to compel the two-man GC Strategies to appear before the committee or face arrest by the Sergeant-at-Arms.

• (1820)

The Trudeau government is certainly acting like it has something to hide — is it not, leader? Who gave the order to shut down the meetings and stall for time? I want the name, please.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. The government is not trying to hide anything, senator. The reason given by the members — at the time — is that the meeting was shut down because there was information that they felt would compromise the ongoing investigations.

I will remind senators in this chamber that since these allegations came to the attention of the government, it has taken appropriate steps to get to the bottom of what has been a very regrettable, unfortunate and unacceptable set of situations. That includes ongoing investigations within the Canada Border Services Agency, or CBSA, and the suspension of contracts with a number of companies that have been implicated, as well as ongoing RCMP investigations. The government will continue to make sure these unacceptable procurement practices, and the reasons for them, are brought to light.

Senator Plett: I asked for a name, and I still didn't receive it.

In recent weeks, we've heard that 1,700 emails related to "ArriveScam" have been deleted. Last Thursday, a House committee heard that the number of deleted emails could be much higher — in the tens of thousands. Which figure is correct, leader? How many "ArriveScam" emails were deleted to try to hide this corruption and waste under this Trudeau government?

Senator Gold: No amount of allegation and innuendo about corruption and the like — upon which there is no evidence — can replace the fact that police investigations are under way. The facts will be revealed when those investigations are completed.

Hon. Leo Housakos: Senator Gold, we heard more explosive evidence on "ArriveScam" last week at a House of Commons committee.

Thank God for the Conservative opposition for trying to hold this government to account. For that matter, thank God for the Conservative opposition in this new independent Senate. It seems this is the only group who is really preoccupied by "ArriveScam." We're the only ones asking any questions of you.

Last week, the committee heard again from the only two senior bureaucrats involved with this faulty and fraudulent scheme that the chief technology officer, Minh Doan — who oversaw the whole thing — deleted tens of thousands of emails related to "ArriveScam." Yet, he received a promotion within your government, and the two whistle-blowers are the only two people who suffered consequences. That's how much you care about getting to the bottom of these allegations or innuendoes, or whatever you call them. Why is that, Senator Gold? Why is your government protecting Minh Doan? Is it because he was following the instructions of the Trudeau government, and now you don't want him to point fingers back at this government?

Senator Gold: The answer is no, senator. The fact is that investigations are under way. Allegations and fingers are being pointed in all kinds of directions. It may serve your partisan or fundraising purposes to continue trying to paint this as a political cover-up. It is not the case. I am happy that you feel as if you are doing your job as you see fit. I'm doing my job as I see fit to give you the answers regarding what the government is doing to get to the bottom of this, including — as I said on a number of occasions — a number of steps that have already been taken to ensure this kind of fiasco vis-à-vis a particular project doesn't happen again.

Senator Housakos: Senator Gold, the only thing your government is doing is trying to obstruct the parliamentary committee from getting to the bottom of things. You're deleting emails and preventing us from obtaining answers to simple questions. Senator Gold, "ArriveScam" has been slammed by the procurement watchdog and the Auditor General, and it is currently under criminal investigation. Are they all partisan as well? We know that, at minimum, at least 10,000 Canadians were mistakenly sent to quarantine by glitches of this shameful app. Senator Gold, how can your government — in good conscience — continue to fight these Canadians in court and hold them to huge outstanding fines in relation to what we now know was a fraudulent app?

Senator Gold: I guess I cannot get tired of responding to these allegations of fraud and corruption, which are not founded on the facts. ArriveCAN cost far too much, and the real problems have been revealed and are being explored. It was used by 60 million Canadians during the pandemic to facilitate their travel across the borders.

Again, I will continue to answer questions so long as it continues to serve your purposes.

CORRECTIONAL SERVICE CANADA—
MENTAL HEALTH SERVICES

Hon. Kim Pate: Senator Gold, Correctional Service Canada received funding in Budget 2018 that it told our Social Affairs Committee was to increase the number of external mental health beds in community hospitals and mental health facilities to which prisoners can be transferred to receive the health care they need. Now, more than five years later, Correctional Service Canada has revealed to at least three Senate committees that, in fact, no new beds were created. Despite promises to provide written answers to the National Finance Committee by December, as well as to the Legal Committee, Correctional Service Canada has failed to clarify how it actually spent some $46 million in allocations, with additional amounts ongoing.

Will you please commit to providing a response regarding how the missing amount was spent?

Hon. Marc Gold (Government Representative in the Senate): Thank you, Senator Pate. It is an important question, and the mental health needs of all Canadians — not limited to those in prison, but including those in prison — is an important and challenging measure of how well we, as a society, are taking care of our citizens.

I'm not in a position to answer the specific question, but I will certainly raise it with the minister.

Senator Pate: Thank you very much, Senator Gold. I appreciate that.

Given the repeated calls of the Office of the Correctional Investigator, and the most recent inquest into the death of Terry Baker and that of Ashley Smith, as well as the countless other inquests and inquiries that people with disabling mental health issues be transferred out of prisons to mental health settings, could you please identify what other concrete steps the government is taking to ensure access to sufficient external mental health beds?

Senator Gold: Again, that is an important question and a complicated one with regard to — as is too often the case — matters of jurisdiction and provincial responsibility. However, I can say that the government remains committed to supporting all Canadians with their mental health needs and challenges, including substance use challenges, and I will certainly raise this with the minister as well when I have the first opportunity.

GLOBAL AFFAIRS

CONFLICT IN GAZA STRIP

Hon. Yuen Pau Woo: Senator Gold, it has been a month since the International Court of Justice, or ICJ, asked Israel to ensure that humanitarian relief be provided to Palestinians in Gaza. It has also been about a month since any meaningful amount of relief entered Gaza. Senator Gold, what is Canada doing to ensure that we're not complicit in any finding of genocide or war crimes that the ICJ and its sister organization, the International Criminal Court, are currently investigating?

Hon. Marc Gold (Government Representative in the Senate): Canada is not complicit, and I don't accept the premises of some of the ways in which our international judicial system is being used.

Canada — the Minister of Foreign Affairs — is in regular contact with its counterparts in the G7. Indeed, the minister has just come back from meetings with leaders in all the neighbouring Arab countries, and is working with our allies and Arab states toward enhancing the humanitarian aid, as well as working toward an arrangement whereby the hostages would be released and hostilities would cease. Canada is doing its part to provide relief to all citizens in that region.

Senator Woo: Yet, Senator Gold, we have said very clearly that we do not make presumptions about the premise of the ICJ's case, which means we leave open the possibility that a genocide may be found. We have been quick to use the genocide term and declare war crimes in many other instances. Therefore, I ask you this again: What is the government doing to protect Canada and us, as lawmakers, from the possibility of complicity in these crimes against humanity?

Senator Gold: Senator Woo, Canada is not committing war crimes. It is not complicit in war crimes. Therefore, I think we as lawmakers have nothing to fear for actions that Canada has taken on the world stage to try to bring an end to the conflict, to provide humanitarian assistance to those in need and also to defend Israel's right to defend itself against terrorist attack.

• (1830)

AGRICULTURE AND AGRI-FOOD

PRIMARY PACKAGING

Hon. Robert Black: Senator Gold, primary packaging is essential for the sustainability of the global produce supply chain, ensuring that Canadians have access to a diverse range of produce year-round. It plays a crucial role in preserving the quality, safety and affordability of perishable goods sourced from fresh fruit and vegetable producers across this country. The industry continues to strive to enhance packaging sustainability.

However, Canada's produce sector has concerns with the government's proposed regulatory and policy actions, which, if implemented, will have adverse and potentially irreversible impacts on Canadians. The proposed regulatory and policy actions single out fresh produce as the only food category subject to a plastics ban.

The Canadian Produce Marketing Association, or CPMA, conducted six studies highlighting the negative effects of the proposed regulations on the fresh produce industry. Of particular concern is the impact on fresh produce affordability and

availability. Senator Gold, why is the government proposing regulatory and policy actions that will lead to increased food costs and loss in fresh produce availability for all Canadians?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. Senator and colleagues, it's important to note that more than half of all the plastic waste thrown out in Canada is from packaging, and most of it ends up in a landfill, incinerators or in the environment, whether on land or in the sea. While plastics, of course, play an important role in the everyday lives of Canadians, getting rid of problematic plastic food packaging, replacing single-use packaging with reuse-refill systems and ensuring that plastics — when and if needed — are designed to be safely reused, recycled or composted, can help Canada move towards zero plastic waste for the benefit of our environment.

Senator Black: Thank you. The price of food will increase 34% above current levels, and Canadians will lose 50% of value-added fresh products. It was also found through studies that the proposed regulations could increase fresh produce food waste by more than 50% above the current levels for multiple produce categories. So not only will this policy impact the affordability and availability of fresh produce, it will also create more waste and increase greenhouse gas emissions. How does the government plan to mitigate these issues?

Senator Gold: Thank you. The government is committed to working with producers and other businesses, grocers and stakeholders to avoid increasing the cost of food and increasing food waste. My understanding is that the government has been very clear that it wants to collaborate with such stakeholders, producers and grocers on implementing solutions that exist, while avoiding the negative consumer and environmental outcomes.

[*Translation*]

GLOBAL AFFAIRS

NORTH ATLANTIC TREATY ORGANIZATION

Hon. Clément Gignac: Last week, some of my colleagues and I were at NATO headquarters in Brussels for the annual meetings with the parliamentary associations of NATO countries. It would appear as though 19 of the 32 member countries will meet the required defence spending target of 2% of GDP in 2024. With a rate of 1.38% of GDP, it seems as though Canada is still far from meeting the required minimum target.

In an interview last Tuesday with the Canadian channel CTV, NATO's Secretary General said that he was still waiting for Canada to give him a date as to when it expects to meet its commitment. The U.S. ambassador to NATO added that Canada is the only member country that has not committed by providing a timeline.

On this historic day marking Sweden's accession to NATO, when does your government intend to honour its commitment to our allies?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. It is important to point out that Canada has one of the largest budgets of the 31-member defence alliance; I believe we rank seventh in terms of contributions. As you know, the government increased its spending by more than 70% as part of its 2017 defence policy. Over the past year, Canada has shown that it is ready to go even further.

Rest assured that Canada will continue to increase its military capacity to meet the challenges of today's world and invest in modern equipment for its armed forces.

Senator Gignac: Thank you for your answer, Senator Gold. I'd like to point out that Canada is part of the G7. I'm therefore not surprised that its budget puts it in seventh or eighth place.

Despite its seven-party coalition government, Belgium agreed last June to meet the target of 2% of GDP by 2035 through binding legislation.

Do you think that the government could follow the example of our Belgian friends and introduce a legislative framework that compels compliance with our international obligations?

Senator Gold: Thank you for the question. The government has agreed to balance its national and international commitments while actively increasing its defence spending. As the Prime Minister said during his visit to Ukraine, a lot remains to be done regarding defence spending, and the government is determined to meet the 2% target in due course.

PUBLIC SAFETY

ARRIVECAN APPLICATION

Hon. Claude Carignan: My question is for the Leader of the Government in the Senate. Last week, we learned that another company, with just two employees, was awarded $7.9 million in contracts to develop the notorious ArriveCAN app. Can the leader explain how two people can be awarded $7.9 million in contracts?

Hon. Marc Gold (Government Representative in the Senate): The answer is no, I have no explanation. That's why the contracts of several companies involved in the development of ArriveCAN have been suspended. It's also why an investigation is under way within the department to shed some light on what happened. If any illegal activity is found to have taken place, a police investigation will follow.

Senator Carignan: I will explain what happened, leader. The fact is that the company is used simply as a front, claiming to be Indigenous. Money is taken out of the budget for contracts awarded to Indigenous companies, who then sub-contract to non-Indigenous companies. The amount of $7.9 million that is usually allocated to Indigenous companies was given to non-Indigenous companies.

Will the government commit to conducting a full audit of every contract awarded to Indigenous companies to ensure that the sums are indeed going to Indigenous people?

Senator Gold: It is unacceptable for a company or an individual to try to circumvent a policy designed to support and encourage certain businesses, whether they are Indigenous or they work in any other context. Again, the investigation will shed light on the situation because it is unacceptable for such things to happen.

[*English*]

Hon. Yonah Martin (Deputy Leader of the Opposition): My question also concerns the $60 million "ArriveScam" app, specifically the deleted emails. On Friday, the Information Commissioner issued a statement that says:

> Based on allegations related to the destruction of records that were the subject of access to information requests, the Information Commissioner of Canada has initiated an investigation into matters related to requesting and obtaining access to records regarding ArriveCAN between March 2020 and February 23, 2024.

Leader, that's almost four years' worth of emails which have allegedly disappeared. Based on the statement, the commissioner appears to have launched the latest investigation into "ArriveScam" on her own accord. Why didn't the Trudeau government ask her to investigate?

Hon. Marc Gold (Government Representative in the Senate): I'm not in a position to answer that question. I think the government is pleased that the investigation is under way, as it is with all the other investigations. Once again, colleagues, politics aside, the situation that we now understand took place with the development of ArriveCAN had so many problems and flaws, as the Auditor General properly pointed out in her report, including lack of documentation, which makes it even harder — impossible, in some cases — for her to get to the bottom of the matter.

These are things that should never have happened and will not happen again if all the measures that are put into place are followed through as they should be.

Senator Martin: It's actually quite unfathomable that four years' worth of emails are missing. That's a lot. Four years, leader. It is ironic, to say the least, that the former CBSA official at the centre of the deleted "ArriveScam" emails is currently the Chief Technology Officer for the entire Government of Canada.

• (1840)

Since it learned of the allegations that four years' worth of his emails were deleted, what has the Trudeau government done to recover them? Has it done anything?

Senator Gold: I'm not in a position to answer the question of what steps have been taken. I will certainly raise that with the minister at my earliest possible opportunity.

JUSTICE

ONLINE HARM

Hon. Julie Miville-Dechêne: Senator Gold, a year ago, during the study of Bill C-11, you said this about my age verification amendment:

> . . . The Government of Canada is looking to introduce legislation to address potential online harms with the goal of keeping all Canadians safe online, including being safe from the kind of harm that this amendment would propose. In the government's view, this would be the most appropriate forum, in the context of that legislation, to discuss this important issue. . . .

In other words, the government said, "We'll take care of the issue in our online safety bill."

Today, the government finally introduced its long-awaited bill, and there's no age verification to prevent children from accessing online porn. So my question is this: What happened to that clear commitment?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. Canadians of all ages and certainly children deserve a safe place and a safer online place. The government's commitment last year remains true today, namely, to put into place a regulatory framework that ensures that there is a protection for Canadians while respecting other important constitutional values, like privacy and freedom of expression.

The bill that was tabled today, the Online Harms Bill, is something which will be debated in the House and will be debated here. I know the major points, and it is clear that it does not include an age verification measure, but it does — if I understand correctly — contain other measures that, in the government's view, are designed to protect children and to make the internet a safer place. We look forward to the study of that bill.

Senator Miville-Dechêne: The United Kingdom, France, Germany and the European Union have adopted age verification laws to access online porn. They have safeguards to ensure privacy of data, like Bill S-210. Why not look at these examples instead of deciding to allow children to freely access the porn sites?

Senator Gold: Again, senator, there's no question that the experiences of other jurisdictions have been taken into account by policy-makers in the drafting of this bill. I look forward to these questions being asked in the other place when it becomes a subject of debate on the floor, in committee and certainly when it comes here. I think the ministers and the officials will be in a better position to answer the questions than I am — at least on this first day that the bill was tabled.

AGRICULTURE AND AGRI-FOOD

HUMAN RESOURCE ISSUES

Hon. Robert Black: My question is for the Government Representative.

Senator Gold, on February 15, 2024, the Canadian Agricultural Human Resource Council, or CAHRC, released a new report which outlines that Canada's agricultural sector is facing a looming crisis with over 100,000 job vacancies projected by 2030. This shortage threatens local food security, economic growth and sustainability of our agricultural sector.

The report emphasizes a crucial role of temporary foreign workers in bridging the gap and also highlights the necessity for long-term solutions to attract and retain workers domestically.

Senator Gold, given the gravity of this situation, can you provide insight into the government's plans to address the workforce challenges outlined by the CAHRC report and ensure the future viability of our agricultural sector?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. The government is committed to supporting Canadian employers and helping them to adapt to the current economic conditions. Canada has experienced continued low unemployment rates. While there are some signs that current labour shortages are easing, the rebound is inconsistent. Furthermore, certain sectors such as the agricultural sector are still facing challenges.

In April 2022, the government introduced the Temporary Foreign Worker Program Workforce Solutions Road Map to help employers fill job vacancies in the wake of labour shortages.

More recently, the government has announced changes to the road map to better reflect current labour market conditions and to reflect the economic outlook for the future. These extended measures will be in place until August 30 of this year and will be reviewed as labour market and economic conditions continue to evolve in the coming months.

Senator Black: Senator Gold, could you elaborate on any specific short-term measures being considered to address the imminent workforce challenges facing the agricultural industry particularly in light of the projected retirements and persistent labour shortages that I've mentioned earlier?

Senator Gold: Thank you for that question. The government has announced what is called the Recognized Employer Pilot, or REP, which will help streamline processes for employers with the highest standards of worker protection. REP will be more responsive to labour market shortages and will reduce the administrative burden for repeat employers who demonstrate a history of program compliance while ensuring that temporary foreign workers are protected.

PUBLIC SERVICES AND PROCUREMENT

PROCUREMENT PROCESS

Hon. Donald Neil Plett (Leader of the Opposition): My next question concerns the secret contracts given to Accenture to run the Canada Emergency Business Account, or CEBA, loans program, leader, for small businesses.

The Trudeau government originally claimed the vast majority of the workforce was based in Canada with just four employees in the United States. Then late last year, an answer to one of my questions on the Senate Order Paper — which I don't get very often — led to the discovery that work on the loan accounting system for this program is, in fact, being done in Brazil. Last month, the Trudeau government admitted to *The Globe and Mail* that about one third of all employees working on this program are based in Brazil through an Accenture subsidiary.

Leader, why did your government provide Canadians misinformation about these contracts?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. Again, I'm not accepting the premise that the government at the time provided misinformation. I simply do not know how the evolution of that work evolved. It is quite common for companies in Canada, indeed around the world, to take advantage of subsidiaries in other countries. Beyond that, I don't have the details to respond to your question.

Senator Plett: You provide information that isn't correct, it's misinformation, leader. You are constantly lecturing us here about misinformation — the Conservatives — but here we have a blatant example of misrepresentation, mismanagement and secrecy, leader. The Trudeau government is not worth the cost and will never fix our budget.

What is the current total of these contracts now, leader? Is it more than $208 million?

Senator Gold: I don't have a figure that I can provide by way of an answer, senator, but thank you for your question.

PRIVY COUNCIL OFFICE

PUBLIC SERVICE COMMISSION

Hon. Marilou McPhedran: Senator Gold, because I don't belong to any Senate caucus I wasn't able to ask this question of the President of the Public Service Commission at Committee of the Whole last December, so I'm pleased to be able to ask you the question.

Can you inform this chamber if whole-of-government policy directives regulating the use of non-disclosure agreements, or NDAs, in resolving employee grievances about harassment exist? Does the government track frequency, cost and other related metrics related to the usage of NDAs in departments, Crown corporations and other entities receiving federal funding?

Hon. Marc Gold (Government Representative in the Senate): I'm glad that you have the opportunity to ask me the question, dear colleague, but I simply don't have the answer. However, I will certainly raise those considerations with the minister as soon as I can.

Senator McPhedran: NDAs are tools intended to protect proprietary trade secrets, not to hide illegal wrongdoing. What is this government doing to protect employees from misuse of non-disclosure agreements like we heard from testimony of employees of Sustainable Development Technology Canada when they addressed Parliament?

Senator Gold: I will certainly add those to my inquiries. Thank you for the question.

• (1850)

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: second reading of Bill C-62, followed by Motion No. 156, followed by all remaining items in the order that they appear on the Order Paper.

CRIMINAL CODE

BILL TO AMEND—SECOND READING

Hon. Marc Gold (Government Representative in the Senate) moved second reading of Bill C-62, An Act to amend An Act to amend the Criminal Code (medical assistance in dying), No. 2.

He said: Honourable senators, I rise today to speak at second reading of Bill C-62, An Act to amend An Act to amend the Criminal Code (medical assistance in dying), No. 2, which was introduced in the other place by the Minister of Health on February 1, 2024.

[*Translation*]

The bill proposes extending the temporary exclusion of mental illness as the sole underlying medical condition as an eligibility criterion for medical assistance in dying, or MAID, for three years, until March 17, 2027. Without this legislative change, the exclusion will be automatically repealed on March 17, 2024, at which point eligibility for MAID in those circumstances will become legal under the eligibility criteria and safeguards.

[*English*]

Colleagues, I appreciate that this is and continues to be a difficult issue for many of us.

On a personal level, this engages our deepest values and beliefs as human beings. How can it not, when we are faced with the human suffering of those who wish to avail themselves of MAID to end their own lives? But MAID is also an issue that engages us as senators as we work through our role as legislators in Canada's constitutional democracy.

In my remarks today, I will focus on two main issues. The first is whether our health care systems, which fall under provincial and territorial jurisdiction, are ready to implement MAID where the sole underlying condition is mental illness, often referred to as MAID MD-SUMC. The second concerns the compatibility of Bill C-62 with the Canadian Charter of Rights and Freedoms.

I hope to persuade you that the government's policy reasons for proposing a further delay are well-founded and reasonable, and to ask for your support in passing Bill C-62 as presented and to do so before we rise this week for our March break.

At the outset, colleagues, let us be clear about what Bill C-62 is not about.

Bill C-62 is not about whether medical assistance in dying is or should be the law of Canada. That was decided by the Supreme Court of Canada in the *Carter* decision and is now entrenched in our Criminal Code.

Nor does Bill C-62 invite us to decide whether MAID should be made available to those whose sole underlying medical condition is mental illness. Bill C-62 does not remove the expansion nor reopen it for debate. That was decided by Parliament and is already entrenched in the Criminal Code.

Bill C-62 provides for a three-year extension to ensure that MAID MD-SUMC can be implemented safely and consistently across Canada.

Colleagues, it is not the case that no work has been done to get the systems ready; on the contrary, since 2021, when Parliament adopted the initial sunset provision for this exclusion of eligibility, important progress has been made in preparation to address MAID for those whose sole underlying medical condition is mental illness. The federal government has been working closely with the provinces and territories on several measures, such as the development of a model practice standard for use by regulatory bodies and clinicians and the development and launch of a nationally accredited training curriculum for clinicians.

Despite this progress, however, all provinces and territories have asked for a further delay to ensure a consistent and safe approach across the country.

[*Translation*]

On January 29, 2024, several provincial and territorial health ministers sent a letter to the federal Minister of Health requesting an indefinite suspension to the expansion of MAID eligibility criteria. Since then, other provinces have indicated that they also support an extension of the sunset clause, although not necessarily indefinitely. This includes the province of British Columbia, which has one of the highest MAID application rates, and the province of Quebec, one of the most progressive MAID jurisdictions in the country.

Bill C-62 also follows the Special Joint Committee on Medical Assistance in Dying's recommendation that an extension of the sunset clause was necessary.

[*English*]

In their report *MAID and Mental Disorders: The Road Ahead*, tabled on January 29, 2024, the committee noted that while considerable progress has been made in preparing for the expansion of eligibility for persons suffering solely from a mental illness, more time is needed to ensure that the health care system can safely provide MAID in these types of complex cases. The committee also recommended that a joint parliamentary committee be re-established to assess preparedness one year prior to expanding MAID eligibility.

As Minister Holland acknowledged during the Committee of the Whole, some provinces or territories are more prepared than others, as are some clinicians. The main issue is variation across the country. More time is needed to ensure that health systems Canada-wide are better prepared to address MAID requests that may arise in any given institution and that these requests be assessed and administered in a consistent manner throughout the country. Indeed, the government has also heard from major institutions, such as the Centre for Addiction and Mental Health, or CAMH, to the effect that they have not yet reached a consensus on how to implement MAID based solely on mental illness.

Honourable colleagues, the current date for the sunset clause to be lifted and to allow for MAID applications where mental illness is the sole underlying condition is March 17, 2024. Should Bill C-62 not receive Royal Assent prior to that date, a significant legal gap would be created that would lead to tremendous uncertainty across the country.

During this gap, the practice may be deemed legal, and it would create very real challenges for jurisdictions and practitioners. It would also create difficulties for individual applicants, especially where there is an absence of both resources and the required framework for the safe administration of MAID.

All parties need clarity, and applicants, assessors and practitioners all need consistency in the application of the criminal law throughout the country so that no one is in fear of running afoul of the law — at the same time ensuring that the best quality of care and service are provided across jurisdictions.

The coming-into-force provision of Bill C-62 should in no way be considered an invitation for us in the Senate to give rise to this legal gap.

[*Translation*]

Colleagues, we know that opinion differs on the fact that the health care system is not ready. We heard that the training program and the model practice standard are in place, that some clinicians believe that they and their colleagues are ready to assess those who apply for medical assistance in dying when their sole underlying medical condition is a mental disorder — otherwise known as MAID MD-SUMC — and that only a small number of people whose sole medical condition is mental illness would qualify for medical assistance in dying. In fact, the Minister of Health acknowledged all of this when he appeared before the Committee of the Whole. However, this is only part of the equation. What do people mean when they say that our health care systems are not yet ready?

[*English*]

With respect to the availability of trained assessors, let's start with the numbers.

The provinces and territories responsible for the administration of health care have identified that only 2% of psychiatrists have currently been trained. Of the 1,100 clinicians who registered for training, only 130 are psychiatrists. And of those 1,100 clinicians, only 40 have received the full training module. Since the curriculum was launched in August 2023, 26 facilitated sessions have been delivered in six jurisdictions — Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan — and 15 sessions are still planned in other jurisdictions: Manitoba, Newfoundland and Labrador, Ontario and Quebec. To be sure, more clinicians will be fully trained as time goes on, but the numbers fall far short of what is required for a country as big and diverse as is Canada.

• (1900)

Senators, we have heard, and will hear, that a number of practitioners are ready to address MAID based solely on mental illness, but there is not unanimity in the field.

Let me cite Dr. Tarek Rajji, who is the chair of CAMH's medical advisory committee who testified:

> We have several physicians and nurse practitioners who are open to being involved in the process of MAID assessments for eligibility, but we hear them very loudly that they need more guidance. They have no consensus standards to determine, if they see a patient in their office, whether this person has an irremediable illness or not.

Colleagues, the issue of readiness goes beyond the raw numbers of trained MAID assessors. It also engages the question of ensuring that there is consistency within and across jurisdictions in the implementation of the MAID regime.

For example, the Collège des Médecins du Québec, which is in principle supportive of MAID MD-SUMC, submitted that there was a need for further clinical guidelines that were yet to be formalized or adopted in that province.

Dr. Gaudreault, the president of the Collège, explained that, while guidelines were being developed and five criteria relating to MAID MD-SUMC had been identified, more work was needed.

British Columbia's Minister of Health has publicly supported the federal government's decision to delay the expansion of MAID eligibility. He stated, "It is my recommendation that additional safeguards are required to ensure the safe and appropriate delivery of MAiD . . . ."

This was also underscored in the submissions to the Special Joint Committee on Medical Assistance in Dying by the Centre for Addiction and Mental Health, CAMH, which is Canada's largest mental health teaching hospital and one of the world's leading research centres. Allow me to quote from their written submissions of November 28, 2023:

> The Federal Model Practice Standards are a good first step in highlighting the benchmarks that health professional regulators can expect from their members who choose to offer MAiD. But it is not enough. Health professional regulators also rely on their members having access to the best available evidence through clinical practice guidelines. Guidelines for MAiD cases where mental illness is the sole underlying condition do not currently exist . . . .
>
> While some provinces and territories regulatory bodies have successfully implemented practice standards developed by an independent task group made up of clinical, regulatory and legal experts into their guidance documents for clinicians . . .

He cites Alberta, Nova Scotia, Newfoundland and Ontario and then continues, ". . . others are still in the process of reviewing and updating their existing standards . . ."

For example, British Columbia, Manitoba, Saskatchewan, New Brunswick and the Northwest Territories, and, ". . . others have indicated that they have not made any advancements on this front."

If I may continue with the written submissions of CAMH:

> It is also important for the government to understand that the health care system is not equipped to handle the increase in MAiD requests that are expected to come in March 2024 . . . .
>
> Without time to ensure that guidelines, resources and experts are in place, access to MAiD for people whose sole underlying medical condition is mental illness will be limited and inconsistent, and may exacerbate existing inequities within the health care system. It may also lead to confusion, distress and frustration for patients, their families, and health care providers.
>
> Therefore, CAMH is urging further delay in extending MAiD eligibility to people whose sole underlying medical condition is mental illness at this time, and until the health care system is ready and health care providers have the resources they need to provide high quality, standardized and equitable MAiD services.

In addition to the submissions of CAMH, the Canadian Mental Health Association in their January 2024 statement in support of the extension wrote:

> A delayed expansion of MAID will allow for the greater training of frontline mental health and substance use health staff. We ask that the government make the training modules available to community mental health and substance use health providers and the staff that support our organizations. Additionally, we suggest developing specific resources to help these providers address ethical, legal, and practical questions and concerns that will arise once MAID MD SUMC is available.

Colleagues, it is not only CAMH and the Canadian Mental Health Association who support the extension of the sunset clause.

The Ontario Hospital Association, which represents Ontario's 140 public hospitals, has indicated that it is still struggling with how their institutions will implement MAID based solely on mental illness.

Colleagues, there is also the question of oversight.

Several provinces have implemented robust oversight mechanisms, including some of the larger provinces — British Columbia, Alberta, Ontario and Quebec — while others do not have formal MAID quality assurance and oversight processes in place, notably Manitoba, Prince Edward Island and New Brunswick.

Furthermore, the decision to pause the expansion was also predicated on the serious concerns about ensuring what may be called "wraparound services" to support the mental health needs of those contemplating making a MAID application. For example, is there enough capacity to refer individuals to suicide prevention resources if appropriate in a given case?

Last summer, a Best Brains Exchange facilitated by the Canadian Institutes of Health Research addressed MAID Track 2 — that is, where death is not reasonably foreseeable — including MAID based solely on mental illness. The meeting report states that the two-day exchange brought together stakeholders from multiple sectors including regional health care authorities, academics and clinicians.

During the Best Brains Exchange, it was noted:

> Not everyone will be eligible and this can increase risk of suicide. Alleviating suffering might be a role in and of itself. Alleviating suffering and putting effort and focus into this discussion can mitigate potential problems, given the shortage of physicians and backlogs of mental health services.

Meeting participants further noted:

> Being on a MAID waitlist after the process of asking for MAID can be stressful and can increase suicidality, and long wait lists can increase risk of suicidality, which all relates to the process being difficult for patients.

In addition to ensuring MAID applicants are adequately given wraparound supports, it is also important to ensure that clinicians or practitioners will be well supported as they undertake the highly complex assessments for those whose sole medical condition is mental illness.

During the same Best Brains Exchange, another system-wide need that remains to be fulfilled is:

> It will be important for Health Authorities (HAs) and leaders to continue developing Communities of Practice and related support systems. HCPs [health care professionals] need space to reflect on their personal and professional boundaries, including the conditions under which they may say 'no.'

[*Translation*]

Indeed, it is not just the provincial and territorial health ministers who raised these concerns during their meeting in Charlottetown. These concerns were also at the heart of the January 30 statement by the Canadian Mental Health Association to support an extension of the sunset clause. In their view, there aren't enough time and resources to consult the community partners and people with a lived experience of mental health problems and addiction, or even to support the front-line mental health and addictions personnel, who have to respond to requests for information and who are likely to proceed with the assessments.

[*English*]

Colleagues, there is also the related issue of the coordination of mental health and other support services that are important in this process.

Some jurisdictions have robust coordination services to manage requests and provide ancillary services, as do British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and Newfoundland and Labrador. Other jurisdictions take a decentralized approach, which can result in less coordination across services and disciplines, for example, in Ontario, New Brunswick and Prince Edward Island. The availability of necessary support services for both practitioners and patients vary, depending on the region.

• (1910)

Colleagues, the government has also heard from Indigenous communities that they are not ready for MAID MD-SUMC to be available in their communities. Discussions with Indigenous leadership and communities have begun, but more time is needed to properly engage and consult.

On this, the Government of Canada has launched a two-year engagement process on MAID to hear the perspectives of First Nations, Inuit and Métis, including urban Indigenous people, non-status/off-reserve Indigenous people, Indigenous peoples living with disabilities, and Two-Spirit, LGBTQQIA+ and gender-diverse Indigenous people. This engagement takes a two-pillar approach through both Indigenous-led and Health Canada-led engagement activities.

To date, nine Indigenous organizations have been funded to lead community engagement on MAID and/or palliative care. Health Canada is supporting additional engagement activities including an online survey open until June 30, 2024, and a suite of 23 national knowledge exchange round tables, led by an Indigenous-owned business, scheduled to take place between February and April 2024 in seven locations across Canada and virtually.

The information collected through all engagement activities will inform a *What We Heard* report, or WWHR, on the views and experiences of Indigenous peoples on MAID, planned for release in 2025. This report will help to guide culturally safe and informed MAID policy at all levels of government and respect the diversity of Indigenous peoples.

Health Canada plans to provide an official update to Parliament on Indigenous engagement on MAID in March 2024.

Colleagues, the government has listened to the provinces and territories, to medical professionals, to people with lived experience, to Indigenous communities and to other stakeholders. Bill C-62 is the product of that engagement, and it reflects the government's considered view that our health systems across Canada simply need more time to be properly and consistently ready.

Honourable senators, the bill before us is about process, prudence and, yes, about cooperative federalism. The request for a pause was made by those with the constitutional responsibility for MAID applications, the provinces and territories, and they spoke with one voice.

Let me switch to the second of my topics.

[*Translation*]

Many things have been said about determining whether excluding eligibility for MAID where the sole underlying medical condition is a mental disorder is consistent with the

Charter. Some have argued that the exclusion not only doesn't comply with the Supreme Court ruling in *Carter*, but that it also perpetuates the stereotypes and discrimination against people suffering from mental illness.

Respectfully, I disagree with that statement. Allow me to underscore three points on this.

[*English*]

The first is in relation to the decision of the Supreme Court in the *Carter* case.

Now, colleagues, it is true that the declaration of invalidity in *Carter* was broadly framed and that it did not expressly exclude mental illness from its ambit. But the court took care to specify that its declaration was ". . . intended to respond to the factual circumstances of this case." Those circumstances involved plaintiffs suffering from advanced and grave physical illnesses. The issue of MAID on the basis of a mental illness was not before the court in *Carter*, and the court did not purport to decide it. Indeed, the court expressly noted that MAID for persons with psychiatric disorders would ". . . not fall within the parameters . . . " of its reasons. In fact, no court has yet determined that excluding persons whose sole underlying medical condition is mental illness infringes the Charter.

Moreover, in concluding that the blanket prohibition on MAID for those whose death was not reasonably foreseeable — in concluding that that was unconstitutional — the Court in *Carter* recognized that physician-assisted death involves complex issues of social policy and a number of competing societal values and interests. It acknowledged that these competing interests are themselves protected under the Charter and that Parliament faces a difficult task in balancing the perspective of those who might be at risk in a permissive regime against the perspective of those who seek assistance in dying. Importantly, the court suggested that a high degree of deference would be given to the particular balance struck by Parliament's response.

The court stated at paragraph 132 in its reasons for judgment:

> . . . nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying. The declaration simply renders the criminal prohibition invalid. What follows is in the hands of the physicians' colleges, Parliament, and the provincial legislatures. However, we note — as did Beetz J. in addressing the topic of physician participation in abortion in *Morgentaler* — that a physician's decision to participate in assisted dying is a matter of conscience and, in some cases, of religious belief . . . . In making this observation, we do not wish to pre-empt the legislative and regulatory response to this judgment. Rather, we underline that the *Charter* rights of patients and physicians will need to be reconciled.

The second point I want to make concerns the rights protected by the Charter itself, notably the equality rights provisions of section 15, and the right to life, liberty and the security of the person guaranteed by section 7 of the Charter.

Regarding section 15, the government has acknowledged, through its Charter Statements for former Bill C-7, Bill C-39, and now for Bill C-62, that the exclusion of eligibility creates a distinction on the ground of disability.

But this is not the end of the constitutional inquiry under section 15. As the Supreme Court has stated in several leading decisions, section 15 of the Charter is designed to protect substantive — not formal — equality. Otherwise put, the equality rights protected by the Charter do not necessarily require identical treatment. For a law to infringe section 15, the distinction in the law must be discriminatory in the substantive sense. The court has told us that this is a contextual analysis that looks at whether the distinction created by the law reinforces, perpetuates or exacerbates stereotypes and social disadvantage.

As outlined in these Charter Statements, and as stated by the Minister of Justice when he appeared before us in the Committee of the Whole, the temporary exclusion of eligibility is not based on an assumption that persons with mental illnesses lack decision-making capacity, or on a failure to appreciate the severity of suffering that mental illnesses can produce. Rather, it is based on the complexities and risks of permitting MAID in circumstances where expert opinion is divided and where all provinces and territories have indicated that they need more time to get ready. Accordingly, it is the view of the government that Bill C-62 is not discriminatory and therefore does not infringe the equality rights protected by the Charter.

As confirmed by the Minister of Justice, Minister Virani, at Committee of the Whole:

> . . . When you get at the heart of an equality analysis under the Charter, you look at whether you're perpetuating negative stereotypes, or attacking or impugning the dignity of the individual. . . . there's an equivalence between mental suffering and physical suffering. There is no daylight between those two. As well, there is no perpetuation of a negative stereotype about the decision-making capacity of an individual who is mentally ill.
>
> However, there is an appreciation of the complexity of applying determinations about capacity and decision making in the context of people who are struggling, and who may be making requests in a time of crisis . . . and where suicidal ideation can enter as part of, as a feature of or as a symptom of someone's mental illness. . . . It's not just that MAID is different from what general health care practitioners do, but it's also that providing MAID in this context is substantively different — qualitatively different — than any other context that has been provided. Are there Charter issues at stake? Absolutely the Charter is at stake. But . . . we have to make triple sure that we have the rigorous assessment and training in place so that people can make the evaluation. It's critical to get that evaluation right. I don't think the Constitution mandates . . . [the] government to provide a health care service when it is not safe to do so, and that's our determination: It is not safe at this time.

A review of section 7 of the Charter leads to a similar conclusion. Although the temporary exclusion of eligibility clearly triggers the right to life protected by section 7, Bill C-62 does not violate the principles of fundamental justice as

elaborated by the Supreme Court of Canada, and the right is the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. In that regard, Bill C-62 is neither vague, arbitrary nor overbroad. As such, the government is of the view that it does not infringe section 7.

• (1920)

Furthermore, colleagues, as we know, rights under the Canadian Charter of Rights and Freedoms are not absolute but are subject to such reasonable limits that can be justified in a free and democratic society. It is the position of the government that given the concerns about readiness, delaying eligibility for a three-year period is both reasonable and justified.

Finally, let me say a word about the role of Parliament in relation to Charter issues of this kind. As the Supreme Court of Canada has stated in several leading decisions, including but not limited to the *Carter* case, where cases raise complex issues of competing rights and social values, Parliament is to be given some latitude in choosing between a range of constitutional policy options. Indeed, the Supreme Court in *Carter*, as I mentioned earlier, acknowledged that Parliament's response — its decision on how to strike the balance amongst these diverse and competing interests — would be owed a high degree of deference from the courts.

Given the important and competing interests, given the stated positions of all provincial and territorial governments, given the lack of consensus within the medical profession as to their readiness to implement MAID where the sole underlying medical condition is mental illness, I submit, colleagues, that Bill C-62 falls squarely within a range of reasonable alternatives that are permissible under the Charter and permissible for Parliament to pursue.

Colleagues, I stated at the outset that this is a difficult issue for all of us, for it engages both our personal convictions and experiences as well as our role as senators in our constitutional democracy, but as I have endeavoured to demonstrate in my remarks today, Bill C-62 represents a legitimate and reasonable policy response to a very complex and challenging social issue. It is supported by an overwhelming majority in the other place and by the health ministers in every province and territory in our country.

Although significant progress has, indeed, been made on the question of access to MAID with mental illness as the sole underlying condition, or MAID MD-SUMC, more work still needs to be done. The additional three years strikes the correct balance between ensuring that individuals across Canada can safely access MAID MD-SUMC while providing a clear target to ensure that our health care systems continue to do what is necessary to be ready. It is a prudent measure to ensure that Canada has a MAID regime in place that is carefully studied, properly equipped and able to respond safely and consistently to the complex issues raised in the cases with which it will be confronted.

For these reasons, colleagues, I would respectfully ask you to support Bill C-62, and I thank you for your very kind attention.

Hon. Yuen Pau Woo: Thank you, Senator Gold, for your exposition. I think you have made a good case for the bill, and I intend to support it. However, I was struck by a comment in the middle of your speech, and I would like to ask you about it.

You referred to the lack of consensus among practitioners around the issue of irremediability and cited that as a reason for the three-year delay. Is it the government's view that at the end of three years, the psychiatric community will come to a view on irremediability and therefore remove that impediment to the implementation of MAID MD-SUMC?

Senator Gold: Thank you for the question. I will have to go reread my speech. I'm not sure I cited that issue as the central reason as to why, in fact, there is not a consensus within the communities of physicians, regulators, health care ministers and the like. Nor am I in a position to competently predict what kind of consensus may emerge among assessors — psychiatrists, notably, but others — because other health care professionals are involved in the process.

Work is being done on that, to be sure, and one of the reasons that has been cited for needing more time is to translate the fairly general practice guidelines into more specific guidance for those in the assessment process, within individual institutions, individual provinces or across this country.

Hansard will reveal what I said, but the purpose was not to zero in on that specific issue.

The government is confident that three years is a reasonable time. It's a clear target as opposed to an indeterminate one, and, therefore, the system will be sufficiently ready so that MAID can be administered more consistently and safely across this country.

Senator Woo: I won't put words in your mouth, but irremediability is, of course, at the heart of the legislation, because it is the triggering criteria for MAID of any kind to be offered.

If, in fact, after three years, the practitioners are unable to come to a consensus on what is irremediable in MAID MD-SUMC, is it not the case, then, that someone seeking MAID MD-SUMC would simply have to find the right practitioner who is willing to offer it because of a diagnosis of irremediability?

Senator Gold: I'm not sure that that's the only consequence, if there still remain differences of opinion between clinicians, and I think it would be idle to assume that what is necessary is that every clinician, whatever discipline or specialty, is of one mind, leaving aside issues of conscience and the like.

I think what is necessary, though — and that is what we are told by the Centre for Addiction and Mental Health, or CAMH, the Ontario Hospital Association and others — is that there needs to be much more specific criteria developed within that community for deciding exactly what measures, for example, might need to be taken before one could conclude that all steps have been taken to no avail to alleviate suffering.

I have confidence in the medical community. I have confidence in the regulatory bodies that are working on this. People are working hard at this and in good faith. In jurisdictions like my own in Quebec or like in British Columbia, these are not jurisdictions that are ideologically opposed to MAID generally or to MAID Track 2 or to MAID for mental illness. It is simply not the case that they are looking for an extension because they wish the thing would go away. They say, "We are working really hard at this, but we need to do more, and we need to drill down deeper. We need more assessors trained. The take-up has been reasonable but not overwhelming." It is a long process to get fully trained, as the Minister of Health said.

I have confidence in our systems to get ready, because I think the extension requires them to get ready, and they have been working really hard at it. We are just not there yet.

Hon. Stan Kutcher: Thank you very much, Senator Gold, for that speech, and I think you are absolutely correct in pointing out the challenges of sorting out this very difficult issue, one that is both personally difficult and professionally difficult for me, but also one that is difficult for all Canadians. People in the chamber know that of the nine countries that provide some form of MAID, Canada is the only one that excludes people with a mental disorder.

You mentioned that at this point in time — and you correctly noted that more psychiatrists are being trained — about 2% of psychiatrists have been trained, and that is a very small number. But you neglected to mention to the chamber that only about 2% of Canadian doctors are trained in MAID, and fewer than 1% of all MAID recipients in the Benelux countries are for a sole mental disorder.

We have 2% of psychiatrists that can't do the work, but 2% of doctors can do the work. This goes to the heart of the discrimination against the people with mental illness. We use one argument that 2% is not good enough, but then 2% is just fine.

Can you help us understand why, if it is okay for 2% of Canadian physicians to be trained, and we can do MAID for physical illnesses, it is not okay for 2% of psychiatrists to be trained?

Senator Gold: Thank you for the question, Senator Kutcher, and also for all the work you have done in educating us and advancing this issue and putting it on the legislative agenda, as we in the Senate did.

In pointing out that only 2% of psychiatrists are trained, it was not to say anything other than the assessment of irremediability and the assessment of someone who is seeking MAID on the basis of mental illness will fall to a large degree — though not completely — on those with psychiatric training and who have received MAID assessment training.

• (1930)

Again, there is no qualitative difference in the suffering at issue, but it may be — and it is believed by many from whom we heard — that there is a more challenging assessment process and a need, perhaps, for greater safeguards with regard to people who present with a mental illness as a sole underlying condition than those who present in the advanced stages of an incurable physical disease and the like.

It's not a question of why it's okay for one and not for the other. What we are being told, Senator Kutcher and colleagues, is that the system as a whole is not ready and that even at Track 2 there is a challenge, in some jurisdictions especially, to respond, in their view, adequately to the demand. And the worry, as was expressed, I believe, by CAMH or other testimony, is that simply the system is not ready to provide all of the support needed, not only for the assessors but for the related personnel and the like.

That's the position of the government with regard to the number of trained assessors at this juncture.

Senator Kutcher: Thank you very much for that answer, Senator Gold. I think it's pretty clear that 2% and 2% are the same number.

The issue here also is that people who have a mental disorder but have a concurrent physical illness are now eligible, even if it's the mental disorder that is the primary reason for their request. There doesn't seem to be a problem currently in providing the kind of comprehensive approach and support and everything else that your government is talking about necessarily having for people who have just a sole mental disorder.

Help us understand why this is not discriminatory. If you have a mental illness and a physical illness, it's okay, but if you just have a mental illness, it's not okay.

Senator Gold: As I tried to explain in my discussion of the Charter, the position of the government is that it is not discriminatory because the nature of the cases is different. When there is a grievous and irremediable physical condition, whether or not it's accompanied by a mental disorder, that is a qualitatively different kind of assessment, it is submitted, than if someone is presenting only with a mental disorder as the underlying condition.

The suffering is the same. The desire for access to MAID is the same, but the actual assessment is going to be done differently because, unless I am incorrect, I believe that those who qualify for MAID under Track 2 — or Track 1, for that matter — are qualifying because of the irremediable physical disability or ailment, and not because they have, as some do, though not all do, a mental disorder that accompanies it.

Hon. Flordeliz (Gigi) Osler: Thank you, Senator Gold, for your speech. My question relates to the health care system issues that were previously identified and that you touched on in your speech. In fact, today in the *Canadian Medical Association Journal* published online, Canadian health care leaders noted ". . . inadequate funding to allow for service 'coordination,' 'consistency in services,' and equitable access to care . . ." for both MAID and palliative end-of-life care.

In the spirit of cooperative federalism, does the federal government have a plan — and not leaving it entirely to the provinces and territories — in the next three years to address the health care system problems that have been identified?

Senator Gold: Thank you for the question, senator.

The Government of Canada has been supporting provincial governments and their health care systems for many years with large sums of money. Most recently, as we know, the federal government has entered into bilateral agreements with all the provinces and territories respecting, as it must, the constitutional jurisdiction of provinces to determine what their priorities are.

As the Minister of Health shared with us at the Committee of the Whole, each of these bilateral agreements will have funds dedicated for different purposes, and some — but I can't give you a figure — are going as well to enhance mental health supports. And the government will continue to work with the provinces and territories to do its part to improve access to mental health supports and other ancillary supports in the provinces and territories and in Indigenous communities as well.

We will never have a system that is perfect, and the government is not pretending that everything will be perfect in three years. There will always be — regrettably, tragically, and one can even say shamefully — inequities in access to health care services. It's not only urban versus rural. It's even within classes of people within any given area.

The Government of Canada is continuing to do its part with the provinces and territories to provide as much support as it can. Provinces are doing their part as well. The expectation is that with all of the measures that are being done — within the profession, within the provinces and territories, within the institutions such as the hospitals of Ontario or the hospitals in my province and elsewhere — the system will be ready.

Senator Osler: Thank you, Senator Gold. I would suggest that now more than ever when it comes to health care, the federal government should take a leadership role in the spirit of cooperative federalism.

You mentioned the bilateral health care agreements. The health ministers met with Minister Holland in November, and I believe health care agreements have been signed with all but one province/territory.

Are you able to share if a plan for helping the health care system issues was discussed at any of those tables?

Senator Gold: I'm not privy to the details of the discussions between the ministers, and I'm not sure that it is a matter of public record. I do know that the Minister of Health and his counterparts are in constant discussion, as are officials, on these matters. I know that this government and this particular minister feel very strongly that the federal government should continue to do its part with the provinces and territories to help them get ready.

Cooperative federalism also means respecting the sovereign jurisdiction of the provinces to decide exactly what their greatest needs are and where to put them. Some provinces are focusing more on services in rural areas, others perhaps in other areas, and that's just an ongoing give and take between the federal government and its counterparts.

Hon. Denise Batters: Senator Gold, thank you very much for your speech tonight.

In your speech, you stated that Indigenous groups say that they are not ready for this and that the government was then going to be launching a two-year process of consultation. However, Senator Gold, three years ago at our Senate Legal Committee, we had witnesses representing many different Indigenous organizations, and they were crystal clear then that they weren't ready. They said this to us both at our pre-study for that bill and at the Bill C-7 subject-matter study at that committee. The reason we decided to call them as witnesses was because there was a clear gap in the House of Commons' study in that respect.

Many of these Indigenous witnesses told us on behalf of their organizations that they did not want assisted suicide for mental illness as a sole underlying condition. They told us that many of their communities were actually in crisis, and they wanted help for their communities on mental illness and substance abuse — and not easier access to the lethal means for suicide.

• (1940)

Given this, Senator Gold, why hasn't the government started this process of proper Indigenous consultation long before now? And will your government actually listen to what they say this time?

Senator Gold: Thank you for the question. The challenges that Indigenous communities face with inadequate access to health care and the high rates of despair and suicide are tragically well known. Therefore, I have been advised that the subject of MAID is one, frankly, that many communities don't even want to talk about; consultation and engagement are a two-way street. It's not something that one can insist on or enforce.

I've been advised that it has taken time to bring people to the table and to explore the fact that Parliament has passed a law that says, subject to the sunset clause, access to MAID — where mental illness is the sole underlying condition — will be in effect in three years, and is working with and funding Indigenous communities to better understand. Also, it's important to listen to and hear from Indigenous communities about what their needs are because their needs are enormous in order to provide care and support for people who find themselves in desperate circumstances, and for whom the resources to support, treat and heal them are inadequate.

The government is doing what it can at the pace that the communities are willing to engage in, and will be reporting on a regular basis to Parliament on the progress of that as well.

Hon. Stan Kutcher: Honourable senators, today I rise to speak against this bill. I do not support it. I believe it to be contrary to the Charter and two provincial court decisions that

directly address this issue. It is discriminatory toward people with a mental disorder, and not based on best available evidence of readiness.

We must focus on what this bill addresses, and not our personal feelings about medical assistance in dying where a mental disorder is the sole underlying medical condition, or MAID MD-SUMC; MAID Track 2; or MAID in general. This bill is about regulators and providers being ready. It is not about expanding MAID — as has been promoted by those who oppose it — but about ending the legal exclusion of people who have a mental disorder from a type of medical care available to those who have a different kind of illness.

The Alberta Court of Appeal and the Quebec Superior Court have already dealt with this issue. Both decisions have considered the Charter issues. Both decisions clearly discounted arguments that we have been hearing from the anti-MAID MD-SUMC activists.

We, in this chamber, are not relitigating. Litigation is for the courts. We don't have the same tools that the courts have to get at the essence of a matter. Our committees are not structured in a way to function like this. We are a political body and subject to those pressures.

We must consider this bill on its merits to determine if its merits justify postponing equal access to medical care for a small number of Canadians — who have met all the established criteria to apply for this end-of-life care — just because of their diagnosis. We must be confident that this bill does not discriminate against people with a mental disorder.

This is a blanket bill premised on the opinion that nowhere in Canada is there readiness. We must be certain that this is indeed the case. This opinion uses the shield of a flawed joint committee majority report that stated, ". . . the medical system in Canada is not prepared . . . ." without studying Canada's medical system. It ignored the weight of expert testimony, ignored the government's own readiness criteria and did not propose or study any alternative criteria, and suppressed the voices of those most affected. It should not be used to justify the bill.

It is supported by a letter from some provincial and territorial ministers saying they are not ready, but they provide no readiness criteria. In many cases, they directly contradict what their own providers and regulators have told us. Are they really not ready, or are they playing some kind of political game?

We heard from two ministers that some Canadians are urging delay. This is not surprising. There is a well-organized, persistent lobby that wants to eliminate MAID or eliminate all MAID Track 2. They do not speak for persons who are grievously and irremediably suffering from a mental disorder. They have successfully drowned out those voices. They are using MAID MD-SUMC to attack MAID Track 2. We must not be overwhelmed by their cacophony.

This bill's blanket clause prevents people from receiving MAID MD-SUMC while living in a jurisdiction that is ready, because some jurisdictions claim that they are not ready. There is no other medical intervention in Canada that is so prohibited. This is discriminatory.

This bill has extended the deadline even though we have solid evidence that many parts of Canada are ready. We have received the signed letter from over 125 providers indicating that they are ready. One provider wrote in *The Hill Times* that the justice minister is ignoring the evidence and claiming the contrary.

This bill has been pushed through even though we did not hear from the people most affected. It seems that the mantra "nothing about us without us" applies to all Canadians except those suffering from a grievous and irremediable mental disorder — an illness that, if it were a grievous and irremediable physical illness, would be fine. This is discrimination.

Discrimination against those suffering from a mental disorder has a long and dark history. We need to decide this week what side of this dark history we will stand on.

Colleagues, we have been snowed with canards and erroneous, inflammatory language on this issue. These canards have promoted discrimination — for example, no MAID MD-SUMC until we can fix mental health care. Yet, as I can attest from personal experience, our physical health care system is broken. Over 6 million Canadians have no family doctor, yet we allow MAID access for physical illness despite a broken health care system.

We have heard that there should be no MAID MD-SUMC anywhere in Canada until everyone everywhere can have equal access. Indeed, that's what Senator Gold just told us. Yet, nowhere in Canada does anyone have equal access to any kind of health care, including end-of-life care. It is only when it's for those with a mental disorder that it is considered okay to legally deny them access to that kind of care. This bill considers some Canadians not as people but as a diagnosis. This, my friends, is discrimination.

We frequently hear that anyone who is feeling depressed or suicidal will receive MAID MD-SUMC; this is not true. We hear that just because there is not enough palliative care, people will instead choose MAID when what they really want is palliative care; this is not true. This cacophony has fed us fear and falsehoods.

Colleagues, I have spoken to many people who have been waiting for three years to apply for MAID. They told me that they know this cacophony is full of that misinformation, yet they now have been put into purgatory again. Some have told me that if this bill passes, they will choose suicide or will travel to another country to receive this care.

Colleagues, I have practised psychiatric medicine for about 30 years, and I have seen much suffering. Yet, I have not encountered anyone with such prolonged and unsuccessful treatment regimens as those whom I spoke with on this issue — decades of every kind of treatment imaginable, and nothing relieving their intolerable suffering. They were clear that they want to speak for themselves. They were clear that none of the organizations and individuals, such as those that Senator Gold quoted, speak for them. Indeed, these organizations and individuals have never even spoken to them. This may be because the issue that some are attacking is actually MAID Track 2. Denying a few people with a grievous and irremediable mental disorder their end-of-life choice seems to be a political strategy.

The joint committee chose not to hear from those affected. The House chose not to hear from them. The ministers chose not to hear from them. Colleagues, we chose not to hear from them.

• (1950)

What would you think if any other group of people were left out of discussions about legislation that directly impacts their health and well-being? There would be a national uproar. This cacophony has subjected us to numerous accounts of unverifiable anecdotes, misinformed data and sensational media coverage. For example, we have the recent poll on Canada's support for MAID MD-SUMC as reported by the Canadian Press. The headline reads, "Fewer than half of people support assisted dying exclusively for mental illness: poll."

But, colleagues, that's not what the poll says: 42% said yes; 28% said no; 30% said they don't know. The denominator is not 100, colleagues. It is 70, and 42% of 70 is 60% out of 100. That is a clear majority.

The headline could have read, "Only one quarter of Canadians don't support MAID MD-SUMC." We see another subtle promotion of misinformation.

Colleagues, we need to look beyond headlines and sound bites. This bill is not based on independently obtained regulator or provider evidence of readiness. It does not assess readiness for these sufferers the way we assess readiness for any other medical intervention. We have heard directly from regulators and providers, and many say they are ready. We must ask ourselves: Would we have ignored regulator and provider evidence for any other kind of illness apart from a mental disorder? I predict the answer is no. So that's discrimination.

Colleagues, we have not even done this for MAID itself. When MAID began, no federal minister said the system was not ready. Yet nothing was in place. But clinicians and regulators quickly geared up and the system worked. No provincial health minister said Canada wasn't ready for MAID. They are only saying this without any clear rationale for MAID MD-SUMC. This is discrimination.

We have been told by the Minister of Justice there was unanimity in providers, that Canada was not ready. He said:

> . . . the decision . . . has been informed by what we heard unanimously from both the people that lead the health-care systems . . . but also to health care professionals that are . . . delivering MAID.

But we have solid evidence to the contrary. For one, we have the numerous briefs submitted by the providers but suppressed by the joint committee, and, two, a letter we all received signed by over 125 providers saying they and the system are ready.

"Not ready" is a slogan designed to politically avoid this issue. In the Committee of the Whole, the ministers were repeatedly asked what specific parts of the system are not ready. They could not tell us. They just said, "This is what we've been told."

Colleagues, this is not grounds for legislation. This is an excuse for discrimination. Indeed, the weight of evidence that all of us have seen demonstrates that the federal government's own readiness criteria have been met and that many of the regulatory bodies and MAID providers across Canada are also clinically ready.

Even if a province or territory does not want to go ahead to provide this medical intervention, they don't need to do so. It's their choice, but they cannot hold hostage people who live elsewhere in this country. That is what's happening with the blanket exclusion in this bill. If you live in a province that's ready — and my home province is ready — but because another province says they are not, you can't obtain this medical service in your home province.

The ministers told us that CAMH says it is not ready. Well, colleagues, just as Toronto is not the centre of Canada, CAMH does not speak for mental health in Canada. There is a group in CAMH who are opposed to this and who have created their own criteria for readiness. They want Canadian clinical practice guidelines, and they have decided that they are the only people who can create them. By the way, CAMH is part of the network that had written to the joint committee saying that Ontario is ready to go ahead with MAID MD-SUMC.

So, honourable senators, let's get a better understanding of what clinical practice guidelines, or CPGs, entail. There are international criteria for how CPGs are created and applied. They are only created after an intervention has been in place for some time and require, one, critical review of the literature; two, input from clinicians with substantial experience; and, three, input from patients and families. CPGs are voluntary; they do not direct clinical care.

In the Benelux countries, CPGs already exist. They were created after seven years' experience with the practice, following international criteria. Colleagues, here's a perfect Catch-22. Since we can't create clinical guidelines in Canada until MAID MD-SUMC has been in place for some time, demanding clinical guidelines before it begins is designed to stop it from ever happening.

Colleagues, a major problem with this bill is that there are no criteria on how we will know if Canada is ready in three years. If there are no criteria for readiness, or if the so-called criteria make no sense on close examination, how will we ever know if we are ready? We can predict this discussion in the future: We're ready. No, we're not ready. My province is ready. I'm sorry, my province is not ready so we can't go ahead.

The ministers told us that they did not support a Conservative private member's bill that would never allow MAID MD-SUMC. They told us they just wanted more time to be ready, but, in reality, because they provided us with no criteria for readiness and they created a blanket exclusion that prevents any jurisdiction from going ahead independently of any other jurisdiction, they did exactly what the defeated legislation attempted to do. They did exactly what they told us they were not going to do. They are indefinitely shutting down equal access to this type of health care.

Colleagues, I will sum up. I reiterate that this bill is not based on evidence of readiness from those responsible for the delivery of the health care, the regulators, the providers on the ground. Indeed, it flies in the face of what they have clearly told us. Many are ready.

Second, none of the voices of people most affected by this bill have been heard. This is untenable and discriminatory. The rushed and problematic work done by the Special Joint Committee on Medical Assistance in Dying as presented in its majority report is so problematic that it cannot be accepted as a valid justification for this bill.

The blanket exclusion in this bill prevents people living in provinces or territories that are ready, or that will be ready before three years to provide that care, from accessing that care. I live in a province that's ready. You live in a province that's not ready because your province says, "We don't know what the criteria are." They're not ready, so I can't receive this care in my province. That's what this bill actually does.

Clearly defined preparedness criteria for future evaluation of readiness have not been created. The bill doesn't tell us what criteria will be used, so there is never an ability to determine whether we're ready or not.

Hon. René Cormier (The Hon. the Acting Speaker): Senator Kutcher, I'm sorry, but your time is up. Are you asking for five more minutes?

Senator Kutcher: May I have 50 seconds?

The Hon. the Acting Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Kutcher: In three years, we will be back at the point of hearing, "Nine people say we're ready, one says we're not ready; therefore we're not ready."

These are the reasons I do not support this bill. I hope you will consider all of the evidence before we move forward with what, in my opinion, is a discriminatory piece of legislation that violates our Charter and ignores provincial legal precedent. Thank you, *wela'lioq*.

Hon. Pamela Wallin: I thank Senator Kutcher for his work and for his remarks.

Honourable senators, the government's decision to delay puts politics ahead of people, and it has devastating consequences for all those who have worked to see the law recognized and respected and assured for all Canadians. It is heartbreaking for those who face a life of mental illness.

This was, I will remind you, a government commitment. Making those with mental illness as a sole underlying condition was your priority. The government chose that over and above, for example, the issue of advanced requests. I'm still fighting for that. The government said this was its priority and gave hope to all those waiting. Then it delayed a year. And now in spite of facts and evidence to the contrary, you have delayed until after the next election.

The undermining of the joint committee process allowed the whole issue of MAID to be reopened, not just the question of mental illness. Now we are once again relitigating MAID in the public sphere because the government could not muster the courage of its convictions on this particular issue, nor could it take the advice of those who have studied this and who have concluded there is a state of readiness.

In a democracy, people are elected to make the hard decisions, not the easy ones. Anybody can do that. And if the government thinks by putting this off that you will be able to lay blame for backsliding at the opposition's door, I think you are mistaken.

The Conservatives have long stated their disagreement with this, and we can all read the polls. The Conservatives have a reasonable chance of forming a government, so we know that means refighting this battle repeatedly. It was the government that lost its nerve and now tries to shift blame. This puts politics above life and death and the suffering of ill Canadians.

• (2000)

I disagree with the position of the official opposition, but at least they have been consistent in reflecting religious or moral concern, and they vote their conscience. The government has done a one-eighty. It looks political because it is. It was a

government minister who said this will be put off until after the next election, and when you play with people's lives, people, families and professionals will remember the consequences.

For me, the issue of MAID is and has always been about choice. It was for the Supreme Court of Canada, as well, when they ruled, and for the government when they made it the law of the land.

Choice — it's all anybody asked for. The government says it believes in choice for abortion, gender or contraception, but what about choice for end-of-life care? And why will choice be denied just for certain groups?

The "better safe than sorry" argument was the debate three or four years ago before we had the training, standards, practitioners and experience with MAID provision, before MAID providers and medical experts declared readiness.

Of course, next week, next month, next year, more doctors and nurses will join those who have been trained and accredited, and the numbers will grow, but to say because only 40 are ready today that we can't go ahead, well, that is specious. We don't have enough doctors, oncologists, nurses or surgeons for dozens of procedures, but we don't deny care until everyone has access. It has never been how the medical system operates.

We are told repeatedly by Senator Gold that The Centre for Addiction and Mental Health, or CAMH, wants clinical standards. What most Canadians want is a CAMH facility in every city and province, but we don't have that. That doesn't mean we don't treat the mentally ill, it means we do the best we can with the resources and facilities available. We cannot let perfection or equity be the enemy of common sense. Let's do what we can now for those in need now.

But the arguments for the delays are still ill-conceived and more about politics than life struggles facing our citizens. The government says it agrees that mental illness is equivalent to physical illness, but it then proceeds to argue that those with mental illness — or even dementia or Alzheimer's — must be denied the right to access MAID. It is the law of the land. Because some have yet to be defined as ready doesn't mean we will deny readiness for all.

We are living and experiencing a health care system in crisis, and we do not have enough of anybody or anything, but we do not deny treatment until that problem is solved.

The provinces and health ministers' job is to fund and safeguard our health care system, but not to judge or overrule the daily decision making of medical professionals who have direct patient experience and training needed to make safe judgments about medical procedures.

The readiness or preparedness criteria was met according to the experts the government appointed and who testified at the joint committee, and now once again the bar has been moved. What is the new bar? What are the new criteria that the government is adding to the list of four we were all asked to evaluate?

The government is unable to explain what would constitute readiness other than to say health ministers have to agree. Well, on no other file does this government seek unanimity from provinces before proceeding with the policy — energy; carbon taxes; even actual funding for health care. In fact, when governments embraced MAID, they most certainly did not have the backing of all provinces, health ministers, medical professionals or doctors.

As for the undue haste in passing the bill to delay the deadline of March 17, the government clearly, in advance, understood that time might be needed for proper debate. They have written right into the bill that should it not be finally passed by March 17, it will apply retroactively so there can be no accidental provisions of MAID. To be frank, no doctor in his or her right mind will provide MAID while it is still subject to the Criminal Code or retroactively subject to the Criminal Code, and, of course, there is the further 90-day waiting period as part of the assessment process.

Why sow this fear among the public so gratuitously? Here in this chamber, on the evening of the Committee of the Whole, we witnessed exactly why all bills should be subject to the rigorous standard of Senate standing committees and not this process.

The ministers, political creatures that they are and must be, treat it like a press conference with annoying reporters asking questions. Many senators had no chance to follow up their questions or press for substantive answers. I was one of the lucky ones, so when talking points were served up as answers, I, at least, had a brief chance to drill down. That is why our committee process works and why the Committee of the Whole works for them, but not for us.

I will give the ministers this: They are both new to their jobs and may have not had time to understand the level of debate that has occurred in this country. Yes, it is a nuanced debate. But it is a time now where we have moved well beyond that in this country. The public is ready. The system is ready. Only the government is not ready.

We have built high fences to ensure safety in the provision of MAID. It offers reassurance for families, and it offers protection for the individuals.

This delay — the denial of rights for some and the deliberate misrepresentation by government ministers of the state of readiness, and of the evidence and testimony heard — is truly troubling. I know this to be true because I sat through the testimony. Witnesses were questioned directly and repeatedly. These witnesses were people like Dr. Mona Gupta, the Chair of the Expert Panel on MAID and Mental Illness, who — among others — has been directly involved in the process of developing the regulations and guidelines for MAID assessors and providers. You may have seen the letter she sent to all of us.

As others have mentioned, this is also a sad fact, and part of this debate, that not one individual suffering from a mental disorder or who has been waiting to exercise their right to simply apply for MAID was consulted.

The government ignores those whose lives hang in the balance. It ignores the testimony of its own chosen experts and then tries to argue it was a lack of consensus on the issue. There will never be a consensus on issues that are so personal. But, then again, no consensus was sought. We were looking for a state of readiness, preparedness, and we were told by the providers that the system was ready.

All I can say to you tonight, colleagues, is please go back and read the letter sent on February 12, 2024, from 127 medical professionals. It says in their concluding paragraph:

> We urge the Senate to review all of the evidence submitted to AMAD by the people actually involved in getting the Canadian MAiD system and healthcare professionals ready . . . to understand that there are many clinicians who support the implementation . . . .

It's too late for to Senate because our process has been overridden, but I ask you all, as individuals, to take a moment to read the testimony and hear the advice of the professionals. Do it for the sake of the Canadians who live with mental illness every day of their lives.

Thank you.

Some Hon. Senators: Hear, hear.

Hon. Paula Simons: Thank you, Your Honour.

On May 5, 2016, the Court of Appeal of Alberta brought down a landmark decision in the case of the *Canada (Attorney General) v E.F.*; the Honourable Mr. Justice Peter Costigan, the Honourable Madam Justice Marina Paperny and the Honourable Madam Justice Patricia Rowbotham — three of Alberta's most respected jurists — delivered their judgment unanimously. They ruled that E.F., a 58-year-old Alberta woman, had the right to receive medical aid in dying, even though her illness was not terminal and the cause of her constant searing pain and near paralysis was psychogenic, the result of a psychiatric condition known as conversion disorder. E.F. was not suicidal. She was not delusional. The court held that she was competent to make her own medical decisions, and they allowed her to do so.

• (2010)

The decision came at an unusual moment in Canadian legal history — after the Supreme Court of Canada's *Carter* decision and before the passage of Bill C-14, Canada's first medical assistance in dying legislation. At that point, patients who wished to receive MAID had to petition the court for permission. E.F. had originally been granted the right to die in a decision from Madam Justice Monica Bast of the Alberta Court of Queen's Bench, as it was then known. The judge held that even though the patient's symptoms had a psychiatric genesis, she met the threshold established in the Supreme Court's *Carter* decision. Justice Bast wrote:

> The evidence . . . establishes that none of the multitude of traditional or non-traditional treatments, therapies, or trials that the applicant has undergone for over nine years since the onset of her medical condition has remedied the applicant's medical condition or made it right. The evidence clearly establishes that the physical symptoms suffered by the applicant as a result of her medical condition deprive her of any quality of life. The fact that the applicant's medical condition is diagnosed using the DSM-5 or the fact that it has a psychiatric component cannot be permitted to overshadow the real horrific physical symptoms that the applicant is most definitely experiencing on a continual and daily basis.

The Court of Appeal concurred with Justice Bast, but they went further. Let me quote now from that unanimous Alberta Court of Appeal decision:

> The specific issue of whether those suffering from psychiatric conditions should be excluded from the declaration of invalidity was very much part of the debate and the record before the Supreme Court. For example, at paragraph 114, the court discussed Canada's position regarding the risks associated with the legalization of physician assisted death in these terms:

Here, the Alberta court went on to quote the Supreme Court's original *Carter* ruling, and I will do so as well:

> In [Canada's] view, there are many possible sources of error and many factors that can render a patient "decisionally vulnerable" and thereby give rise to the risk that persons without a rational and considered desire for death will in fact end up dead. It points to cognitive impairment, depression or other mental illness, coercion, undue influence, psychological or emotional manipulation, systemic prejudice (against the elderly or people with disabilities), and the possibility of ambivalence or misdiagnosis as factors that may escape detection or give rise to errors in capacity assessment. Essentially, Canada argues that, given the breadth of this list, there is no reliable way to identify those who are vulnerable and those who are not. As a result, it says, a blanket prohibition is necessary.
>
> The evidence accepted by the trial judge does not support Canada's argument. Based on the evidence regarding assessment processes in comparable end-of-life medical decision-making in Canada, the trial judge concluded that vulnerability can be assessed on an individual basis, using the procedures that physicians apply in their assessment of informed consent and decisional capacity in the context of medical decision-making more generally. . . .

The Alberta justices continued:

> The court concluded, at paragraph 116, ". . . the individual assessment of vulnerability (whatever its source) is implicitly condoned for life and death decision making in

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

The Government of Canada could have appealed the *E.F.* ruling to the Supreme Court. It did not, so E.F. was granted the release she had sought, and we were left with this somewhat unusual precedent. Some have argued that the *E.F.* case somehow doesn't count because it was heard in that strange legal limbo time, after *Carter* and before Bill C-14, because it dealt with the issue of whether E.F. was entitled to MAID at that particular moment.

However, Justices Costigan, Paperny and Rowbotham didn't simply grant E.F.'s petition. They provided a close reading and sharp analysis of *Carter*, specifically as it related to MAID in cases of serious psychiatric disorders. In effect, they found that *Carter* established a constitutional right to medical aid in dying for psychiatric patients who faced unendurable and irremediable suffering, with their vulnerability and capacity to be assessed on a case-by-case basis.

Based in no small part on the legal logic of this very ruling, we, the Senate of Canada, determined in 2021 that Bill C-7 was unconstitutional because it contained a blanket denial of MAID to anyone whose sole underlying cause of unendurable medical suffering was deemed to be psychiatric.

Let me remind all of you who were in the Senate that day and all of you who have joined us since of how we voted: by a margin of 57 to 21, with 6 abstentions, to accept an amendment from Senator Kutcher to allow for people with serious, intractable and profoundly debilitating psychiatric disorders to receive MAID, with a sunset clause to allow governments and medical professionals to prepare. The Senate then voted to accept Bill C-7, as amended, by a margin of 66 to 19, with 3 abstentions, and the government itself accepted Senator Kutcher's amendment.

Yet, here we sit today as many seem to wish to relitigate this whole debate, as though all our careful work in 2021 never happened and as though the *E.F.* decision itself never happened. How did we get back here, retreating and ceding hard-won ground in Canadians' fight for personal liberty and bodily autonomy?

The government tells us that Canada is not ready for this exercise of constitutional equality. The truth is that it is our provincial and federal politicians who are not ready, because they are afraid that this decision will be controversial.

A three-year extension, one which kicks this issue down the road until after the next election? Let us be honest. If we wait three years, one of two things will happen. Either the Liberals will be re-elected, and then perhaps they'll feel insulated enough to respect the courts and the Charter. Clearly, they won't stand on principle now. Why bother if your opponents are going to weaponize your position to score political points? In the second scenario, the government will be defeated, and the Conservatives will make good on their public threat to defy the Constitution and the courts and deny MAID to those with irremediable and unbearable psychiatric or psychogenic illnesses.

This isn't just about Canadian politics. The backlash goes far deeper than that. Over the last three years, North Americans have seen a broad legal and cultural assault on the very idea of bodily autonomy and on the rights of patients and doctors to make private and personal treatment decisions based on the best medical evidence.

In 2022, the Supreme Court of the United States upended the long-standing abortion rights and privacy protections of *Roe v. Wade*. Now, some states are taking harsh steps to limit the ability to end a pregnancy or even to receive life-saving care in a gynecological emergency. Women have been stripped of their fundamental rights to bodily autonomy while doctors have been robbed of the responsibility and the duty to do their jobs based on the best science. The best interest of the patient has been trumped by religious fundamentalism and straight-up misogyny, putting patients and physicians alike in danger of criminal prosecution.

Then there's the war on trans youth and adults and on the doctors who treat them. It started in the United States; then it spread to Canada. This very month, in my home province of Alberta, doctors were told that they will have to make treatment decisions based not on the best medical interests of their patients but rather on a series of arbitrary rules and regulations created by the premier's office. Young patients are being told that their bodies don't belong to them or even to their parents, but rather to politicians and bureaucrats.

Because this culture war on trans kids and the physicians who treat them is seen as a popular vote winner, we are denying patients bodily autonomy and denying physicians their professional rights and responsibilities and putting them under threat of sanction.

It's no accident that the very day Premier Smith announced a crackdown on doctors who treat young trans patients, a coordinated push poll began in Alberta aimed at limiting abortion access for teens in the province as well.

This new pushback against MAID is absolutely akin to the war on reproductive choice and the war on gender-affirming medical care.

We're told not to worry, that this is just about a temporary delay in MAID for practical reasons. Don't be fooled. If we pass Bill C-62 with a three-year extension, all hope for equal access to end-of-life medical care will evaporate. This will be a wedge, the thin edge of a wedge — a cue to start rolling back access to MAID for more and more people.

As senators, it is part of our job to uphold Charter rights and to defend the Constitution. We are not elected; we are appointed. We are not beholden to election cycles and popular opinion. We have the freedom and the responsibility to take tough decisions. At this moment in our history, most of us — though not all — are non-partisan. We are not beholden to a leader or a party. We have been given the privilege to think for ourselves and to speak for ourselves in a way that few other politicians in Canadian history — or world history — have ever had.

It is also our job to exhibit responsible restraint, to show due deference to the elected other chamber. We do not overstep precisely because we are not accountable. We do not answer for our decisions at the ballot box. We can't be self-indulgent and exploit our protected appointed status to be social revolutionaries. Instead, we are meant to be conservative — in the best sense of the word — to protect the fundamental foundations of our Constitution.

• (2020)

But here is the thing, my friends: We have shown a lot of restraint and deference. When Bill C-7 came to us in 2021 in its original, unconstitutional form, we could have defeated it. We did not. We were restrained. We debated it carefully and found a compromise, which was Senator Kutcher's amendment. We could have passed that amendment without a sunset clause or asked for a shorter sunset clause, but we did not. We showed restraint and deference.

And when the government didn't make that first deadline and brought us Bill C-39, we showed restraint again. We deferred to the will of the elected Parliament and granted their request for another extension.

When do we stand our ground and defend Bill C-7 as it was passed by the Senate and accepted by the other place? It is our job to defend the Charter and the rights of minorities, and what minority group could possibly be more marginalized than those with serious psychiatric illnesses who have been waiting for Bill C-7 to come into full effect for three years now? They have been waiting with restraint and patience for the right to have their competence and their legal capacity to make their own medical decisions respected.

Of course, some would, with the best of intentions, deny those very people their right to self-determination because they believe it is for their own good. We are told that it is because psychiatric patients are routinely discriminated against in this country that we must protect them from themselves and the consequences of their decisions.

It is true that we in this country have a profound crisis when it comes to a lack of mental health care. Many people with mental health problems, or more complex psychiatric conditions, live in conditions of poverty and isolation: some are unhoused; others are housed only precariously. There are all kinds of people who have already given up and either taken their own lives or begun killing themselves, slowly and inexorably, through substance abuse.

When opponents of MAID for mental illness paint a picture of a dystopian future in which hundreds of hopeless people, tired of poverty and discrimination, ask for MAID simply because their lives seem too hard and miserable, I'll agree that isn't so far-fetched. But let's please stop using our moral failure to address the socio-economic needs of those with addiction and mental illness as a way to slough off our legal duty to protect the Charter rights of those with extremely serious psychiatric illnesses who are being forced to suffer while we dither.

We can walk and chew gum at the same time. We can do two things at the same time: We can provide better health care and better social and economic supports to those who need them. We can treat those who can be treated and save them from despair and desperation. Simultaneously, we can protect the Charter rights and bodily autonomy of those seriously ill psychiatric patients who genuinely meet the strict criteria for medical assistance in dying.

Those two goals are not antithetical; they are, necessarily, complementary. If we fail in our duty here to respect the courts and the Constitution, then we force suffering patients to somehow find the wherewithal to go to court to fight for their rights — a process that could take years.

I want to quote the wise words of Senator Carignan from 2021, when he spoke in support of Senator Kutcher's amendment.

The English translation is as follows:

> . . . 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. . . .

My friends, that was true three years ago, and it remains true today. I just hope we can remember why we amended Bill C-7 in the first place.

Thank you, *hiy hiy*.

[*Translation*]

Hon. Julie Miville-Dechêne: Honourable senators, I rise in support of Bill C-62, which proposes a three-year extension to the temporary exclusion of medical assistance in dying eligibility for persons suffering solely from mental illness. In the interest of full disclosure, and specifically for the benefit of our recently arrived colleagues, I'd like to remind you that three years ago, I voted against the Senate amendment that extended MAID to psychiatric patients. At the time, there was no consensus among experts on this social issue, and that is still the case today.

Although defending minority rights is at the heart of our mandate, the Senate is not a court of law. While some may argue that denying access to MAID violates the constitutional rights of those with mental illness, this conclusion is far from clear. In its Charter statement, the Department of Justice spells out the competing rights and values at stake, including the autonomy of individuals versus the protection of vulnerable people from any incentive to end their lives. The Department of Justice adds:

> . . . feelings of hopelessness and the wish to die are common symptoms of some mental illnesses, which can make it difficult for even experienced practitioners to distinguish between a wish to die that is fully autonomous and well considered and one that is a symptom of a person's illness.

After analyzing international science-based evidence for a year and a half, the Council of Canadian Academies' expert panel found no evidence that the irremediability of mental illness could be predicted. Some mental disorders may even impair a person's decision making and increase their risk of incapacity.

The fact that provincial governments aren't ready is another compelling argument. We mustn't forget that the provinces deliver medical care and have jurisdiction in this area. It would be a mistake to equate their serious concerns with an ideological objection to MAID in every case. Take Quebec, for example, a place I know better than others: It was a frontrunner in expanding medical assistance in dying and even holds the world record for this practice. Last year, MAID accounted for 5,200 or 6.8% of deaths in Quebec, a 42% increase in a single year. Of that number, a disturbing 16 cases failed to meet all the criteria specified in the act.

Last June, Quebec amended its Act Respecting End-of-Life Care to legalize advance requests related to cognitive illness leading to incapacity, but it excluded patients who exclusively suffer from a mental disorder. This decision was based on a report by Quebec's end-of-life care commission, published in December 2021, which concluded, and I quote:

> Medical aid in dying is care of last resort for persons whose illness cannot be cured and whose decline in capability is irreversible. Given the lack of consensus in the medical community on the incurability and irreversibility of mental disorders, a strong doubt remains as to whether medical aid in dying is appropriate care. In this context, the risk that this gesture be premature appears very real to us. We are faced here with the grim prospect of individuals obtaining medical aid in dying rather than appropriate medical follow-up that would favour a fully satisfying life.

I share those very same concerns. Some have argued the following — and I'm quoting the report of the Special Joint Committee on Medical Assistance in Dying:

> . . . there is no consensus on many existing medical practices, and that this is not generally considered a justification for prohibition.

I think that it's inappropriate to equate MAID with a simple medical practice, as though this were about a hormone treatment or taking antibiotics. We have to have the honesty or lucidity to come to grips with this. This is about helping a person to die. It is irremediable.

Another sensitive aspect is the fact that, in the report of the Special Joint Committee on Medical Assistance in Dying, witnesses observed that the eligibility criteria for MAID didn't require people with mental disorders to have exhausted all reasonable treatment options. Bill C-7 only required that the patient be informed of treatment options. In theory, this would mean that the patient could receive MAID even if he or she hasn't had access to adequate care. This is particularly worrying in a country like ours, where the shortage of psychiatric care is an established fact.

In Belgium and the Netherlands, where psychiatric patients have access to MAID, more robust safeguards exist.

• (2030)

According to the submission of Professor Scott Kim from the University of Michigan, 1,150 applications for MAID were made in the Netherlands in 2022, which is quite a lot. However, only 5% to 10% were granted. Belgian and Dutch laws require doctors to agree with the fact that there are no options other than MAID in each case, so MAID really is a last resort. I'm aware that the right to refuse all treatment is well established in our country, and it is a paramount right, but it seems to me that the exercise of this right, combined with a life-ending medical intervention, is a sensitive issue that warrants further consideration.

Bill C-62 will do just that. It will allow time for such careful consideration of the state of our knowledge and the scientific and ethical grey areas.

Obviously, I'm aware that there is intolerable mental suffering that is as great if not greater than the suffering associated with physical illnesses, but we can't expand access to MAID any further until we're able to confidently assess the applicant's incurability, the irremediability of their condition, their capacity and their suicidal tendencies.

The severe shortage of psychiatric care and services must be at the heart of this reflection on the health care systems' state of readiness, or at least that's what I think. We can't focus solely on the fact that there are protocols for administering MAID. That is not enough.

Finally, the precautionary principle applies when lives are at stake. Thank you.

[*English*]

Senator Kutcher: Will the senator take a question?

Senator Miville-Dechêne: Yes.

Senator Kutcher: Thank you so much for your contribution to the debate. It's very appreciated, and I do appreciate the consistency in your position. I don't agree with it, but I appreciate your consistency.

You talked about necessity for medical consensus before we allowed medical assistance in dying for a sole mental disorder, but we are all aware that there is no medical consistency on MAID itself. In fact, we have heard lots of testimony in our committees that there are lots of physicians in the palliative care community who don't want MAID and say it's bad and to forget it. There's no consensus.

How can we allow MAID for people with a physical illness when there's no consensus but deny people with a mental illness when there's no consensus?

[*Translation*]

Senator Miville-Dechêne: That's a difficult question. I don't think politics is a perfect science. I think we're all trying to find the right way forward in dealing with the very difficult issue that is MAID, broadly speaking.

I think there are specific criteria for psychiatric illnesses that make irremediable consequences generally more difficult to establish than for physical illnesses. I'm not saying, Senator Kutcher, that this is absolute. I'm saying that, based on what I've read and on the discussions I've had, this is part of the difficulty.

I also think that the safeguards need to be robust. I understand that it is difficult and, as you know, our opinions on this issue differ. I understand that there are people who are waiting for this help and who are suffering, but I believe that what happened in Belgium and the Netherlands shows us that once we open MAID up to those with psychiatric problems... When 1,150 people are requesting MAID in a country that is smaller than Canada, that's a lot of people. You often talk about people you know who have indeed had illnesses for a very long time, who have tried every treatment, but once that door is open, how will it work? Unlike you, I don't have absolute confidence in all doctors, all medications and all treatments. I think there are abuses. The fact that there have been 16 cases of MAID in Quebec where tough questions are being asked because it appears the law was not followed shows that these questions are far from easy.

I don't have a definite answer. I wonder, I have doubts and I think you do, too. However, we have fairly opposite points of view on this issue.

[*English*]

Senator Kutcher: Thank you very much for that. I do very much appreciate that your perspective is different than mine. That's fine and that's okay, but I think we do have to actually look at what the evidence tells us, and we have to look at what causes discrimination for one group against another group of people for the same argument. I would encourage all of us to think about that.

You mentioned Dr. Kim in your speech. Are you aware that the evidence he gave before the Superior Court Of Québec was discounted and that the judge had substantive concerns about the quality of the evidence that he gave? Maybe you weren't aware. Otherwise, you probably wouldn't have quoted him here. I think people need to know that some of the information you provided was actually already litigated in court and the courts found not to support it.

[*Translation*]

Senator Miville-Dechêne: Honestly, no, I wasn't aware of that. That was in one of the briefs submitted to Quebec's commission on end-of-life care. They discuss the situation in Belgium and in the Netherlands. It's a bit different. All right, then, I'll take you at your word.

But there is certainly more than one expert who's uncertain about the irremediability of psychiatric disorders. It's a difficult debate. You mention evidence and the fact that it's beyond dispute, but I think that the Council of Canadian Academies, a respected scientific organization, also reached similar findings on the issue of irremediability. These are professionals, but not physicians only. From what I understand, they are also scientists from various backgrounds. That, too, is not insignificant. It is a social debate. Yes, physicians are very important, but I think the debate is broader than that.

[*English*]

Hon. Patrick Brazeau: Honourable senators, I rise today on the topic of Bill C-62, to make a few brief points and to add another dimension to the debate.

As we know, the government proposes a three-year pause on MAID for those with mental illness. Passions run high on this issue from every angle. It is possible — not only that, it is actually the case — that compassionate, thoughtful and loving people will study the same facts and come to opposite conclusions on this legislation.

As noted in the final report of the expert panel on MAID and mental illness, comprehensive and meaningful engagement with Indigenous people has yet to occur. The expert panel says that compared to the non-Indigenous Canadian population, a disproportionate number of Indigenous people live in poverty, have inadequate housing, a lack of clean drinking water and have limited access to education and health care. Let's add all the mental illnesses that were created because of residential schools over generations, even to this day.

Most alarmingly, as we consider Bill C-62, the report notes that Indigenous leaders have said that in their communities, it is easier to access a way to die than to access the resources they need to live well. As this chamber knows, I have personally spoken on the issue of suicide prevention quite often, but before I go on, I am fully aware that when I mention suicide prevention efforts, some will object that MAID and suicide are different things. Others will feel that there is no ultimate or meaningful difference between the two. I will briefly share my own personal view on the distinction, although I hope that even if you disagree, you will appreciate my perspective.

• (2040)

Quite bluntly, suicide is death caused by injuring oneself with the intent to die. MAID is a procedure in which a patient is given medications to intentionally and safely end their life. The result of both those actions could be the same thing: death. I think this is what causes people to have such strong emotions on the subject matter.

The major and most notable difference between both actions is that people contemplating receiving MAID will likely get the time to think deeply about it — we hope so — and discuss it with family members and other loved ones. It would also include

having numerous amounts of discussions with health experts to come to a determination to receive MAID. Unfortunately, oftentimes this is not the case with suicide.

I'm not here to try to convince you of my position on this matter. We do not need to agree on whether the distinction is meaningful or not for the purposes of today's debate.

[*Translation*]

If we can provide the help that is so desperately needed, the demand for MAID for people with mental illness will go down. We may never be able to stop it completely, but shouldn't we do our due diligence to help those who are in crisis?

When I talk about due diligence, I have a simple question: Have we done enough for the men and women suffering from mental illness? What community supports are in place to help people with serious mental illness?

When we closed asylums and opted for community outpatient care instead, did we fund these alternative measures properly? Or did we instead turn a blind eye as the patients from the psychiatric hospitals ended up in the street and in prison?

Desperate families are calling on the governments for help for their loved ones, Your Honour. I have witnessed this several times within my immediate and extended family. For example, my youngest son's grandmother has had Alzheimer's for about 15 years. It is really not a good quality of life. That being said, Ms. Violette is turning 100 next week.

When a loved one goes off their meds and poses a danger to themselves or others, family members are often left to face obstacles alone.

Medical assistance in dying exists now.

We're being asked to wait three years to ensure that the provinces and territories have time to prepare. As the Minister of Health told us directly, "They are not ready."

I think we need to ask ourselves whether the provinces and territories are ready to care for patients suffering from mental illness today, right now, before we talk about medical assistance in dying.

[*English*]

I suffer from mental illness. I know what it is to feel alone, broken and hopeless. I know what it is to suffer inside. Physical pain is physical pain. Mental health pain goes to the very core of one's existence. We all know somebody who suffers from mental illness, but if you've never experienced mental health pain, how can you know what pain they are in or what they are suffering? However, I'm not asking you to understand people's pain. I'm asking you, from this day forward, to be aware of it and — most of all — to be compassionate, non-judgmental and understanding of those suffering from mental illness. They have enough to deal with, and here we are collectively trying to make the best decision for all those people concerned.

I think the best way to deal with this issue is to put our minds, knowledge and expertise — and, most of all, our care and compassion — into focusing on effective ways and new solutions for those suffering from mental illness. Are we really providing a shortcut for people to end their lives because we are not collectively doing what is necessary to help those who are suffering? When will mental health be treated equally to physical health in Canada? We have international days, national days, municipal days and regional days of mental health awareness, but people suffering from mental health live with this every single day of the year.

Regardless of our personal views, MAID exists, and, in 2027, it will be available for those having a mental illness as their sole condition. My hope is that the committee will focus on three areas. These are mostly provincial jurisdictions, but here is where the Senate could be a leader in focusing on better mental health care for Canadians.

First, we need to provide more mental health resources. People who need help need places to go.

Second, we need to investigate the reopening of mental health institutions or mental health centres. I don't know about you, colleagues, but when I look at the news and see homeless people flooding our streets, well, I'm not an expert, but a whole lot of those people should be in mental health institutions receiving the proper help and care they deserve. Unfortunately, they end up abusing other substances and becoming homeless, and here we are trying to politicize the very problems that are going on in their lives.

Third, I'll talk about a procedure in Quebec that is called Law P-38. It would put more power into the hands of family members so they could intervene when a loved one has prescribed medication, but decides to stop that medication one day. I know many families like this — one is a distant family where it's a constant revolving door. A person has been diagnosed with a mental illness and has medication to take. This person takes their medication, but along the way, during the year, decides to stop it. What happens? Well, the family cannot intervene whatsoever because the danger has to be clear, imminent and immediate. Therefore, families are helpless and hopeless. What do you do if somebody who needs to take their medication to, at least, function doesn't take it? Sometimes they become menaces to society.

Like I said, these are all issues of provincial jurisdiction, and we are talking about MAID. We are talking about Bill C-62, but we have to continue the discussion on providing proper mental health resources to people who need them.

In closing, what protections do we owe those struggling with their mental health? What assistance can we give to desperate family members who feel abandoned by medical authorities as they seek help for their loved one? I'm asking that this chamber consider not putting the cart before the horse. Let's accept the

Minister of Health's word that more time is needed before extending MAID, but insist that those three years are dedicated to providing mental health care to all who need it.

I thank you for your time.

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, thank you to all honourable colleagues who have intervened this evening on this very important issue and debate.

I rise today to speak to Bill C-62, An Act to amend An Act to amend the Criminal Code (medical assistance in dying), No. 2, as the opposition critic in the Senate. Bill C-62 extends the exclusion of eligibility for receiving medical assistance in dying in circumstances where the sole underlying medical condition identified in support of the request for MAID is a mental illness until March 17, 2027.

Former Bill C-7 expanded the eligibility for MAID to persons whose natural death is not reasonably foreseeable. Originally, the bill excluded eligibility to receive MAID in circumstances in which mental illness was the sole underlying medical condition. However, as others have noted, Senator Kutcher's amendment was adopted at third reading to allow MAID for mental illness, with a sunset clause. I did not personally support that amendment, but the government accepted this amendment, and the law that was ultimately passed included a sunset clause date of March 17, 2023.

• (2050)

Parliamentarians heard from constituents and media who spoke and reported on the concerns and dangers MAID for mental illness was creating in Canada, specifically with the looming coming into force of the sunset clause on March 17, 2023.

On February 2, 2023, the government tabled Bill C-39, which extended the deadline for one year, and reconstituted the Special Joint Committee on Medical Assistance in Dying to review the readiness for MAID with the sole underlying condition being mental illness. The reconstituted committee was tasked with studying the degree of preparedness attained for safe and adequate application of medical assistance in dying where mental disorder is the sole underlying medical condition.

I had previously served as co-chair of the Special Joint Committee on Medical Assistance in Dying with former MP Marc Garneau in the spring of 2023, and once again when the committee was reconstituted in the fall of 2023 along with co-chair of the House, Member of Parliament René Arseneault. Our colleagues Senator Dalphond, Senator Kutcher, Senator Mégie and Senator Wallin also served on the committee along with members of Parliament representing all parties.

The most recent Special Joint Committee on Medical Assistance in Dying heard from 21 witnesses, which included legal and medical experts, practitioners, representatives of professional associations, mental health organizations and regulators as well as representatives of Health Canada and the Department of Justice.

The committee heard from several witnesses to the effect that it is difficult if not impossible to accurately predict the long-term prognosis of a person with a mental disorder. But we also heard that, in practice, a person would need to have a long, documented history of failed treatment attempts in order to be found eligible for medical assistance in dying where a mental disorder is the sole underlying medical condition, or MAID MD-SUMC.

The committee also heard that many psychiatrists do not support the practice of MAID MD-SUMC. Some witnesses expressed concerns regarding the potential impacts of MAID MD-SUMC on vulnerable groups, women, Indigenous people, people with disabilities and people living in poverty. The committee also heard differing views as to whether there is an adequate number of trained practitioners — psychiatrists in particular — to safely and adequately provide MAID MD-SUMC.

On January 29, the final report was tabled in the House of Commons and backdoor tabled in the Senate. The report concluded that the medical system in Canada is not yet prepared for medical assistance in dying where mental disorder is the sole underlying medical condition.

The committee recommended:

> That MAID MD-SUMC should not be made available in Canada until the Minister of Health and the Minister of Justice are satisfied, based on recommendations from their respective departments and in consultation with their provincial and territorial counterparts and with Indigenous Peoples, that it can be safely and adequately provided; and
>
> That one year prior to the date on which it is anticipated that the law will permit MAID MD-SUMC, pursuant to subparagraph (a), the House of Commons and the Senate re-establish the Special Joint Committee on Medical Assistance In Dying in order to verify the degree of preparedness attained for a safe and adequate application of MAID MD-SUMC.

We all know that on February 1 Minister Mark Holland tabled Bill C-62, which gives a three-year extension for mental illness as a sole underlying condition for MAID, and here we are today debating this very bill at second reading.

During my technical briefing with the officials, I asked about the importance of the letter which was reported on January 30 of this year that the health and mental health ministers from all three territories — along with quite a few of the provinces, and those that were ready, still signed on to the letter — which asked for a delay because they were not ready. I asked the officials what the importance of that letter was and why it would have weighed into the decision for the minister to table Bill C-62.

I was told that Health Canada has a federal-provincial-territorial administrative committee on MAID specifically to work with the provincial and territorial counterparts to get a handle on the state of readiness, that they meet quite frequently and, therefore, because the provinces and territories are

responsible for the readiness — undertaking training — that their state of readiness as stated in the letter was very important to the minister in his decision to table Bill C-62.

Other important considerations that have led us to where we are today go back to 2022 when the Association of Chairs of Psychiatry in Canada called for delaying the MAID expansion, citing a lack of public education on suicide prevention as well as an agreed-upon definition of irremediability.

In February of 2023, 30 legal experts co-signed a letter addressed to Prime Minister Trudeau and his cabinet that called for the government to order a suspension and review — not just a delay — of further expansion of MAID. In June of 2023, Quebec amended an assisted dying law, the Act Respecting End-of-Life Care, to prohibit requests for MAID based on a mental disorder other than a neurocognitive disorder.

There is quite a history of concern that has been expressed by the experts, and at committee we also heard differing opinions, which made us pause about the state of readiness.

Once again, we find ourselves in a position where the government must correct their fervour to implement their expansionist agenda for MAID. Bill C-62 is an attempt to fix the problems they created with their rushed approach to Canada's MAID regime, but this is merely a short-term solution. I believe that as quite a few of the provinces and territories have requested, an indefinite pause on this critical expansion is what is needed. A three-year pause is merely a short-term solution.

As I stated in my second reading speech for Bill C-39, medical assistance in dying has been and remains one of the most complex and deeply personal issues for individuals and families across our country. There is a wide range of opinions in this chamber on what the appropriate parameters and safeguards should be as we continue to grapple with these questions in the development of our MAID regime.

I voted for the first Bill C-14 to enact a MAID regime because I thought that we needed a regime, but it was in Bill C-7 when there was an expansion to include offering MAID to those suffering from a mental disorder as a sole underlying condition that I voted against the bill.

I believe we have gone too far with the proposed expansion to include those with mental illness as a sole underlying condition. The lives of Canadians battling mental illness are not disposable. I think the introduction of Bill C-39 and now Bill C-62, which extends the exclusion of eligibility for receiving medical assistance in dying to circumstances where the sole underlying medical condition identified in support of the request for MAID is mental illness until March 17, 2027, is evidence that we have moved too far, too quickly, and it is an attempt to put a pause on a policy we should be repealing altogether.

However, colleagues, though this bill is only enacting a three-year pause, I will reluctantly support Bill C-62 because, without it, MAID for those with a mental illness as a sole underlying condition will become law on March 17 of this year, and we know we will need more time. Thank you.

Senator Kutcher: Thank you very much, Senator Martin, and I respect your opinion. I know we differ on this, but I also know that you respect my opinion, and I think our personal friendship and the way we have worked together for many years is a good reflection of how we can differ, but we can respect that. I also thank you for pointing out that "never ready" may be the logical outcome of this bill, and I respect that this is how you feel it should be.

• (2100)

You mentioned consensus. We've had this discussion with other questions about consensus. You're right. Some psychiatrists would continue to try treatment after treatment after treatment, even after decades, and the patient is completely exhausted. It happens in oncology as well until someone says they don't want any more treatment.

For those here who haven't read it, there's a fantastic Substack article that was published last week saying that psychiatry has a futility problem. That's right, and I would like your opinion on this. Some psychiatrists seem unable to acknowledge futility, but they want to expose patients to more and more treatments, which not only causes harm but also undermines patient autonomy and violates the principles of truth telling and trustworthiness. Do you think we should be in a situation where we allow some physicians to keep doing that to patients?

Senator Martin: I am not quite sure what you are asking, senator, but I know you bring expertise from your profession, and on this, we do disagree. However, the fact that we heard from various experts who have such differing opinions is what, I think, made me and other parliamentarians pause as to when, because when we do go forward, it needs to be at the right time for our nation.

In terms of your question, I didn't quite understand. You can repeat it if you like, but I don't know if you want to ask it again.

Senator Kutcher: For the purposes of everyone being exhausted and tired tonight, the last thing people want is for me to repeat that question. Thank you.

Hon. Rosemary Moodie: There is a phrase you used that I don't understand. What is "the right time"? Can you define that for me? What do you think is the right time?

Senator Martin: As I said, with the letters from the territories and the provinces and with the provincial counterparts who are working tirelessly on assessing the readiness — on a personal level, I have my own examples of why allowing MAID for people with mental illness as a sole underlying condition is frightening to me. But in terms of the readiness, I do believe that we must listen to the provinces and territories. That's why we

have this three-year extension. I can't say when that will be. I will leave it to the experts and those in charge of assessing the readiness to tell us when they are ready.

Hon. Ratna Omidvar: Will Senator Martin take a brief question?

This question is appropriate for you especially because you were a co-chair of the MAID committee. This bill proposes that within two years after Royal Assent, a joint committee of Parliament will be struck to undertake a review relating to the eligibility and readiness. So, it is possible that this committee will be called into life after as late as two years, giving the committee just one year.

Here we are on February 26, and we are pressed for time to approve the bill by this Thursday; otherwise, the law will kick in. Do you believe that is enough time for your committee to study, once again in 2027, the questions of eligibility and readiness, when this time you didn't — at least it doesn't appear to me that you did — have sufficient time?

Senator Martin: I think my colleagues who served on the committee would agree that it was very rushed, and we were pressed for time.

I worry about the three-year extension. Personally, I would like an indefinite pause so that a bill can be tabled when we are ready, whether it be three years or longer. One year sounds like a lot of time, but in a parliamentary cycle, many things can interrupt that time. That is what happened to our previous committee. There was a winter recess, so we had less time than we thought we had over the six months given to us. I can't answer that accurately because I don't know. I know that we will reconvene and we will be tasked to fulfill our mandate.

That's why I think we need more than three years. At least this bill gives us three years; therefore, I will support this bill.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

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

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

THE ESTIMATES, 2023-24

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (C) WITH THE EXCEPTION OF VOTE 1C TO BE STUDIED BY JOINT COMMITTEE ON THE LIBRARY OF PARLIAMENT

Hon. Marc Gold (Government Representative in the Senate), pursuant to notice of February 15, 2024, moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (C) for the fiscal year ending March 31, 2024, with the exception of Library of Parliament Vote 1c;
>
> That, for the purpose of this study, the Standing Senate Committee on National Finance have the power to meet, even though the Senate may then be sitting or adjourned, with rules 12-18(1) and 12-18(2) being suspended in relation thereto;
>
> That the Standing Joint Committee on the Library of Parliament be authorized to examine and report upon the expenditures set out in Library of Parliament Vote 1c of the Supplementary Estimates (C) for the fiscal year ending March 31, 2024; and
>
> That, in relation to the expenditures set out in Library of Parliament Vote 1c, a message be sent to the House of Commons to acquaint that house accordingly.

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

Hon. Senators: Agreed.

(Motion agreed to.)

BUSINESS OF THE SENATE

Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-13(2), I move:

> That the Senate do now adjourn.

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

Hon. Senators: Agreed.

(*At 9:07 p.m., the Senate was continued until tomorrow at 2 p.m.*)

CONTENTS

Monday, February 26, 2024

PAGE

SENATORS' STATEMENTS

ROUTINE PROCEEDINGS

QUESTION PERIOD

ORDERS OF THE DAY