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(HANSARD)

Tuesday, December 15, 2020

The Honourable LEO HOUSAKOS,
Acting Speaker

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THE SENATE

Tuesday, December 15, 2020

The Senate met at 2 p.m., the Honourable Leo Housakos, Acting Speaker, in the chair.

Prayers.

SENATORS' STATEMENTS

HOMELESSNESS IN MONCTON

Hon. Nancy J. Hartling: Honourable senators, as the holiday season approaches and we prepare to leave this place for our homes across Canada, my thoughts are drawn to those who are homeless and suffering by not having their basic needs met. In Canada, the number of Canadian who experience homelessness on any given night is estimated at 35,000 individuals. As the weather gets colder, I think about how difficult it is for many people without warm shelter.

Homelessness can be chronic, long term or episodic. It's a very serious problem, and it needs to be addressed with long-term solutions. Four causes of homelessness include: the absence of affordable housing, unemployment and poverty, mental illness and substance abuse, and lack of appropriate and needed services.

So what can be done? Many agree that a Housing First approach would be effective. It means rapidly assisting people experiencing homelessness by helping them find shelter from the streets into emergency shelters and then on to stable, long-term housing and supports. It also includes a wraparound, strength-based approach which promotes self-sufficiency and addresses the social determinants of health.

Across the province of New Brunswick, there are 1,600 people on a waiting list for affordable housing, including seniors, families and single people. Unfortunately, for many a lack of affordable housing means having to make difficult choices, such as choosing to heat your place or buy groceries or having to live on the street or less desirable places.

In Moncton, New Brunswick, my home, the growing number of homeless people was alarming to those in non-profit groups and local businesses. Rising Tide Community Initiatives Inc., a new Moncton non-profit organization created by United Way, John Howard Society and Food Depot Alimentaire, proposed a great long-term solution. The goal is to solve the homelessness crisis in Moncton by acquiring funding from the city and the province, requesting a three-year investment of $6 million each, or $2 million per year. This would allow the group to create permanent housing for 125 individuals by buying derelict houses or vacant properties, fixing them up and renting those units for $300 a month. In addition, the project would provide for the implementation of the Housing First model, which would provide much-needed wraparound services.

On November 2, 2020, Moncton City Council committed the $6 million as long as the province contributes the same. The provincial government has not yet made a formal commitment of funds, but I am optimistic that the money will be acquired very soon.

Congratulations, dear friends in Moncton and all those collaborating on this issue in our city. Your work on social justice is commendable and provides real solutions to address homelessness, offering help and hope to those who do not have a place to call home.

May each of us here remember our generosity, not just at this time of year but all year long, as there are people in our communities across this country who need ongoing support to meet their basic needs. Thank you.

CANADA'S FOOD PRICE REPORT

Hon. Robert Black: Honourable colleagues, I rise today as we near the end of 2020 to once again highlight the importance of Canadian agriculture and our agri-food industry. In a year where almost nothing was certain, farmers, producers and processors across this country worked tirelessly to keep Canadian families fed without fear of shortages.

From those raising cattle in Alberta to those growing potatoes in P.E.I., and everywhere in between, the agricultural sector stepped up. In return, Canadians have recognized the importance of our domestic food supply. In fact, the Canadian Centre for Food Integrity, also known as CCFI, determined that confidence in Canada's food system is at an all-time high through their 2020 Public Trust Research opinion survey. CCFI also found that 47% of Canadians, a five-year high, feel our food system is headed in the right direction. More specifically, nine in ten Canadians trust that the food system will ensure the availability of healthy food for Canadians.

Through their survey, CCFI found that the cost of food remains the issue Canadians are most concerned about. Last week, the eleventh annual edition of Canada's Food Price Report, compiled by the University of Guelph and Dalhousie University, forecasted an overall food price increase of 3% to 5% for 2021 — the highest that Dr. Sylvain Charlebois and his team have ever expected.

The border and facility closures, shifting consumer demand, unemployment, as well as modifications in production, manufacturing and distribution that came with the COVID-19 pandemic will have widespread impacts on many aspects of our daily lives, including at the grocery store. As a result, it is anticipated that the average Canadian family will pay up to an extra $695 for food next year.

While we will all need to adjust our budgets in the kitchen next year, we can be confident that our food system will remain strong and steady. Canada has one of the safest food systems in the world, and over the past 10 months it has shown just how resilient it is. Although the impacts of the pandemic and the uncertainty that accompanies it will continue into 2021, Canadians can be sure that farmers are ready to keep our fridges full.

I'd like to take this opportunity on your behalf to thank the agricultural industry for their hard work this past year. It is greatly appreciated by all Canadians and many others around the world. I would also like to wish everyone in the chamber and everyone tuning in from their home offices a safe and happy holiday season. I am looking forward to 2021, as well as the challenges and opportunities it will bring. Thank you. *Meegwetch*.

[*Translation*]

ISABELLE BOISVENU FUND

Hon. Pierre-Hugues Boisvenu: My dear Isabelle, time goes on, but your memory never fades and it reminds me of the many happy moments that you brought to our family, your friends and your co-workers.

On December 22, 2005, just two and a half years after a repeat sex offender took the life of your sister and she was so brutally taken from our family, we lost you to a fatal car accident.

Just a few days before Christmas, when people are usually in a festive mood and their biggest concern is finding the right gifts for their children and preparing for family meals, I received some absolutely devastating news. On the evening of December 22, the Sherbrooke police asked me to come down to the station where they told me that you and your husband had been killed that morning in a fatal car crash.

Imagine your mothers's pain when I had to tell her she no longer had a daughter, your brother's pain when he found out that he was now an only child, and the pain of your grandparents, the rest of the family and your friends.

That night is etched in my memory like a message carved in stone, completely indelible.

• (1410)

Fifteen years on, we relive the painful memory of your departure just before Christmas, but we also remember the intensity of your love for life, your constant devotion to your friends, and the precious treasure of the 27 years you spent with us.

For all those years, you gave so much to your friends and loved ones. You showed us perseverance and what it meant to never give up. You demonstrated the value of learning and of striving to succeed. You embodied those qualities as a woman and as a professional embarking on a career and charting your course in life.

I immortalized your qualities in the Isabelle Boisvenu Fund, which I created together with the Université de Montréal. Every year for the past 15 years, the fund has provided scholarships to students in the field of victimology. You were so passionate about your studies, and your memory lives on thanks to these scholarship recipients who are pursuing theirs. I have no doubt that, wherever you are, you are guiding their research, which will improve the support and services that victims and their families so desperately need if they are to rebuild their lives following major trauma.

As I continue my discussions with the justice ministers from all the provinces in order to improve my bill to better protect women and children who are victims of domestic violence, both recipients of the 2019 and 2020 scholarship, with whom I met last week, will continue their research into domestic violence. One is trying to better understand the profile of an abuser, and the other is studying the social reintegration of women who are victims of abuse and violence who too often wind up homeless. Whether it's a coincidence or not, I'm sure you have a hand in there somewhere.

I'm still as proud of you as ever, my darling, because your legacy continues in this way, through the research being done by those scholarship recipients, just as you were so proud to have done by paying for your godson's education.

Life can be cruel at times, and cruelty can even hit certain families more than once. This cruelty will quite often destroy and shatter souls but, as the title of my book states, it can also teach us to survive the unspeakable.

The loss of my two daughters has given even greater meaning to the time I did have with you both, and this has, in turn, given greater meaning to my own life. My daughters guide my mission and contribute to my own legacy, which I will pass on to victims and their families. My dearest Isabelle, I am proud of you, and I have many fond memories that I cherish more than anything. I often think of you and your sister, Julie, and I know that you are watching over all of your loved ones.

We miss you so much. Dad.

[*English*]

THE LATE FREDERICK (FRED) SASAKAMOOSE, O.C.

Hon. Marty Klyne: Honourable senators, I rise today to pay tribute to elder Fred Sasakamoose, the first First Nation hockey player of treaty status to play in hockey's top league, the National Hockey League, the NHL.

Fred was born in my home province of Saskatchewan on December 25, 1933. He was admitted to hospital on November 20 this year in Prince Albert, Saskatchewan, where he was diagnosed with COVID-19. He passed away four days later after suffering complications from the coronavirus. He passed away only three weeks ago, on November 24, one month before his eighty-seventh birthday.

Back in his youth, for a kid from the reserve to think about becoming a hockey player in the mainstream, let alone an NHL player, would have been seen as highly unlikely and, by many, impossible, but against all odds, through hard work and resilience, Fred endured.

He was raised by his parents on the Cree First Nation band of Ahtahkakoop 104. He was one of 11 children, although only 5 survived past childhood, with 6 of the children lost to smallpox.

Like many First Nation children taken away from their family and forced to attend residential school, Fred, along with his brother Frank, were sent to a residential school 96 kilometres away in Duck Lake. It would be two years of troubled times and sordid details at the residential school before he and Frank saw their parents again.

While playing on the Duck Lake residential school hockey team, a priest saw Fred as an exceptional hockey player. The priest had a hockey scout visit Fred's home when Fred was 15. That was followed by Fred Sasakamoose being drafted by the Moose Jaw Canucks at the age of 16.

Fred showed up to play for the Canucks, and play he did. In that 1953-54 season with the Canucks, he scored 31 goals in 34 games and was named the most valuable player in the Western Canadian Junior Hockey League. During that season, Fred was called up by the Chicago Blackhawks in November and made his NHL debut, playing two games before being sent back to the Moose Jaw Canucks. Fred was called up again a few months later, after the Canucks' season ended in February 1954, playing a total of 11 games for the Chicago Blackhawks in 1953-54 NHL season.

Hockey was more than a game for Fred; it was a way of life, and his success and passion were recognized by the Chicago Blackhawks. In ensuing years, after playing in the minor leagues, Fred entered a life of service to the Ahtahkakoop community. He eventually regained his Cree language, taken from him as a child, and served for 35 years as a councillor and as chief for six years.

Colleagues, Fred's commitment to developing the capacity for Indigenous and non-Indigenous participation cannot be understated. Beginning in 1961, he promoted youth in sports, and in 1962, he was a founding member of the Northern Indian Hockey League. He was also a founding member of the Saskatchewan Indian Summer Games and Saskatchewan Indian Winter Games, Saskatoon's All Nations Hockey School and the Fred Sasakamoose All Star Hockey Week.

Fred was honoured by the Chicago Blackhawks at a home game in 2002, served on the NHL Ethnic Diversity Task Force and became a board member for the Aboriginal Healing Foundation. He was inducted into Saskatchewan's Sports Hall of Fame in the builder category in 2007, and he was named as a member of the Order of Canada in 2018.

In that same year, he received an honorary doctorate in law from the University of Saskatchewan. During his convocation, Fred humbly said:

> Time will come when I will no longer be here, but my voice you will always use.

And of that I have no doubt, elder Sasakamoose.

At the time of his death, his autobiography entitled *Call Me Indian: From the Trauma of Residential School to Becoming the NHL's First Treaty Indigenous Player* was being finished and is due to be on the shelves on April 6, 2021.

My condolences to Loretta, Fred's wife of over sixty years, their children, grand-children, great grand-children, their community —

Hon. Leo Housakos (The Hon. the Acting Speaker): Honourable colleagues, I would like to remind you all that statements are supposed to be done within the confines of three minutes.

Senator Klyne: May you rest in peace, Fred, knowing your voice lives on. Thank you.

HIS HIGHNESS THE AGA KHAN

CONGRATULATIONS ON EIGHTY-FOURTH BIRTHDAY

Hon. Mobina S. B. Jaffer: Honourable senators, this past Sunday, December 13, Ismaili Muslims around the world celebrated His Highness the Aga Khan's eighty-fourth birthday. What is normally a grand celebration that includes a large feast, special prayers and lots of dancing was observed a little differently this year. While our community may not have been able to physically gather this year, the joy, hope and sense of happiness that this day brings to all Ismaili Muslims remained the same.

This day also serves as an opportunity to reflect upon His Highness the Aga Khan's life work. His Highness has devoted over 60 years of his life to the improvement of the quality of life of some of the most vulnerable and marginalized populations around the world. He has also been an advocate for education, specifically the education of girls. He has established schools in some of the poorest areas in the world.

I personally attended Aga Khan kindergarten, Aga Khan elementary school and Aga Khan secondary school. The education I received in those institutions served as a strong foundation for my future studies in law.

At a time when it was assumed that women would pursue roles within the household, His Highness believed that women could be lawyers, doctors, surgeons, nurses and accountants, and encouraged us to pursue further education and fulfill our dreams.

• (1420)

I am forever grateful for His Highness the Aga Khan's guidance. I know his guidance helped me become a senator.

His Highness the Aga Khan works tirelessly to advance Islam's core ethics of service to others, compassion, justice and peace. As we navigate a global pandemic that is disproportionately affecting those who are the most vulnerable in our society, these principles are more important now than ever.

Honourable senators, today I would like to invite you to join me in the celebration of His Highness and honorary Canadian citizen for his contributions to humanity, for his unrelenting commitment to a more peaceful, understanding and equitable world, and for offering, in difficult times, a source of hope and inspiration to millions. Happy birthday, Your Highness. Canada salutes you. *Salgirah Khushiali Mubarak*. Thank you.

[*Translation*]

UNIVERSITÉ DE MONCTON

Hon. Percy Mockler: Honourable senators, today I would like to tell you about Université de Moncton.

As a senator from New Brunswick, I am honoured to rise in the Senate of Canada to talk to you about my alma mater, Université de Moncton, and its performance in our country. I would like to recognize and congratulate this institution for ranking among the top 50 research universities in Canada. Since it was founded in 1963, Université de Moncton has played an important role in the development of the Acadian people with its three major campuses in Moncton, Shippagan and Edmundston. Université de Moncton is the only francophone university outside Quebec to be honoured with such a high standing by the Research Infosource Inc. group for its excellence in research.

Honourable senators, history clearly shows that the Université de Moncton has educated great leaders, women and men who have distinguished themselves around the world in every field, from business to justice, research, administration, the arts, health and political science. Université de Moncton stands out for the quality of its public education, which our graduates showcase around the world.

Honourable colleagues, with COVID-19, we must turn to health research, such as that being done at the Centre de formation médicale du Nouveau-Brunswick at the Université de Moncton, which trains our future doctors and nurses.

The university is also a partner to a major hardwoods research centre that is unique in its field, and I am proud that it is located in the area where I was born. Forestry and agriculture are two very important economic sectors.

The Université de Moncton also plays a major role in the Organisation Internationale de la Francophonie, and contributes to francophone immigration in our province, not to mention Canada.

Honourable senators, I want to congratulate the visionaries of the Université de Moncton, such as its founding president, Father Clément Cormier, and all subsequent presidents who have helped build and expand the university. I would like to thank the new president, Dr. Denis Prud'homme, for joining the people of Acadia.

In closing, honourable senators, there is no doubt in my mind that all New Brunswick senators joined together to thank the Université de Moncton and commend its national and international leadership. As La Sagouine would say, "You have earned your laurels." Thank you very much, honourable senators.

[*English*]

QUESTION PERIOD

HEALTH

COVID-19 PANDEMIC

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question for the government leader today concerns a photo op this morning at the Civic Campus by the Prime Minister and the Minister of Health. All campuses of the Ottawa Hospital are under full visitor restrictions with the exception of essential care partners and paid support workers.

Leader, people in Ottawa are told that they cannot support family members when they require hospitalization. Those seeking medical attention, emergency surgery and cancer patients must go to the hospital alone in stressful times as they are asked to respect COVID measures.

Yet, leader, the Prime Minister and Minister Hajdu, their staff, security and media walked around the Ottawa Hospital for a photo op. Now, I need to clarify, leader, that I am not blaming the media, as they are required to cover the Prime Minister.

Leader, what is the Prime Minister's message to Ottawa families who cannot visit or support their hospitalized loved ones about this photo op this morning?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I haven't seen the photo and am not aware of the particular event, so I'm not prepared to characterize it as simply a photo op.

I would offer this in response to your question: We are at the beginning of an important phase of both the distribution of the vaccines, which we have been able to procure, and their administration throughout the country.

It is a regrettable fact, but a fact nonetheless — and an understandable one in some cases — that some Canadians are hesitant to receive the vaccine. They have expressed so in polls, perhaps out of a concern — however well or not well-founded — with the speed at which they were developed. Others, and clearly regrettably, are opposed to vaccinations for reasons which I do not believe, and this government does not believe, are well-grounded in science.

Having not seen this event to which you referred, I would venture to say that it is a legitimate objective of the Prime Minister and the Minister of Health to communicate to Canadians that, indeed, vaccinations have begun and to reassure Canadians by seeing images of the process unfolding. This is to demonstrate that it is not only a safe and appropriate step for Canadians to look forward to and take, but one that is encouraged by the government.

Senator Plett: Leader, of course, the photo op wasn't about the Prime Minister receiving the vaccine, so I'm not sure where that answer was leading.

The Prime Minister has said he wants to lead by example by staying home in his cottage; maybe that's where he should have stayed rather than going to the Ottawa Hospital.

The Prime Minister's photo op this morning showed poor judgment, leader. Residents of Ottawa with loved ones receiving end-of-life care or with babies in intensive care are being granted hospital visits for exceptional purposes. How must they feel about seeing this?

• (1430)

Minister Hadju said today that she was emotional now that vaccines have arrived in Canada. Families and patients have been emotional for months as they face serious medical issues alone while respecting COVID-19 protocols at the hospital, which are meant to keep us all safe. Is this morning just another example of one rule for the Prime Minister and another rule for everyone else?

Senator Gold: Thank you for your question. The short answer is no. I will repeat, it is important for the government to indicate and exemplify the processes that are underway to keep Canadians safe. We all, in our own personal lives and our circles, are deeply affected by the isolation that our loved ones, especially those in hospital or long-term care homes, are forced to endure, in a most immediate way; including my family, and I'm sure most of ours. It is not for a lack of concern or compassion, and it is certainly with understanding of how we all, here in Ottawa and elsewhere, must go through this most difficult time that I offer this answer. I hope that it is satisfactory to you.

FINANCE

FISCAL UPDATE

Hon. Elizabeth Marshall: My question is for Senator Gold, the Leader of the Government in the Senate. Senator Gold, as you know, I, along with many others, have been looking for the program and financial information on the government's COVID-19 spending. We call it the transparency gap, and many of us have concluded that the government is doing a poor job of fiscal transparency. The Fall Economic Statement is raising new questions. The statement was released last month, and parliamentarians have been combing through the 223-page document in detail trying to make sense of the information provided.

Within the Fall Economic Statement, the government has announced a $100 billion stimulus plan. Aside from the lack of details surrounding the plan, the government already has a $100 billion infrastructure program that was studied twice by the Standing Senate Committee on National Finance. That committee identified significant problems with the infrastructure program. Specifically, the committee recommended that the government define clear priorities, concrete objectives and specific performance measures, and that it release data on individual projects and report to Canadians on the achievement of its goal. In other words, there is a transparency gap for that $100 billion program. In fact, the concern over the infrastructure program has been so extensive that the Auditor General has been requested by parliamentarians to undertake a special audit, hence my concern over the $100 billion stimulus plan.

Given the experience of the existing infrastructure program, how confident can Canadians be that the new stimulus program, as envisioned by this government, will achieve its objectives? When can we expect to see the details of this new stimulus plan?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator, and for your ongoing commitment to holding the government to account on these important questions. The $100 billion program to which you referred was an announcement of programs and initiatives that the government assumes that it will need to do when we reach the next stage in our progress through this pandemic.

The government has been transparent all along by reporting regularly on the programs that it has put in place to help Canadians. I think that Canadians should feel confident that this government will continue to use its best efforts and deploy the best minds in this country to develop programs that suit the circumstances we find ourselves in. In that regard, I think Canadians should find some comfort, to use the word you used, in the recent appointment of Deputy Minister of Finance Michael Sabia, who has demonstrated through his work on the infrastructure file at the Caisse de dépôt et placement du Québec and elsewhere that he knows how to get things done and move things forward.

Senator Marshall: A second issue identified in the review of the Fall Economic Statement revolves around the EI operating account. The government has moved the CERB to the EI operating account and enhanced benefits. It is estimated that the EI operating account will have a $52 billion deficit by 2024, yet there is no indication by the government how this deficit will be funded. In the midst of the pandemic, when businesses are trying to survive, employers are rightfully concerned whether this deficit will be funded by increased premiums. How does the government plan to fund this deficit in the EI operating account?

Senator Gold: Thank you for your question; it's an important one. I don't have a specific answer to your question because I suspect none of us know exactly how certain measures will be addressed in six months' time, much less a year's time. One thing that can be said with confidence is that the country entered this pandemic in a strong financial position. Credit agencies still maintain that Canada is in a strong position, and it is in no small measure in part due to the programs that the government has introduced and which have been supported in this chamber and in the other place to make sure Canadians have the resources they need, and the economy has the resources it needs to weather this storm.

[*Translation*]

COVID-19 PANDEMIC—IMPACT ON TOURISM

Hon. Éric Forest: My question is for the Leader of the Government in the Senate.

Leader, as you know, although vaccinations against the coronavirus started this week, we will still be dealing with this virus for many more months. The Government of Quebec plans to announce strict lockdown measures later today.

Even in the most optimistic of scenarios, we are not expected to return to normal by summer 2021, especially in the hospitality, restaurant and tourism industries, which primarily employ women and young people. These industries bring in 60% of their revenues during the summer. A plan to help these industries is needed more than ever.

Last Friday, the government released the Leroux report, which provides a framework for Canada's economic recovery. According to the Industry Strategy Council, 80% of businesses in the tourism and hospitality sectors are at risk of failure without significant intervention from the government. The Leroux report proposes some creative and aggressive solutions for these sectors, such as providing patient capital to anchor firms and developing new financing models beyond traditional debt-based instruments.

The government has had this report since October, but all it's offering to businesses in these sectors is the opportunity to go into debt. Will workers and businesses in the food services, hospitality and tourism sectors have to stand by until the federal budget and wait two more long months for the government to come up with a plan to help their sectors?

Hon. Marc Gold (Government Representative in the Senate): I thank the senator for his question, which raises an issue that's important to many Canadians, municipalities, and businesses.

As you know, the government has invested over $7.7 billion in Canada's tourism sector since the start of the pandemic. It extended the Canada Emergency Wage Subsidy, the CEWS, until the summer of 2021. The government also expanded the Canada Emergency Business Account, the CEBA, and introduced the new Canada Emergency Rent Subsidy, the CERS.

In addition, in the economic update, the government announced new credit programs for the hardest-hit sectors. These programs will provide low-interest loans of up to $1 million for the businesses that need it the most.

Lastly, the government added $500 million to the $1.5-billion Regional Relief and Recovery Fund, the RRRF, a quarter of which is earmarked for tourism businesses.

So the answer to your question is no.

• (1440)

Senator Forest: Government Representative in the Senate, it's easy to say no. You listed a series of universal programs, with the exception of one quarter of the specific budget for tourism. However, the fact remains that Canada's tourism industry is mainly made up of SMEs, and they are getting shortchanged. The government is weakening the entire structure of the tourism sector, an industry that has a major impact. It may not be able to work miracles, but the great thing about tourism is that it brings the consumer to us, increasing economic spinoffs and the GDP. Rather than exporting our raw materials, it imports consumers. I believe that the government needs to pay special attention to the tourism industry by developing a sector-specific plan.

Senator Gold: Senator, perhaps you misunderstood me. I completely agree with you. Tourism is an extremely important sector of the economy. What I was trying to point out is that money has already been distributed and that large sums have been put toward helping this industry. I will go even further than that. As the government announced, it is in the process of developing a whole suite of programs targeting individual sectors that were hit particularly hard by the pandemic, including the tourism industry. Announcements will be made in the coming weeks and months.

Senator Forest: Thank you.

[*English*]

NAV CANADA

Hon. Pat Duncan: Honourable senators, my question is to the Government Representative in the Senate.

Last week, the National Finance Committee tabled its second report, and I draw your attention to this point on page 26 of our report:

> With respect to the potential closure of air traffic control towers in several regional airports, officials said that they are aware of the planning that NAV CANADA is looking at in terms of cost reductions.

Senator Simons questioned you last week. We recently received a less-than-satisfactory briefing from NAV CANADA. They assured us, as Transport Canada did in committee, that any actions will not compromise the safety of air travel. Canadian taxpayers, of course, expect no less.

Senator Gold, the aviation sector is an essential element in the Yukon, from bush flying to international passenger flights. The Yukon tourism industry, in their own words, owes much of its success to accessibility provided by Yukon's airline, Air North, an airline owned by Yukoners and Yukon First Nations, and the direct flights from Europe — Frankfurt, Germany — to Whitehorse and Anchorage, Alaska, provided by Condor Airlines for many years. Condor has stated they will not offer their flights to the Erik Nielsen Whitehorse International Airport if there are no NAV CANADA services.

Cuts to regional airports by NAV CANADA are a mental health issue, an economic issue and a safety issue for Canadians. Yukoners and Canadians who have been dealing with the insecurity of the pandemic — job losses in almost every sector of the economy, particularly in the airline and tourism industry — deserve our attention and a fair response.

Will the Government Representative commit to drawing this matter to the attention of the Minister of Transport and the Minister of Finance? Will the Government Representative ask these ministers to reassure Canadians that NAV CANADA will be instructed to cease and desist with this threat of cuts to regional airports?

Hon. Marc Gold (Government Representative in the Senate): Senator, thank you for raising this important health and safety issue, as you most properly underline. I can certainly commit to raising this with both ministers. As to their response, I will leave it to the ministers to do so. I'm confident that it will be appropriate and timely.

Senator Duncan: Thank you, Senator Gold. Allow me to follow up on the international aspect of the airport in Whitehorse. It's not the only international airport under consideration by NAV CANADA for service cuts.

We all remember Canadian airports hosting unscheduled international flights on September 11, 2001. Gander, Yellowknife and Whitehorse all have something in common. I think I was the only premier that got a call from the Governor of Alaska saying, "Hey neighbour, thanks for hosting that Korean jetliner we wouldn't allow to land."

These national and international airports are known throughout the world as safe, clean, modern and welcoming spaces. Their staff-controlled towers serve and watch over who is in our airspace. I acknowledge that air travel has declined; every Canadian looks forward to it coming back.

Will the Government Representative undertake to make every effort to ensure the government grounds the planned cuts by NAV CANADA and that Canadian international and regional airports remain well staffed and continue to provide, dare I say, a high, stellar service to Canadian and international passengers and air carriers?

Senator Gold: Thank you. I will certainly use my very best efforts to bring this important issue to the attention of the government, the responsible ministers and department officials.

TRANSPORT

FERRY SERVICE BETWEEN PRINCE EDWARD ISLAND AND NOVA SCOTIA

Hon. Diane F. Griffin: Honourable senators, my question is for Senator Gold, the Government Representative.

There are two ferry boats that run from Caribou, Nova Scotia, to Wood Islands, Prince Edward Island. This past winter, both were tied up in Nova Scotia, which caused difficulty for the Islanders working on the boats and getting them ready for the new season, as usual. They had to drive from Prince Edward Island through New Brunswick and to Caribou, Nova Scotia in order to reach the vessels to do their work, but due to COVID, they also had to self-isolate upon their return to the Island. This was a very challenging scenario.

The workers are members of UNIFOR Local 4508, and their union president, Jerry Dias, is calling upon Minister Garneau to direct the company to dock one of the vessels on the Prince Edward Island side of the Northumberland Strait this winter so that once the boat is tied up for the season, Island workers can work on the Island, thereby reducing travel, potential exposure to COVID, self-isolation during time off and the use of testing resources.

Senator Gold, will the government encourage Northumberland Ferries Limited to dock one of the vessels in Wood Islands in order to protect the health and safety of Maritimers?

Hon. Marc Gold (Government Representative in the Senate): Senator, thank you for your question. Indeed, I have been advised that the Minister of Transport has received a letter from UNIFOR making the request regarding off-season docking. However, senators, we must keep in mind that the ferry service is provided by a private company, Northumberland Ferries Limited.

The government does encourage UNIFOR and Northumberland Ferries to continue discussions amongst themselves about minimizing the impacts to P.E.I. workers and others as a result of the ongoing pandemic and associated provincial travel measures. The government recognizes the important role and work that these workers play in ensuring reliable and efficient ferry service.

I would add that on a personal note, at least in my capacity as representative of the government, I have come to appreciate Question Period — I know, it's a surprise. The reason is simple, and it was exemplified by a number of the questions today. It gives senators an opportunity to bring regional interests of great concern to the national Parliament that we would otherwise be unaware of, and to hold the government to account. It is not always fun to get the questions, but it is a legitimate exercise of our power.

FINANCE

COVID-19 PANDEMIC—REGIONAL AIRPORTS

Hon. Jane Cordy: First, Senator Gold, congratulations to the government on getting the COVID-19 vaccine to Canadians ahead of schedule. That doesn't always happen with government, and I'm pleased that today, Nova Scotia received our first allotment of the vaccine. My question follows up along the lines of Senator Duncan's, and it is related to the airline industry.

• (1450)

As the COVID-19 pandemic stretches on, we are seeing the devastating effect it is having on Canada's airline industry. Between April and August, airports in Atlantic Canada have reported a 92% decrease in passengers compared to over a year ago, with losses expected to be in the area of $140 million this year, and industry experts are not expecting service to return to regular passenger levels until 2024, which is a long way off.

We are also seeing airlines reducing or altogether stopping services to smaller, regional airports. Last Tuesday, Air Canada announced it will stop their remaining flights to Sydney, Cape Breton by January 11, 2021. WestJet stopped its service to Cape Breton on November 2. Sydney Airport is now an airport without any commercial air service, and we all know that is essential to small regions like Cape Breton. In the new year, Cape Breton will lose a service that is vital to business, to those who commute across the country for work, to Cape Breton University and to the tourism industry.

Senator Gold, in the government's Speech from the Throne and its economic update, the government pledged its support for regional air routes. Does the government have a plan to support regional airline routes, like those to Cape Breton, to ensure some of our smaller regions are not economically cut off from the rest of Canada by having no commercial air service?

Hon. Marc Gold (Government Representative in the Senate): Senator, thank you for your question and, again, for raising this important consideration.

The government is disappointed in Air Canada's decision to cancel more regional routes, and it recognizes that the air sector has been hard hit by this pandemic as you and previous questioners underlined. Over the next few years, the government is committed to investing more than $1.1 billion to support key players, such as airport authorities and regional airlines. It acknowledges that the major airlines also need specific support, and that's why it is committed to developing a package of assistance for the Canadian airline industry. However, it's important to understand that before the government spends taxpayer money on airlines, it will ensure that regional communities maintain air connections to the rest of Canada and that Canadians get the refunds that they deserve.

Senator Cordy: Thank you for that, Senator Gold.

As you know, time is crucial for those living in smaller regions in Atlantic Canada and in fact all of Canada, the smaller regions particularly. Lack of commercial air service will cause harm to all communities and, as I said earlier, particularly to the smaller ones. It's essential to their economic well-being, and certainly, it's essential to their economic recovery.

I'm wondering if the government is working with the airlines and the airports on solutions because the situation is becoming dire for many regions, and particularly for the smaller regions, which depend so much on air service.

Senator Gold: Thank you, senator. I don't have the details of the ongoing discussions between stakeholders and the government, so I won't venture an answer to your specific question, but any solution to a problem that affects so many players and so many parts of the country surely must involve a dialogue with and the engagement of all the major players. I feel comfortable in assuming that is the case.

[*Translation*]

INTERNATIONAL TRADE

CANADA-UNITED STATES-MEXICO AGREEMENT—ONLINE SEXUAL EXPLOITATION

Hon. Claude Carignan: My question is for the Leader of the Government in the Senate. It follows up on the question Senator Miville-Dechêne asked yesterday regarding Article 19.17 of the Canada-United States-Mexico Agreement.

I asked the Leader of the Government a question about the same article on December 6, 2018, just before that free trade deal came into force. I talked about one particular aspect of the agreement, namely that, through Article 19.17, the Government of Canada had agreed to apply civil law and to limit civil liability for content publishers like the Facebooks and Googles of the world.

Later, in response to my supplementary question, I was told that this commitment only applies to civil liability and will not affect Canada's ability to regulate in the public interest or enforce criminal law.

Why is the government not enforcing criminal law to prosecute Pornhub?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question, senator. As I have stated several times in this place, certain federal laws apply to the sexual assault of minors.

Not only did I explain that certain sections of the Criminal Code apply, but I also said that the Canadian government is currently looking at ways to make better laws and find solutions through regulations. I also raised the issue of obtaining a decision from the Attorney General — at the provincial level, in this case — to determine whether there is sufficient evidence to prosecute.

Unfortunately, not to say tragically, that is why we are currently in this deplorable situation, even though this issue is not the result of a gap in Canadian criminal law.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE

On the Order:

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

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I rise today to speak at second reading stage of Bill C-7, An Act to amend the Criminal Code (medical assistance in dying).

I would like to begin by thanking Senator Petitclerc for agreeing to sponsor this bill. Senator, your exemplary work, your openness to the opinions of others and your recognition of the differing points of view on a bill like this should serve as a model for the role of sponsor of a bill in the Red Chamber. Thank you, Senator Petitclerc.

[*English*]

Let me begin by stating the obvious: The subject of end-of-life decisions is a very personal one. It engages our deepest convictions — ethical, religious and philosophical — as well as our deepest fears, and many in this chamber have already come face to face with the experience as it relates to a loved one. As we age, we consider for ourselves what we would want should that time come for us to make such a decision. All that is to say that individuals have their own personal choices to make in exercising their constitutional rights.

Colleagues, as parliamentarians we also have choices to make as we review the legislative framework in Bill C-7 that is designed to give effect to these rights. My purpose today is to set out why I believe that Bill C-7 is worthy of your support.

Let me begin by summarizing the argument. Bill C-7 gives effect to the constitutional rights of the individuals who are suffering from grievous and irremediable medical conditions as recognized by the Supreme Court of Canada in the *Carter* decision in 2015, affirmed by the Senate in 2016 and reaffirmed by the Quebec Superior Court in *Truchon* in 2016.

Bill C-7 is informed by consultation with Canadians and affected groups. It is grounded in evidence and reflects the evolution of Canadian attitudes on this difficult issue, and most importantly, Bill C-7 strikes a reasonable and responsible balance between respecting the autonomy of individuals to exercise control over their bodies and their lives and providing appropriate safeguards to protect the most vulnerable when faced with intolerable suffering and the choices they confront. For these reasons, it is the view of the government that Bill C-7 is sound in both policy and in law.

Now, my remarks today will focus mainly on the constitutional issues raised by Bill C-7 and about which we heard a great deal during the pre-study by the Standing Senate Committee on Legal and Constitutional Affairs and, may I add, in the excellent speech of the bill's critic, Senator Carignan. That I should focus on the constitutional issues is obvious. The central purpose of this bill is to give effect to the constitutional rights of individuals suffering from grievous and irremediable medical conditions to access MAID.

• (1500)

As we heard from witnesses during the committee's pre-study, solving one constitutional problem — by removing the foreseeability of death as a limiting criterion for access to MAID — has given rise to several other concerns about the constitutionality of the bill. Some argue that Bill C-7 is too restrictive, as it now denies access to MAID to those whose sole underlying medical condition is mental illness. Others argue that Bill C-7 is too permissive and is dangerous to the rights of the most vulnerable in our society. Still others argue that the bill fails to protect the rights of those in the health care field whose personal, ethical or religious convictions simply preclude them from participating in a patient's request for access to MAID.

Different though these concerns are, they do have one thing in common, and that is a concern that Bill C-7 may infringe on the Canadian Charter of Rights and Freedoms, and must be amended accordingly.

In my speech today, I will endeavour to explain why it's the position of the government that Bill C-7 does not infringe on the Canadian Charter of Rights and Freedoms. But I do want to make it clear at the outset that I understand very well the position of those who take a different view, and I understand very well that there are very good arguments on both sides of many of these issues. I respect these arguments. They are worthy of serious consideration, and I will try to address them fairly.

[*Translation*]

I would like to make one last point. As you know, the government has submitted a request to the Quebec Superior Court seeking an extension of the suspension of the declaration of invalidity. Arguments will be heard later this week, and we do not know whether the extension will be granted.

As the Government Representative in the Senate, I had hoped that the Senate would be able to conclude its deliberations on Bill C-7 in time to meet the December 18 deadline, even though it received the bill only last week. As I have said in this chamber and in committee, I respect and support the Senate's role in carrying out a comprehensive and appropriate review of this bill, I am pleased to have the opportunity to take part in the debate, and I am anxious to refer the bill to committee for study.

I would like to begin with a few general observations about our role as parliamentarians as we debate this bill at second reading. These observations have informed my thinking on constitutional rights since I started studying this topic, and I submit them for your consideration as we begin our deliberations.

[*English*]

Because we are dealing with constitutional rights, parliamentarians must be guided by the courts. When bills are studied at committee, senators are assisted by the testimony of witnesses. Ultimately, after all is said and done, we have the responsibility as parliamentarians to legislate, to make the difficult policy choices, to find the right balance between competing constitutional rights and values, to come to our own views on the constitutionality of a bill and to do so while respecting not only the Canadian Charter of Rights and Freedoms, but also the division of legislative powers in our Constitution and the Senate's distinctive role as a complimentary legislative body to the elected House of Commons. Nowhere is this clearer and more important than in the subject matter with which we are seized of today.

In the course of our deliberations and debates, you will hear a great deal about court decisions interpreting sections 1, 7 and 15 of the Charter, as we have already properly heard yesterday. But it may be helpful to spend a few minutes on the court case that started Parliament on the road to a legislative framework for medical assistance in dying, a case whose teachings remain very relevant as we consider the bill before us.

The 2015 decision of the Supreme Court in *Carter* struck down the provisions of the Criminal Code prohibiting physician-assisted death for a competent adult person who clearly consents to the termination of life and has a grievous and irremediable medical condition, including an illness, disease or disability, causing enduring suffering that is intolerable to the individual in the circumstances of his or her condition. But as you know, the court in *Carter* suspended its declaration of invalidity for a period of 12 months.

Why did it not simply strike down the law immediately? Why did it not grant a free-standing constitutional exemption to the appellants, who were seeking access to physician-assisted death, indeed as a majority of the British Columbia Court of Appeal in *Carter* had suggested?

The court's explanation for its suspension is relevant to our evaluation of Bill C-7. Here is what the court said at paragraph 124:

> The majority at the Court of Appeal suggested that this Court consider issuing a free-standing constitutional exemption, rather than a declaration of invalidity . . .
>
> In our view, this is not a proper case for constitutional exemption. . . . issuing such an exemption would create uncertainty, undermine the rule of law, and usurp Parliament's role. Complex regulatory regimes are better created by Parliament than by the courts.

Colleagues, the court in *Carter* recognized that it was not up to the courts to legislate the framework within which individuals could exercise their constitutional rights to access medical assistance in dying; that is Parliament's responsibility. When Parliament legislates a complex regulatory scheme, such as it did in Bill C-14 and again here in Bill C-7, the Supreme Court in *Carter* stated that its policy choices were entitled to "a high degree of deference" from the court. This is just another way of underlining Parliament's unique role and responsibility to legislate in this area.

The same understanding of Parliament's responsibility underpins the Quebec Superior Court's decision in *Truchon*, and the extensions that were granted on two occasions. As the court stated in *Truchon* at paragraph 743:

> . . . the suspension of a declaration of invalidity seems to have become another aspect of the dialogue doctrine, which allows the courts to acknowledge the legislature's social policy role by granting it the opportunity to amend its legislation before it becomes of no force or effect.

Now, before I turn to the specific constitutional issues that have been raised about Bill C-7, I want to address several other points that were raised in committee and here in the chamber. They are sometimes expressed as arguments, but I prefer to express them as questions. That way I can provide you with my answer without being or appearing to be argumentative, because these are serious questions, worthy of serious reflection.

First, why did the government choose not to appeal the decision in *Truchon* so that there would be fuller judicial consideration of the matter?

Second, why did the government not simply accept the decision in *Truchon* as it applies in Quebec and leave the law intact in all other provinces and territories?

Finally, related to the first question, why did the government not use its power under section 53 of the Supreme Court Act to refer the question of the constitutionality of Bill C-14 to the Supreme Court for a definitive ruling, rather than introduce a bill that will likely be the subject of constitutional litigation in any event?

So to these questions. On the first point, both the Attorney General of Canada and the Attorney General of Quebec decided not to appeal the decision in *Truchon*. In part, it may very well be that they believe that the court in *Truchon* was correct, that the foreseeability of death provision in Bill C-14 did indeed infringe the Charter, as this chamber also believed when it passed its amendment to Bill C-14 in 2016.

Beyond that, I am of the view it was also because the Attorney General of Canada takes seriously the fundamental point in *Carter*; that it is the constitutional responsibility of Parliament to legislate in this area, to ensure that the right balance is struck between competing constitutional rights and social values.

Some, as you have heard, have called this an example of the dialogue theory between courts and legislatures, but for my part, I prefer to see this as Parliament playing its unique role, guided by the courts, in the democratic enterprise of ensuring that our laws respect our basic rights and freedoms.

This leads me to my second question. Why did the government not accept the ruling in *Truchon* but leave Bill C-14 intact in the rest of the country? The answer, honourable senators, is simple. To have done so would have been to create an asymmetry between the constitutional rights Canadians enjoy, depending on where they live. Of course, it will be said that is true in a federation such as Canada, examples of which may even be found in our Criminal Code. But the consequences of such asymmetry on an issue as consequential as access to medical assistance in dying was a decision that the government simply felt would be irresponsible and an abdication of its responsibilities. It would condemn Canadians in all provinces and territories to suffer without access to MAID, and to be forced, like Jean Truchon and Nicole Gladu, and too many others, to go to court to vindicate their constitutional rights.

• (1510)

Finally, some ask why the government did not simply refer the matter to the Supreme Court of Canada before introducing Bill C-7, a bill which they considered to be vulnerable to a Charter challenge. Well, let me offer two answers to this question, and one demurrer.

The first is a point that I've already made. Parliament has the responsibility to come to its own determination on the constitutionality of legislation, guided by the courts to be sure, but as *Carter* and many other cases teach us, with a constitutional authority — indeed responsibility — to balance the competing rights, freedoms and interests in pursuit of the public good.

The second answer, or the second reason, is compassion. Compassion for those Canadians across the country who are suffering intolerably from a grievous and irremediable medical condition, but would have to litigate to vindicate their constitutional rights to access medical assistance in dying. This is simply an unacceptable option, not only for this government, but also for the members of those opposition parties in the House that also supported this bill.

And finally, to my demurrer. Will there be litigation challenging Bill C-7? Of course. Would leaving *Truchon* to apply only in Quebec eliminate litigation? Of course not. Colleagues, welcome to "Charter-land." For better and for worse, the courts will continue to be seized with this issue as individuals and groups seek to vindicate their constitutional rights, however they conceive them, and whatever their views may be on MAID. But this cannot be a reason for government and for Parliament to abdicate their responsibilities to legislate in good faith and in the best interests of Canadians. This is our democratic responsibility.

And Bill C-7 is the product of that. Now there is a further question that has been asked. It's analogous to the question of a reference to the Supreme Court: Why did the government not do a complete parliamentary review, as required by Bill C-14, before proceeding in a stopgap, piecemeal way as some characterize Bill C-7 to be?

I will not repeat the reasons why the government believed it was important to respond to the *Truchon* decision to provide access to MAID. Nor will I elaborate on why the intervention of an election and a worldwide health crisis delayed the launch of the parliamentary review contemplated in Bill C-14. The Government of Canada remains committed to this review. Indeed, as Government Representative in the Senate I have proposed that the Senate begin a parliamentary review once Bill C-7 is passed. I have shared this proposal with the leaders of all groups and caucuses in this place, and I have asked them to discuss my proposal with their members. I hope you will support this, because it is through a parliamentary review — and as Senator Harder correctly pointed out, a review that the Senate is uniquely positioned to embark upon — that the issues, not only of mental illness, mature minors and advanced consent, but also of palliative care, can be and should be and will be fully canvassed.

But now we're debating Bill C-7. So it's to that bill that I now turn.

The court, in *Carter*, recognized that Canadians have a constitutional right to medical assistance in dying, as I have said. But Bill C-14 limited that right to those whose death was reasonably foreseeable. Some supported that limitation because it would protect those suffering from physical disability and mental disorders from the risk that they may make choices that were influenced by the difficult social circumstances they were in, or that their decisions would not, in some sense, be fully free and informed.

But the court, in *Truchon*, as did the Senate in 2016, rejected this argument and reaffirmed the rights of all as recognized, defined and affirmed in *Carter*. So Bill C-7 responds to *Truchon* by affirming those rights for those suffering from grievous and irremediable medical conditions, but it does limit access to MAID — denies access to MAID, to be clear — where the sole underlying condition is a mental illness.

Some argue that the removal of the foreseeability of death limitation discriminates against the class of persons with disabilities — singles them out, and therefore infringes the Canadian Charter of Rights and Freedoms. Others argue that it is the exclusion of mental illness from access to MAID that infringes the Charter. Both of these arguments are important and worthy of our serious consideration.

I'm going to begin with the second question, that of mental illness, because in my considered opinion it raises more difficult constitutional questions. Moreover, it allows me to provide a fuller analysis of the Charter issues that apply to the case of disability more broadly.

Bill C-7 excludes all individuals from access to MAID where a mental illness is the sole underlying medical condition. That's a change from Bill C-14. Under Bill C-14, access to MAID was available in principle to persons suffering intolerably from grievous and irremediable medical conditions, including persons with mental disorders, but the requirement that death be reasonably foreseeable had the practical effect of limiting access to those for whom the sole underlying condition was a mental disorder. But under Bill C-7, the de facto limitation has become a legal exclusion. This clearly engages the Canadian Charter of

Rights, notably section 7 and the equality of rights in section 15. Colleagues, engaging the Charter is not the same thing as infringing the Charter, as I will endeavour to explain.

[*Translation*]

If there is one issue upon which all would agree, and this emerged clearly in the committee's pre-study, it's that the issue of permitting MAID for persons whose sole underlying medical condition is a mental disorder is a complex and difficult one.

This practice is only authorized in a few jurisdictions in the world. The results have been mixed, and opinion is strongly divided.

Furthermore, the constitutional considerations associated with MAID for individuals suffering solely from mental illness have not been dealt with conclusively by the courts and were excluded by the Supreme Court in *Carter*. That is why it is important to have this debate. We have the opportunity as senators to participate in this constitutional conversation with the courts, the government and our counterparts in the House of Commons.

[*English*]

Let me begin with the equality rights provisions. Our understanding of the equality rights provisions of section 15 of the Charter have evolved over the past 35 years and are still evolving. It is now clear that section 15 is not limited to what is termed "formal equality," that is, the Aristotelian notion of treating like cases alike, but protects what the courts have come to call "substantive equality." According to our courts, equality guarantees under section 15 seek to prevent and remedy discrimination against groups subject to social, political and legal disadvantage in Canadian society.

The courts' analysis under section 15 proceeds in two steps. Step one asks whether the law creates a distinction on the basis of an enumerated or analogous ground. Step two asks whether the distinction is discriminatory, or put another way — and I'm quoting — whether it:

> imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating their disadvantage.

The courts have been at pains to remind us that section 15, and the analysis under section 15, is contextual, and must take into account the concrete impacts of the law on members of protected groups "in the context of their actual circumstances, including historical and present-day social, political, and legal disadvantage."

• (1520)

The Supreme Court of Canada has recently issued two judgments consolidating and clarifying the legal framework to be applied under section 15 — a framework that we need to take seriously and under consideration as we deliberate on this matter.

In the *Fraser* decision, the court provided two important clarifications of the second step of the section 15 test. First, although the presence of social prejudices and stereotyping can help show that a law has negative effects on a particular group, these are not essential parts of the analysis nor factors that a claimant must prove.

Second, the question of whether a law perpetuates a disadvantage of a protected group is relevant to a state objective — whatever that is in any case — is properly considered not in section 15 but as part of the section 1 analysis. At this stage of the analysis, in section 15, the question is simply whether the law perpetuates a disadvantage.

The second important case, one directly relevant to the question before us, is *Attorney General of Ontario v. G.* Senator Carignan referred to it yesterday. This case concerned the provisions of an Ontario statute known as Christopher's Law requiring those who are either convicted or found not criminally responsible for a sexual offence because of a mental disorder, NCRMD, to physically report to a police station for their personal information to be added to the province's sex offender registry. Registrants must continue to report in person at least once a year and also if certain information changes. Registrants must comply for 10 years, if the maximum sentence for the sexual offence is 10 years or less, or for life if the maximum sentence is greater than 10 years or if they committed more than one sexual offence.

But here lies the rub. Under the law, there is an opportunity, based upon individualized assessment for those found guilty of sexual offences, to be removed or exempted from the registry or relieved of their reporting requirements. By contrast, no one found not criminally responsible on account of a mental disorder can ever be removed from the registry or exempted from reporting, even if they receive an absolute discharge from a review board.

The Supreme Court struck down this provision of the law on grounds that it was discriminatory. Here is what the court said in relation to the meaning of discrimination under section 15:

> The second step [of the analysis] asks whether the challenged law imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage, including historical disadvantage. By denying those found NCRMD opportunities for exemption, removal, or relief from the sex offender registry, *Christopher's Law* effectively presumes they are inherently and permanently dangerous. It considers NCRMD individuals a perpetual threat to the public. *Christopher's Law* imposes a burden on people found NCRMD in a manner that violates s. 15(1) in two respects: the law itself invokes prejudicial and stereotypical views about persons with mental illnesses; and the law puts those

> found NCRMD in a worse position than those found guilty. Both effects perpetuate the historical and enduring disadvantage experienced by persons with mental illnesses. The distinctions drawn by *Christopher's Law* are thus discriminatory.

Now, returning to Bill C-7, there is no dispute that the exclusion of eligibility for MAID where the sole underlying condition is a mental illness amounts to a distinction on the basis of mental disability. Bill C-7 clearly satisfies the first step of the section 15 analysis. But is it discriminatory under the second part of the section 15 analysis in the terms that the Supreme Court has provided us for our guidance?

The government's legal position is that this distinction is not discriminatory. But this is not to deny that persons with mental disorders have not, and do not still, suffer disadvantages caused by stereotyping and social exclusion. Yes, there is stigma that has attached and still attaches to those who suffer from mental disorders. Sometimes they are viewed as having lives not worth living, a burden to society, better shut away out of view or worse. Other times they are deemed incapable of making informed decisions for themselves.

Nevertheless, colleagues, denying access to MAID for people whose sole underlying medical condition is a mental disorder is not at all analogous to the discrimination in Christopher's Law that was struck down by the Supreme Court. In the case of Christopher's Law, the assumption was that persons found not criminally responsible due to mental disorder were a perpetual danger; they could never change. This flies in the face of medical knowledge. It perpetuates the worst stereotypes about mental disorder and contributes to the ongoing stigmatization suffered by those with mental disorders.

Is this the hypothesis underlying Bill C-7? No. Bill C-7 is based upon the assumption that persons suffering from mental disorders can, in fact, improve; that their suffering, though intolerable in the present, may be alleviated in the future through treatment; and that their medical condition, though grievous, may not in fact be irremediable. Does this perpetuate a stereotype about mental disorder? Does this stigmatize people who suffer from mental disorders?

Colleagues, to pose the question, I think, is to answer it.

Honourable senators, Bill C-7 seeks to protect persons with mental disorders, given the lack of clear criteria for determining the trajectory of many such disorders and the lack of consensus amongst the health care community on the standards to be applied in such cases. It is the position of the government that this exclusion does not reinforce, perpetuate or exacerbate disadvantage on the basis of mental disability and, therefore, does not infringe the equality rights guaranteed in section 15.

However, as any student of the Charter will know, arguments about rights — and especially equality rights — are inherently controversial. Predicting how a court might rule is a very risky business.

Part of this actually has to do with the very nature of equality rights and the competing conceptions, understandings and interpretations of the equality rights that are co-existing within the very text of section 15.

As one scholar wrote that equality is:

> . . . one of those political symbols . . . into which men have poured the deepest urgings of their hearts. Every strongly held theory or conception of equality is at once a psychology, an ethic, a theory of social relations, and a vision of the good society.

As another scholar observed:

> Equality is the great political issue of our time. . . .
>
> The demand for Equality obsesses all our political thought. We're not sure what it is...but we are sure that whatever it is, we want it . . . .

But part of it also has to do with the uncertainty surrounding how courts will rule in any given case, especially since the jurisprudence interpreting section 15 is still in a state of flux. It's therefore possible that a court would conclude, notwithstanding what I've presented to you, that the exclusion of mental illness in Bill C-7 does perpetuate disadvantage, thereby infringing section 15, and it must be justified as a reasonable limit to that right under section 1 of the Charter.

[*Translation*]

As you know, the rights guaranteed by the Charter are not absolute, but are subject to such reasonable limits as can be demonstrably justified in a free and democratic society. Bill C-7 clearly satisfies several of the elements of the criteria set out in section 1, which were established by the Supreme Court in the reasons for the main ruling. The exclusion of eligibility for MAID where the sole underlying condition is mental illness serves to protect vulnerable persons from being induced to end their lives. The *Carter* ruling clearly states that this objective, which was also the basis for the previous law, is pressing and substantial. That is the first part of the section 1 analysis. With regard to the other tests, there is no doubt that there is a rational connection between the exclusion and the objective. After all, the court wrote in *Carter* that it is clearly rational to conclude that prohibiting MAID will protect the vulnerable from being induced to commit suicide at a time of weakness. For the same reasons, the introduction of MAID for individuals suffering solely from mental illness certainly satisfies the rational connection requirement.

• (1530)

[*English*]

The much harder question, colleagues, surrounds the requirement under section 1 that the impugned provision impairs rights to the least degree possible, the so-called minimum impairment test. Otherwise put, the question of the minimum impairment test is whether the law is reasonably — not only rationally, but reasonably — tailored to its objectives.

In approaching this question, our courts have recognized that in cases involving complex social issues, legislatures may "may be better positioned than the courts to choose among a range of alternatives." The court recognized in *Carter* that the issue of physician-assisted dying involves complex issues of social policy and several competing rights, interests and values, and it rightly suggested that Parliament's response would be owed a high degree of deference. Moreover, in cases involving complex human behaviour, the court has accepted that Parliament is entitled to take a precautionary approach even when the harms that it is trying to address are difficult to prove.

So the question boils down to this: Did Parliament have a reasonable basis for concluding that the perceived harms exist and that the law does not limit rights more than necessary to achieve that legislative objective?

The government's position is that continuing to prohibit MAID for persons suffering solely from mental disorder is necessary in light of the currently available evidence to achieve the objective of protecting vulnerable persons from being induced to end their lives.

Following the legalization of MAID, the Council of Canadian Academies was asked to conduct independent, evidence-based reviews on three potential areas of expansion for Canada's MAID regime, including mental illness as the sole underlying medical condition. The CCA report on mental illness reflects the deeply divided opinion and evidence in this area, and this was also evident during the pre-study conducted by our Senate Committee on Legal and Constitutional Affairs.

The CCA report includes evidence to support the view that relaxing the prohibition on MAID in these circumstances would pose untenable risks, compromising the objective of protecting vulnerable persons. This evidence to which I referred includes a number of different categories, of which I will mention just three.

The first relates to the challenges associated with screening for decision-making capacity. While most people with mental illness have the capacity to make treatment decisions, some mental disorders can impair decision making and increase the risk of incapacity. There is evidence that screening for decision-making capacity is particularly difficult and subject to a high degree of error in relation to persons who suffer from a mental disorder serious enough to ground a request for MAID. Hopelessness, feelings of worthlessness and the wish to die are often symptoms of some mental disorders. Accordingly, it can be difficult — though, of course, not impossible — for even experienced practitioners to distinguish between a wish to die that is autonomous and well considered and one that is an expression or symptom of the person's very illness.

The second category of evidence relates to the nature and trajectory of mental illness. As explained in their chapter on diagnosis, prognosis and treatment effectiveness, there is evidence that mental illness is generally less predictable than physical illness in terms of the course that the illness will take over time. Many people with a poor prognosis will improve — at least in terms of their suffering and their desire to die. Although some will not improve, there is no reliable way of identifying these people in advance.

The third category of evidence relates to international evidence from the few jurisdictions that permit MAID for those whose sole medical condition is a mental illness — Belgium, the Netherlands and Luxembourg. Recent practice in these countries has raised concerns, both in relation to the increasing numbers of these cases and in relation to the wide range of mental illnesses in respect of which MAID has, in fact, been provided.

To be sure, we must be mindful to pay attention to the differences between the health care systems in other countries and in Canada before automatically incorporating their experiences into ours; however, we should never turn a blind eye to the lessons that other jurisdictions may have for us, especially as we aspire to make difficult policy decisions on the basis of the best evidence available. That is what we expect our government and Parliament to do.

For all these reasons, and based on the evidence available at this time, it is not clear that the inherent risks associated with this practice can be adequately mitigated by any feasible system of safeguards. Therefore, it is the position of the government that the exclusion in Bill C-7 satisfies the minimal impairment test under section 1 of the Charter.

[*Translation*]

That same evidence supports the government's conclusion that prohibiting MAID for individuals suffering solely from mental disorders addresses the final balancing requirement, or the third step of the criteria established in the Supreme Court's decision in *Oakes* with respect to balancing the benefits of a particular act and the harm it causes.

It is also important to remember that, in cases like this one that involve inconclusive evidence and complex social issues, the courts tend to take a flexible approach to balancing the benefits of the act. As it stands, the benefits of the act include protecting vulnerable people who face unique risks, in relation to MAID, of having their lives cut short even though there is hope for recovery.

[*English*]

In assessing the harms associated with the prohibition, it is important to be clear that ineligibility for MAID is not based upon and does not perpetuate the assumption that persons with mental disorders are incapable of making consequential decisions. This is evident in the fact that mental disorder is not a disqualifying factor for individuals who are otherwise eligible; rather, the prohibition is based on evidence suggesting that the assessment of capacity in these situations is fraught with difficulty and insufficiently reliable.

[*Translation*]

The prohibition is also not based upon the notion that mental disorders do not cause profound or grievous suffering or that they are less worthy of concern than physical illnesses. The prohibition is based on the unique risks posed by access to MAID in situations where the only underlying condition is a mental disorder. Although eligibility for MAID can cause distress for some individuals with mental disorders, the government believes that, in this context, the benefits of the prohibition — meaning the protection it provides — outweigh the harms associated with it.

[*English*]

Honourable colleagues, the guarantee of substantive equality under the Charter is based upon the idea, in the words of the Supreme Court, that individuals should be treated "as human beings equally deserving of concern, respect and consideration."

The exclusion introduced in Bill C-7 is not because persons suffering from mental disorders are human beings any less deserving of concern, respect and consideration; quite the opposite. The exclusion is based primarily upon the apparent lack of criteria for determining when a patient's mental disorder, notwithstanding their suffering, is, in fact, irremediable — one of the conditions set out in *Carter* — to ground our constitutional right to MAID. This is reinforced by the clear lack of consensus amongst medical practitioners and their professional associations as to whether mental illness as the sole underlying condition should be included or not in the legal framework of medical assistance in dying.

For all these reasons, the government's position is that prohibiting MAID for a person suffering solely from mental illness is consistent with the equality rights provisions in the Canadian Charter of Rights and Freedoms. However, this does not end the analysis, because the issue could also be approached through the lens of section 7 of the Charter, which protects the rights of life, liberty and security of the person and prohibits government interference with these rights, unless done in accordance with the principles of fundamental justice.

• (1540)

Now, there is no doubt that the exclusion of mental illness in Bill C-7 engages the interests protected by section 7 of the Charter. In *Carter*, the court explained that a competent adult's ". . . response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy." Now, although the issue of MAID for persons suffering solely from a mental disorder was not before the court in *Carter*, this aspect of Bill C-7 clearly appears to engage the right to liberty and security of the person.

However, it is the position of the government for all the reasons that I set out in my discussion of the equality rights provisions in section 1 that the impact on liberty or security of the person is, in fact, consistent with the principles of fundamental justice. According to the Supreme Court, the principles of fundamental justice embody three important constitutional values: that the law not be arbitrary, overbroad or disproportionate. And in here, colleagues, you may detect a connection with the values of rationality, reasonableness and proportionality that I discussed under section 1 of the Charter.

To put the matter simply, the prohibition in Bill C-7 responds to the unique risks of MAID in this context. Its effects are both related and proportionate to the important objective of protecting vulnerable individuals, and as such, it is neither arbitrary nor overbroad or grossly disproportionate. But as I said before, it is possible that a court would disagree, such that a justification under section 1 would be required. And although it is often stated that it would be difficult to justify a law under section 1 that has been determined to be inconsistent with the principles of fundamental justice, since there appears to be considerable overlap between the core principles underlying the tests in both sections, it is nonetheless important to note that there are recent developments in the jurisprudence that have significantly expanded the scope of section 1 in section 7 cases. So all of the considerations previously outlined would apply equally to a justification of any potential limit on section 7 rights in this context.

But before I conclude this part of my remarks — and, yes, alas, there is still more to come — and at the risk of repeating myself, I want to underline for this chamber that the government is aware that there are strong constitutional opinions to the contrary, and that the arguments against this aspect of Bill C-7 are worthy of serious consideration and debate. I certainly have wrestled with them, as should we all. But the central point I want to make in this regard is that the government has carefully considered the scope of the *Carter* decision as well as recent court decisions interpreting sections 7 and 15 of the Charter. It has carefully considered the views expressed by the Council of Canadian Academies, and it was in light of all of this that the government reached the conclusion, at this stage in the evolution of both the law and medical opinion, that the exclusion of mental illness when it is the sole underlying medical condition was justified as a matter of policy and is consistent with the Canadian Charter of Rights and Freedoms.

Honourable senators, the issue of MAID for persons suffering solely from mental illness is not the only issue that has raised constitutional questions. This comes as no surprise and reflects the range of potential effects that were identified in the Charter statement for Bill C-7. The first issue is whether the removal of the requirement that a person's natural death be reasonably foreseeable increases the risk and therefore engages the Charter rights of persons with disabilities. As explained in the Charter statement on Bill C-7, the government recognizes that expanding eligibility for MAID involves broadening the exceptions to criminal prohibitions on the intentional taking of life. If sufficient safeguards are not included to protect vulnerable persons against abuse or error, it could affect the right to life and security of the person guaranteed by section 7 of the Charter, and because the broadened exceptions would apply where the person seeking MAID has a serious and incurable illness, disease or disability, the bill also potentially engages the section 15 right to equal protection of the law of persons with disabilities.

Now, as set out in the Charter statement, several considerations support the consistency of this aspect of the bill with both sections 7 and 15 of the Charter. Crucially, individuals would continue to be eligible for MAID only if they have made a voluntary request that was not the result of external pressure. They would also still have to give informed consent after having been apprised of means available to relieve their suffering. Importantly, providing MAID where these requirements have not all been met, either with respect to the eligibility criteria or procedural safeguards, would be a criminal offence.

Additional considerations support the consistency of this bill with section 15 of the Charter. Like the current law, and as set out in the preamble, Bill C-7 would continue to affirm the equal and inherent value of every person's life. Eligibility for MAID under Bill C-7 would not be based on negative stereotypes equating disability with loss of dignity or quality of life, but on respect for the autonomy of all persons with a serious incurable illness, disease or disability to choose MAID as a response to intolerable suffering that cannot be alleviated by means that are acceptable to them.

Persons with disabilities have fought for, gained and deserve the rights of full inclusion, including the right of choice. Yet, at the same time, they often don't have, or are not perceived to have, the same autonomy as others. Colleagues, the same discussion was had at great length during the joint parliamentary study leading up to Bill C-14.

Bill C-7 eliminates the barriers between those already eligible for MAID while providing safeguards for those wishing to access MAID due to irremediable and prolonged suffering where death is not imminently foreseeable. It is the view of the government, as it is of the courts, and, indeed, of the Senate in 2016, that individuals supported by their families and the medical professionals caring for them should be able to determine what is best for them in their own circumstances.

[*Translation*]

The decision to access MAID is not taken lightly by the person making the request or by those who love or care for them. To suggest otherwise is to ignore all the thought and prayer that went into making the decision, not to mention the suffering that led to it.

The provisions of Bill C-7 are permissive and not automatic. They offer a legal choice to those who are suffering intolerably as a result of a grievous and irremediable medical condition. That is the right granted to every competent adult. However, that right to choose must be exercised within the context of a legislative framework that ensures the implementation of appropriate safeguards for those who are seeking access to MAID because of their suffering. The law must guarantee that they make an informed decision and that the situation is assessed professionally and appropriately, hence the need for additional safeguards in the bill under such circumstances.

Bill C-7 includes these sorts of guarantees for those who request MAID even though their death is not reasonably foreseeable or imminent. These guarantees are designed to support the individual's informed choice and were developed in consultation with people with disabilities and representatives of that group because, as Senator Petitclerc pointed out, there is a lot of diversity among the millions of Canadians who are living with a disability, whether it be physically, mentally or sociologically, and they also have very diverse opinions on medical assistance in dying for themselves and for those they represent.

[*English*]

As Senator Petitclerc outlined both the process and the safeguards in her speech, I shall not repeat them. That these safeguards are deemed too strong for some and inadequate for others is to be expected given the importance and sensitivity of these issues. For example, Senator Carignan raised concerns about the 90-day assessment period for those seeking MAID but whose death is not reasonably foreseeable, arguing that this infringes on the Charter. But we have also heard that this period — a minimum period, it must be underlined — is too short to provide proper protection for persons seeking MAID. This only reinforces the importance for us as parliamentarians to be mindful of the complexity of these issues as we deliberate on this aspect of the bill.

Let me turn to some of the arguments that we've heard on this particular issue more broadly. Some advocates for the communities of disabled persons and some members of the opposition in the other place argue that the "foreseeability of death" criterion should be maintained to protect the vulnerable. Indeed, there is a vigorous letter-writing campaign under way to this effect.

• (1550)

The government strongly disagrees. As the court in *Carter* stated in paragraph 66:

> An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy. The law allows people in this situation to request palliative sedation, refuse artificial nutrition and hydration, or request the removal of life-sustaining medical equipment, but denies them the right to request a physician's assistance in dying. This interferes with their ability to make decisions concerning their bodily integrity and medical care and thus trenches on liberty.

To maintain the foreseeability of death criterion limitation — one should state more strictly — would be to deny a person with a disability their constitutional right to life, liberty and security of the person. It would show a lack of respect for their dignity and autonomy and violate their constitutional rights to be treated as individuals deserving of equal respect and consideration.

Concerns have also been expressed that the power dynamic between physician and patient exposes the most vulnerable to pressure that could compromise their capacity to make a free and informed decision on MAID.

Without denying this aspect of the physician-patient relationship, permit me to say that this argument fails to recognize the devotion, professionalism and good faith of the vast majority of medical professionals who are called upon to assist and assess someone who is seeking access to MAID. I am tempted to go even further and suggest that it implicitly dishonours them and the professional and ethical standards by which they are bound. The government also agrees with the court in *Truchon* that physicians are able to properly assess a patient's request for MAID to ensure that it is well informed and free of coercion.

It is not only the concerns about the impact of the potential power imbalance between patient and physician that has raised concerns. Some of the concerns I'm about to express are focused on Bill C-7 itself, while others are broader in scope.

It is argued that expanding access to MAID is dangerous, given the inequalities that exist in our country. Concerns were expressed, and will continue to be expressed, about the impact of poverty on the choices people may feel compelled to make, on the impact of unequal access to health care generally, whether in more rural and remote areas, on reserves or within provinces themselves, and on the relative lack of palliative care alternatives for those who are suffering intolerably. All these factors are set to compromise the choices of individuals who are suffering.

These inescapable truths cut in several, not always consistent, directions. For some, this is an argument for expanding social services and palliative care resources so that individuals have more options. For others, this is a reason to maintain the "foreseeability of death" limitation to minimize the impact of the social and regional inequalities on the choices available. These are real, legitimate and important concerns.

More resources are needed for palliative care. Fortunately, both the federal government and provincial governments are responding to their needs through increased funding. Furthermore, as the recently enacted Ontario Compassionate Care Act illustrates — to which Senator Harder made reference yesterday — we are also seeing a movement to create legislative frameworks to support increased palliative care in the provinces and territories.

More and better training for medical practitioners is urgently needed, whether in our medical or nursing schools across the country or in the development of a training and certification program for doctors specializing in MAID through the professional associations at the provincial and national levels. Efforts must continue to address the social inequalities that clearly affect the choices Canadians make in this, as in so many areas of their lives.

Colleagues, these concerns cannot be addressed through the Criminal Code, much less through Bill C-7, and nor should they be. Many of these fall clearly outside Parliament's constitutional authority and are within exclusive provincial jurisdiction. Others lie in the hands of the professional associations that oversee the work of our medical professions. Those, too, fall within provincial jurisdiction.

Bill C-7 strikes a reasonable balance between the rights of individuals to seek access to MAID and the safeguards necessary to protect the most vulnerable in society. It is sound in policy terms and — as I have endeavoured to explain in great length and with your considerable indulgence, for which I thank you — on constitutional terms.

Honourable senators, there remain other issues worthy of consideration that I wish to outline for your consideration.

[*Translation*]

One of the issues that came up during the debate on MAID is advance directives. This issue will be looked at during the parliamentary review pursuant to Bill C-14. The Council of Canadian Academies studied advance directives in its own independent review, also pursuant to Bill C-14.

Bill C-7 is a step forward because it enables people whose natural death is reasonably foreseeable to receive MAID on the basis of a prior arrangement giving consent under certain conditions. Bill C-7 would also allow an individual who chooses to self-administer MAID to make a back-up plan should self-administration not result in death within a specified period but cause a loss of capacity.

The question is whether this approach, which would prohibit most advance directives for medical assistance in dying, complies with the Charter of Rights and Freedoms. The government's position is that it does, and I'm prepared to discuss that further if senators have questions about it.

[*English*]

Finally, it has been argued that Bill C-7 should make it clear that medical practitioners who object on grounds of conscience should not have to participate in a patient's request for access to MAID, including, some argue, not being required to refer that patient to a medical practitioner willing to provide assistance and assessment.

Regarding the first point, the position of the government is that this is not necessary. The Canadian Charter of Rights and Freedoms guarantees freedom of conscience and religion. The preamble to Bill C-14 clearly states that nothing in the act affects the guarantee of those freedoms. No doctor or nurse is forced to administer MAID.

Let me make two points regarding the question of referrals. First, this is a matter properly within the scope of provincial organizations to which health professionals belong, which are within the exclusive jurisdiction of the provinces.

Second, colleagues, we cannot forget that access to medical assistance in dying is a constitutional right. As parliamentarians, we should be careful before we contemplate legislating to limit a person's ability to exercise their constitutional rights, especially where there are serious questions about the scope of Parliament's legislative jurisdiction in this area.

I began my remarks by referring to the pre-study and the decision of the Supreme Court in *Carter*, and so I will conclude. That was a pause for what I thought would be a sigh of exasperated relief. I will conclude with the same.

As you know, the committee did not do a pre-study on the bill, because it was still being debated in the other place. It did an extensive pre-study on the subject matter of the bill. As such, it was inevitable that witnesses and the study and questions of senators would range over a broad set of issues concerning medical assistance in dying, including issues explicitly excluded from Bill C-14 and, indeed, Bill C-7. In this respect, the following comments by the Supreme Court in *Carter* could apply with equal force to much of what we heard in committee.

• (1600)

Speaking of the evolving public debate, the court said:

> The debate in the public arena reflects the ongoing debate in the legislative sphere. Some medical practitioners see legal change as a natural extension of the principle of patient autonomy, while others fear derogation from the principles of medical ethics. Some people with disabilities oppose the legalization of assisted dying, arguing that it implicitly devalues their lives and renders them vulnerable to unwanted assistance in dying . . . . Other people with disabilities take the opposite view, arguing that a regime which permits control over the manner of one's death respects, rather than threatens, their autonomy and dignity, and that the legalization of physician-assisted suicide will protect them by establishing stronger safeguards and oversight for end-of-life medical care.

Colleagues, I am tempted to say that the more things change, the more they stay the same. But things have changed. Canadians' attitudes towards MAID have changed, and so too must the law change.

Colleagues, we have embarked upon a very important debate, and the Senate has a critical role to play. As a senator and the Government Representative in the Senate, I am confident that we will do our work responsibly and honourably as we play our part in this collective exercise of democratic law making.

Thank you very much for your attention.

Some Hon. Senators: Hear, hear.

Hon. Denise Batters: Would the senator take a question?

Senator Gold: With pleasure.

Senator Batters: Thank you. Senator Gold, as you pointed out in your speech, assisted death for mental illness as a sole condition is only allowed in a few countries in the world. Please tell us more about why you believe that particular international experience is important in evaluating that issue.

Senator Gold: Thank you for your question. Any experience that we can gather that throws light on the evidence, such as is available, is something that all good policymakers should take into account.

The experience of other countries and the opinions of medical professionals here have led this government to the conclusion that more time is needed to arrive at a proper solution.

With regard to the international experience, as I understand it, jurisdictions that allow it have seen a rise in the number of cases and an expansion of the mental illnesses underlying successful requests for MAID. That gives this government pause as it wrestles with the difficult questions that medical practitioners wrestle with, which is to distinguish between various mental disorders and their impact on the ability to make a decision that is free from the impact of their illness on their wish to live.

To hearken back to what I said, it is taking a precautionary approach before we plunge further, so the international experience illustrates the complexity of the issue and is something that responsible policy making has to take into account.

Senator Batters: Senator Gold, in your speech today, you said, "more resources are needed for palliative care." Senator Gold, where are those resources? That was one of the big Trudeau government promises coming out of the Bill C-14 debate and, almost five years later, we are still waiting and Canadians are still waiting for a lot more resources to be allocated by the federal government for palliative care.

Senator Gold: Thank you for the question; I'm in my familiar territory of Question Period now.

The government recognizes that access to palliative care and end-of-life care is not only an important issue for Canadians, but is necessary to respect the rights of Canadians, especially those in the last chapter of their life.

In a series of budgets, this government has made significant new investments in health care. Those investments representing billions and billions of dollars often come with no strings and allow the provinces, who are responsible for health care, to choose to direct some of those funds to increasing palliative care in their provinces, as many provinces are doing.

Because it's a provincial jurisdiction, the government has been working since 2018 with the provinces, territories and other stakeholders to develop the framework for palliative care in Canada.

In terms of actual dollars, a lot of federal funding has flown into palliative care to the provinces. I have a list here, and I haven't done the math to add up how many billions of dollars it amounts to, but there have been significant investments.

Having said that, senator, it's never enough. We have had questions in this chamber that have pointed out that whether it's in smaller towns in my province or in large metropolitan areas, there aren't enough beds for all who need them. This government is committed to continuing to work with the provinces. It's continuing to listen to the provinces in terms of their growing health care needs and is committed to doing its part in increasing palliative care for the well-being of Canadians.

But as Senator Petitclerc mentioned in her speech yesterday, this real and pressing social problem is one track we must pursue while, at the same time, providing a balanced and responsible legislative response to the constitutional rights of Canadians seeking access to MAID.

Hon. Robert Black: Senator Gold, will you take another question?

Senator Gold: Yes.

Senator R. Black: Since medical assistance in dying, or MAID, became legal in Canada in June 2016, over 13,000 Canadians who were suffering unbearably chose to die peacefully with the help of a physician or nurse practitioner. However, according to the *Canadian Medical Association Journal*, only 14.9% of Ontarians who accessed MAID between June 2016 and March 2018 resided in rural settings.

Senator Gold and honourable colleagues, I'm deeply concerned about how access to MAID differs between urban areas and rural communities. In many cases, rural Canadians aren't able to find a MAID practitioner in their community and have to travel to larger communities or larger centres for care. Rural Canadians not only face challenges finding MAID practitioners in their community, they also often face challenges accessing many other health care services that urban dwellers can find around the corner.

Almost one fifth of Canadians live in rural communities, but they are served by only 8% of physicians practising in Canada. When making things like MAID available to Canadians, it's important to consider the ways it will affect different communities. Rural Canadians may be less likely than urban dwellers to request MAID due to the perceived difficulty in accessing it. This could prolong the suffering of someone while their urban counterpart receives more expeditious care.

My question today, Senator Gold, is this: Will the government consider conducting an additional review on rural access to medical assistance in dying? It is critical that, as we move forward with making changes to MAID, we consider the barriers that face Canadians in rural, remote and northern areas.

Senator Gold: Thank you for your question, senator. As I mentioned in my speech, it is a real problem. It's not only a problem that we discuss in the abstract, but a felt, living experience for far too many people. Not only in rural areas, but, frankly, in many cities with limited access to trained professionals.

I would make two points in response to your question. The first is that if senators would support my proposal for the Senate to undertake parliamentary review under section 14, it would lie within our hands, masters of our own business as we are, to make sure that part of our analysis is to look at regional inequalities and the impact on the fair value of constitutional rights in this country.

The other point I would make is this: In my speech, I alluded to the need and importance of providing better training to our doctors and nurses from the very beginning of their medical and nursing education so that they can become competent, experienced and knowledgeable about medical assistance in dying. Indeed, I know that there are efforts and discussions under way, which I applaud, to see whether such programs can be introduced and their implementation encouraged in the professional associations, universities and health care institutions across the country.

• (1610)

If we had more health care professionals — doctors, nurses and others — who were competent and comfortable with assisting and advising, where appropriate, persons who come to them with requests for assistance in access to MAID, then we would take a step toward reducing the inequalities that continue to plague the delivery of health services in our country.

[*Translation*]

Hon. Claude Carignan: Leader, on June 17, 2016, Senator Harder said, and I quote:

> It is the Government of Canada's view — and indeed my view — that this bill conforms with the Constitution and with the Charter. I know that is not a view that is shared amongst all senators, but it is the view of the Government of Canada, the Attorney General of Canada, that this bill is in conformity with the Charter.

However, it was rescinded and deemed unconstitutional. A little later, Senator Harder quoted a member of the other place, Mr. Oliphant, who said the following:

> It is now apparent to me that having legislation in place will at least save vulnerable Canadians from the costly and inhumane tribulation involved in having to appear before a judge to access their right to medical assistance in dying.

Despite that claim, however, there are vulnerable Canadians who were forced to go to court to access their right to medical assistance in dying.

You are using exactly the same words and I feel like I'm experiencing déjà vu. Did you and Senator Harder use the same speech writer?

Senator Gold: How can I answer in a parliamentary fashion?

Colleagues, first of all, I wrote my own speech. I presented it as Government Representative as that is my role in this place, and it is a privilege for me. I did not once mention my past career or my personal points of view, because it is not appropriate to do so in the Senate. That is my answer to the first part of your question.

However, there is an important element in your question and I take what you said seriously. In fact, your comments are in line with mine, not with respect to the issue of constitutionality, but with respect to the fact that it's impossible to accurately predict the response of a court to any given case, with its unique circumstances. That is a reality that legal experts understand very well.

Furthermore, as I was saying, the Charter is in the process of evolving, especially with respect to the right to equality as well as our understanding of the required protections that will better protect the rights and freedoms of Canadians.

I'll get back to the main point I was trying to make in my speech. It would be nearly impossible to legislate on an issue like this without expecting that there would be judicial processes demonstrating that the law has gone too far or not far enough, or that a right or freedom is invalid. It comes with the territory, as they say. It is a reality, just as the sun rises in the east and sets in the west, and we can't escape it. Nor can we escape our responsibility in dealing with this situation, dealing with this moment in time. We are doing our best to strike a balance between the constitutional rights of individuals and the other constitutional values we hold dear. Therefore, if we do our job in a respectful and serious manner, as I said earlier — and I have every confidence that we will — then we will do our very best.

Finally, we are doing our job, but no one can predict the future. All we can do, and what we must do, is our very best, even if we disagree. The chamber will decide, and we will ultimately enter into a dialogue with the House of Commons. That is my response.

Senator Carignan: Thank you, leader. Will you take another question?

[*English*]

The Hon. the Acting Speaker: Senator Gold, your speech has elicited a lot of interest, and there are a number of senators who have raised their hands. You are, of course, entitled to take which questions you choose.

Senator Gold: No one has ever paid this much attention to me in my life. Bring it on.

The Hon. the Acting Speaker: Excellent. Continue, Senator Carignan.

[*Translation*]

Senator Carignan: Don't worry. We'll pay a lot of attention to you.

I imagine that you must have read Justice Baudouin's decision in *Truchon* when writing your remarks. I listened to your speech, which makes it seem as though Justice Baudouin never said anything about mental illness. Obviously, when the judge talked about the notion of "end of life" in Quebec or "reasonably foreseeable death," she was talking about a common group that includes a subset of people who are suffering solely from mental illness and another subset of people who are not mentally ill but who have physical problems and whose death is not necessarily reasonably foreseeable.

It is as though we left one subset of people out, saying that certain people will have the right to MAID but those in the mental illness subset won't have access to it and will be excluded. However, Justice Baudouin specifically addressed the issue of people who were suffering solely from mental illness and said that they must not be excluded. She talks specifically about mental illness and uses that term 20 times. She uses the term "mental disorder" three times and "psychiatric illness" 18 times. Justice Baudouin's ruling specifically addresses the fact that the group of people who are suffering solely from a mental illness must not be excluded. In paragraph 252, she says, and I quote:

> The Court cannot accept the concept of collective vulnerability suggested by the Attorney General because the broad protection that results therefrom is too general an application of a precautionary principle. Vulnerability should not be understood or assessed on the basis of a person's belonging to a defined group, but rather on a case-by-case basis, at least for the purposes of an analysis under section 7 of the *Charter*.

In other words, it is not a person's belonging to a group described as "vulnerable" — such as persons with disabilities, Indigenous people or veterans — that should substantiate the need to protect a person applying for MAID, but the person's individual capacity to understand and consent to such a procedure in a free and informed way.

I don't know if you did not read or understand this passage because, having listened to your speech, I feel that it contradicts this passage of the Superior Court's ruling. The government claims to want to pass Bill C-7 in order to comply with the ruling, but as things stand, I believe the opposite is true.

• (1620)

Senator Gold: Thank you for your question and for mentioning the reasons for Justice Baudouin's decision.

The government decided to respond to the *Truchon* decision because it believed that the "reasonably foreseeable death" criterion violated the Constitution. As I explained in my speech, the government and the House of Commons decided to simply let things unfold and accept the *Truchon* decision, without legislating another set of safeguards, including the exclusion of individuals with mental illness.

First, Parliament has a duty to legislate and to try to follow the guidance of the courts. We play a different role, and this is recognized by the courts. We are not a lower court, required to follow the Supreme Court's decisions to the letter, the *ratio decidendi* or *obiter dictum*, terms familiar to me because of my background as a common-law lawyer. Instead, the courts recognize that we, as parliamentarians, must respect laws and decisions and do the difficult work of finding the right balance when laws and freedoms may be in conflict.

Second, it's important to remember that the *Truchon* case arose out of a problematic situation in the province of Quebec, which has a lot more experience with MAID at the provincial level. The other provinces could learn from Quebec in that regard. Even in Quebec, after the *Truchon* decision, the CAQ government said it needed to take a step back on the issue of mental illness. That government took the time it needed, and it recently published a study. Honourable colleagues, even in Quebec, the question of identifying appropriate criteria was part of a consultation and decision-making process.

In response to the *Truchon* decision, the government acted on its responsibility to legislate by introducing Bill C-7. Now it is incumbent upon us to debate it, which is what we are currently doing, and I appreciate your question and your dedication to this issue.

We will take it step by step in this chamber to see whether other interventions would contribute to the debate.

[*English*]

Hon. Frances Lankin: I have a question for Senator Gold, if he will take another.

Senator Gold: Yes, of course.

Senator Lankin: Thank you. Senator, I want to commend you for your speech, and if I may, add the same commendation for all of the speakers we heard last night. It is a rich environment that we work in, and I am impressed and grateful to have heard from all of the speakers and the strong, straightforward and thoughtful work that has been done.

I want to ask you a question that particularly relates to your comments about the Oakes test, and the third part of that being striking the reasonable balance and also limiting impairment of rights.

With respect to sole mental disorder, the exclusion that is there; I fully understand the point that you make, and I fully understand the point that Senator Carignan makes. There are, in some ways, the two interpretations that we have to sort through.

When Bill C-7 was first introduced before prorogation, the state of attention to the issue of determining criteria for assessing eligibility for people suffering from sole mental illness and/or the state of understanding and/or determination of irremediality was further behind than it is today. In the months that have elapsed, a lot of work has been done. Thus, I believe that's leading to the proposal from some senators to consider the idea of a sunset clause on this exclusion, and a direction for the legal framework for the eligibility criteria and the consideration of the issue of irremediality as well.

I am interested to know whether the government is open to the consideration of that. As you said, there will be an evolution, and things have evolved even since Bill C-7 was first written and introduced.

Have you given consideration to this yourself? I realize that I'm asking you, and you're speaking as representative of the government: Is this an area that is worthy of us to explore in this chamber, and if we became convinced that the medical profession and the disciplines of expertise in this area had, in fact, come much closer to, or had in fact endorsed a concept of giving another year, to a year and a half, for that criteria to be developed, to be worked on, to be agreed upon and to have a sunset clause which would then ensure an equality of rights?

On reflection, I would like to ask Senator Carignan another time the same question, but could you respond to that please, senator?

Senator Gold: Yes, with pleasure. Thank you.

As I said to many of you in my discussions — and I'm glad to have the opportunity to say it — the Government of Canada will take very seriously and consider seriously amendments that are designed to improve the law. One of my important jobs is to be a channel between the Senate and the government, to help the government understand our preoccupations.

With regard to this area, it was not by accident that I devoted so much time to the constitutional argument or that I indeed started with it, even though, as Senator Carignan properly pointed out, it's a subset of the larger issue. I did so because, in my humble opinion, it raises the toughest constitutional issues. As I was at pains to say, and it was not just window dressing, I really do believe that there are strong arguments on both sides.

My role in this chamber is to present, as best I can, the government's reasons for believing that it made the right choices and its choices are constitutional. When I do that and answer as best as I can, I believe I have discharged my responsibility to you and to the government.

I also have a responsibility, as I said, to channel your preoccupations to the government. I do it enthusiastically and regularly.

I cannot say more than this. I understand the depth of convictions that animate the debate here. I fully expect that amendments will be brought forward. I fully understand that amendments will pass. If I could have done a thousand times better in my speech, and I did the best that I could, that doesn't mean that I am necessarily right in your minds. We have a responsibility as individual senators and as a Senate to do what we collectively think is best in a bill before us.

• (1630)

I will advise the government as best I can as to amendments that at least I believe are consistent with the objectives of the law. I would encourage senators to take my words seriously. The government is open to seriously considering amendments that have the effect of improving the law, that improve access to MAID and protect those who need the protection.

Senator Lankin: Senator Gold, I would very much like to stay with content, but I am going to move my second question to that of process.

Last night we heard a series of similar questions to speakers talking about whether the Senate will have sufficient time to deal with this bill. I have been so enthralled by the speeches thus far and the contributions that everyone has made and will make. I agree with you, in terms of the complex and difficult nature of decisions that are before us. I also hope that there is sufficient time. I know that you have said that you're hoping for an efficient debate of this but recognize that senators need time to deal with it.

As Government Representative and someone who is concerned with the timetable of processing bills and dealing with the other groups, the caucuses and their leaders, to move government business through, I am wondering about the possibility of extra time. For example, could we not, if we pass the hybrid sitting motion, continue to sit next week? Could we not have the committee come back in January? Could we not come back as a Senate at the end of January? Could we not forgo the crazy schedule that has us back for one week in February and then gone for another? Could we not sit through that? We could add at least three or perhaps four weeks to our time of deliberation and still be in a situation of meeting the new court deadline, if such is granted. Could you speak to the process and how we ensure that we spend less time talking about the time that is being denied us when we don't know what the time will be, and spend more time focusing on the important content of people's speeches?

Senator Gold: Thank you for the question. As Government Representative in the Senate, I do not control the pace of the deliberations and debate. When I say sincerely that I expect the Senate to apply itself seriously and responsibly, I mean it.

As with other bills, there are discussions that will be under way, such as those that have taken place, to determine an appropriate way forward that respects the needs of all senators to participate in the debate, and for all groups to have the time that they feel they need. As Government Representative, I have my issues and my red lines. These are matters for discussion, and our debate this week, albeit only beginning, should illustrate the fact that we are taking the time we need to have a fulsome debate, and here only at second reading. I hope that we can conclude second reading debate this week and send it to committee, but what happens thereafter is in the hands of the Senate as a whole and, at least initially, in discussions I will be having with the leaders in the days to come.

Hon. Paula Simons: Honourable senators, my question is for the Government Representative, if he is willing to accept more questions.

Senator Gold: Yes, of course.

Senator Simons: You are a constitutional law professor and I am not, so I don't presume to lecture you on your area of expertise. You know, of course, that in *Starson v Swayze* Chief Justice Beverley McLachlin, as she was then, wrote that:

> Mental illness without more does not remove capacity and autonomy.

That was an important decision that provided that people who were deemed to be mentally ill still had the right to refuse treatment, as they can in every province now except for British Columbia, I believe.

It seems to me that if we acknowledge that every patient with a mental illness is a discrete, unique case, that mental illness does not necessarily remove capacity or autonomy, and that mental illness — which is not defined in this bill — includes many things that we now know to have a physiological, neurological or biochemical cause, is it not somewhat patronizing for the government to assume it is acting in the best interests of people with psychiatric conditions by protecting them from the capacity to exercise their right to medical aid in dying?

You went on at some length to describe the ways in which doctors are trained professionals who have the capacity to assess individual cases. I'm wondering why the government is throwing its hands up and simply saying that there is no way to assess capacity in a case of psychiatric or neurological condition.

Senator Gold: Thank you for your question. I will try to be brief in my answers. I apologize for the time I am taking, but these are important questions.

First, the evidence that the government has before it, and indeed evidence that was replicated as was expressed in the pre-study, shows that the medical community is divided as to whether or not, at this stage of the development of criteria ranging over all the issues that bear upon this, it was an appropriate time to legislate. The decision of the government, based upon the conflicting evidence of the medical professionals to whom you referred, was that we're not there yet.

The other point that I would make — and I know this might strike one as a narrow point, but it is a fundamental one — is that Bill C-7 falls clearly within the framework and does not depart from the framework of the *Carter* decision. In the *Carter* decision, the constitutional right to access to medical assistance in dying, is not granted to each and every person who is suffering under circumstances intolerable to them. That's a horrible thing to contemplate. But that's not the constitutional right that *Carter* recognized. The constitutional right was for those who are suffering intolerably and suffering from a grievous medical condition. Goodness knows that many mental disorders are as grievous as any other form of disorder, but they are not all irremediable. That is one of the challenges that any government would have in legislating a proper framework where the only underlying condition is a medical disorder of that kind.

That is the real challenge for us as parliamentarians. Our hearts break when we contemplate the denial of access to people who are suffering intolerably, but the constitutional right that *Carter* acknowledges and that Bill C-7 embodies does not go that far. Were the constitutional right to be framed differently — and perhaps someday it will be — we would have a different conversation.

In my speech I laid out all the considerations, and they included issues of capacity. But I was at pains to underline that, in so many cases, persons suffering from a variety of mental disorders clearly do have the capacity to give informed consent. But there is still a problem in some subset of cases, and there is still a real problem, as all of us know from our own experiences with people — friends and family — who have suffered, for example, from deep clinical depression. There is a real problem in concluding that, in the pits of despair that some people can find themselves in, where it seems there is no hope, that in fact, with treatment, whether pharmacological treatment or talk therapy, meditation or what have you, people do get better. They develop their zest for life, but in moments of despair, they don't believe it.

• (1640)

So the government made a decision based upon the conflicting input from medical professionals. It stayed focused on the scope of the rights guaranteed by *Carter*, and in so doing, it has raised a real serious constitutional controversy that we are in the process of debating, but it was done in good faith based upon the best evidence that it had in order to do the right thing. I hope that answers your question.

Senator Simons: I do have a supplemental question, if that's all right. There are many kinds of mental illnesses that are not depression or related to depression. It seems to me that what you are saying is because a mental illness might someday be remediable, you are asking people to live in what may be unbearable physical and emotional torment in the hopes that one day there might be a remedy. That is not the same test that we are asking for people who, for example, have ALS, advanced multiple sclerosis or inclusion body myositis or any other condition that may trigger access to MAID under Bill C-7.

Why is it only people who are suffering from this particular category of psychiatric illness who are asked to wait in torment in the hopes that one day there may be remediation for their condition?

Senator Gold: Senator, again, we can't help but be touched, as I am, by your remarks. And it's going to sound — let me rephrase this.

First of all, the government has taken all of this into consideration, including the input and advice of experts it consulted and experts who appeared before it. Despite the truth of what Senator Lankin reminded us of, that there is progress and movement in this area, there is no evidence that there are agreed-upon standards for the medical community in place, either in law or in their professional associations, to properly and responsibly deal with that.

The other point is to return to *Carter*, to Bill C-14 and to Bill C-7. The constitutional right is where the medical condition is grievous and irremediable, though, of course, it is true that in any given case, a competent practitioner may come to his or her view that a particular condition is or is not remediable — that is, that the person will or will not respond to treatment — and you are perfectly right to point to a number of other conditions.

Where death is still imminent, access to MAID remains open. That track has not been eliminated, and Bill C-7 does that, importantly. But where the medical community has not arrived at standards for determining in advance whether a particular medical condition or disorder, or even having to classify which ones are or are not, then the government took the view that it would be imprudent not to legislate in this area.

But it was not for lack of compassion for the suffering. We all recognize that. We have all seen it around us.

[*Translation*]

Hon. Diane Bellemare: Would Senator Gold take another question?

Senator Gold: I would be happy to.

Senator Bellemare: Thank you, Senator Gold. First let me congratulate you on your performance. Delivering such a long and well-laid-out speech and following it up with answers to our questions is quite a feat. My question is brief, but it picks up on what Senator Carignan and others had to say about the mental health issue.

Maybe my hypothesis isn't justified, but I'm curious about why the government wouldn't agree to frameworks governing the constitutional right to medical assistance in dying that would vary slightly from province to province. For example, in the United States, there are 10 states with MAID programs. Now we have Justice Baudouin's *Truchon* decision, which includes mental illness among the conditions that make people eligible for end-of-life care and MAID.

Why didn't the government wait until it had completed a comprehensive review of Bill C-14 as planned, which we should have started in June, before deciding to change the legislation? The government could easily have let Quebec carry on with Justice Baudouin's decision and the MAID framework and waited until a more comprehensive review was done, as set out in Bill C-14. Yes, there would have been two standards, but is that so dangerous? That's the gist of my question. Why impose uniformity in a country where populations and communities are maybe not all on the same page?

Senator Gold: Thank you, senator. That is a good question. I tried to address it in my speech. It is true that there are differences among U.S. states, but criminal law is a state jurisdiction in the U.S. Here, we have a national law.

As I tried to explain in my speech, the government decided to legislate rather than wait for a parliamentary review or Supreme Court decision, which, as you know, can take years, simply because there are individuals across Canada who are suffering. They have constitutional rights that are recognized by the Supreme Court, this chamber and also Justice Baudouin, but they are unable to access MAID under Bill C-14. If that legislation were to remain in force in Ontario, New Brunswick, and all of Canada's provinces and territories, these people would continue to suffer while having a constitutional right that they are unable to exercise. That is the reason. As the saying goes, "Let not the better be the enemy of the good." If we begin a parliamentary study upon our return in the new year — and I hope that we do — we'll be able to thoroughly study this issue and several others provided for in Bill C-14. If the medical community continues to work on identifying standards and criteria, it will help our study and help the government to bring in legislation at the appropriate time.

• (1650)

Senator Bellemare: The only thing is that Quebec is going to be a little disappointed to see that we are limiting the scope of Justice Baudouin's decision.

Senator Gold: I understand that quite well, being a senator from Quebec. It's not ideal, but once again, the Government of Canada needs to step up and find a balance in the interests of the well-being of all Canadians. That said, I do understand your concern.

[*English*]

Hon. Elizabeth Marshall: Would Senator Gold take another question?

Senator Gold: Of course.

Senator Marshall: Senator Gold, thank you for your speech and also for your thoughtful responses to the many questions.

When the government drafted Bill C-7, was there a consultation process? The reason I'm asking is that I'm not on the Standing Senate Committee on Legal and Constitutional Affairs, but it seems there is so much opposition to the bill. There is nobody stepping forward and saying it's a very difficult issue and the government did the best it could, and Senator Carignan, when he gave his speech last night, said there were 80 witnesses, and I think he said two supported the bill and those were both ministers who appeared.

Could you tell us what kind of consultation process took place when the government drafted the bill?

Senator Gold: Yes, thank you for your question. In fact, I'm glad to have the opportunity to speak to it. I don't necessarily share the characterization that none of the witnesses supported the bill. In a bill this complex, it will always be the case that there are areas of disagreement, and it is also the case that legitimate questions were raised by witnesses. But let me answer your question because it deserves an answer.

The government embarked upon a process of consultation. It had two dimensions. It consulted thousands and thousands — the number now escapes me, so I'm looking to Senator Petitclerc because she probably knows what it is — over 300,000 Canadians online to get their views. The understanding is that, with the experience that we've had with Bill C-14, Canadians' views have evolved significantly, and they support medical assistance in dying in significant proportions.

In addition, a series of round tables were held by ministers and public officials. This did not come out clearly and I regret that, but for the record, they included consultations with representatives of the disability community who provided input in these round tables for the safeguards that they thought needed to be put in place. The government listened, and many aspects of Bill C-7 reflect the input that it got. Did it simply cut and paste every recommendation? Of course not. That would be to abdicate the government's responsibility. Are advocates who represent certain groups within the disability community satisfied with everything? No. Did they use their public platform to press for more? That's what good advocates do, and bravo; that's what democracy is.

There was consultation, as well, with some groups representing First Nations and Indigenous peoples, but the consultation was not as broad as it could have been. I know concerns have been expressed that Métis and Inuit groups were not represented. I'm not standing here saying that the consultation was perfect. The government was under the gun in terms of time. It did its very best, and the important point, Senator Marshall, is that it incorporated the views of Canadians, experts and stakeholders in crafting Bill C-7. It does not please everybody. It may not even please some who did not get everything they wanted in the bill despite their serious engagement with the government, but it is still the case that this bill is supported, I believe, by the majority of Canadians. They recognize that it's a step forward in granting rights and autonomy to those whose deaths, though not reasonably foreseeable, deserve the same rights as all Canadians, to have their autonomy respected. That's what this bill is trying to do.

What we, as parliamentarians, are now engaged in doing is digging deep and trying to make sure that we're satisfied that the government got it right. If we're not satisfied and you have ideas to amend it, bring them on. We'll debate them and we'll vote on them. That's what we do here.

As representative of the government, I'm honoured to be representing a government that is willing to engage in this process and is willing to hear what the Senate has to say to improve this bill.

Senator Marshall: Thank you, Senator Gold, that answers my question. Thank you.

[*Translation*]

Senator Carignan: I want to talk about the decision that mentioned the extension of the unconstitutionality or the effect of the decision. At the end of the 2019 decision, the justice says the following:

> Furthermore, a complete legislative debate took place . . . .

This means that there is no legal vacuum created when the court declared that the reasonably foreseeable death requirement was unconstitutional.

The judge also said the following:

> As Parliament opted to enact a legislative regime essentially based on the parameters set out by the Supreme Court, with the added reasonably foreseeable natural death requirement, its unconstitutionality returns the law to the state it was in Canada following *Carter* and, therefore, creates no legal vacuum.

That is the exact argument I used in my speech. This is an excerpt from Justice Baudouin's decision.

> Furthermore, a complete legislative debate took place at both the federal and provincial levels, so any possible responses should be easy to identify. Finally, this suspension period will allow Parliament and the legislature —

— meaning the Quebec legislature —

> — to coordinate in order to avoid perpetuating the existing incongruities in medical assistance in dying in Quebec.

The judge is referring to what Senator Bellemare said earlier.

What coordination did the Government of Canada and the Government of Quebec engage in or what steps did they take to avoid any incongruity with regard to Quebec's choice, which was clearly expressed by the fact that the Government of Quebec chose to open eligibility for medical assistance in dying to people who are suffering solely from mental illness? What discussions took place between the two levels of government?

Senator Gold: Senator, I don't have an answer to that specific question, but I will repeat that the federal government decided that it was necessary to legislate in that way to give effect to the constitutional rights of Canadians.

• (1700)

This is not a question period, but we will have time to continue the debate, and I'll do my best to give you an answer. It is an important question, but I can't give you an answer at this time.

Senator Carignan: You also referred to the fact that, without an extension, failing to pass the bill by December 18 would create a legal vacuum. However, in its decision regarding the second extension, the Superior Court stated the following at paragraph 20:

> . . . there is no legal vacuum here, because the legislative scheme that will continue to apply during the extension period and during the parliamentary proceedings relating to Bill C-7 is essentially based on the parameters set out by the Supreme Court in *Carter*.

The judge has made it clear that, at this time, since we have a legislative framework that is consistent with the *Carter* decision, there will be no legal vacuum.

How do you reconcile that with what you just said?

Senator Gold: If I understand the question correctly, the Government of Canada disagrees with the idea that allowing the *Truchon* decision to apply in Quebec would have no consequences. According to the government and a number of witnesses, the safeguards introduced in Bill C-7 for seriously ill individuals who are not at the end of life are necessary to protect those people. Some safeguards are necessary. Also, given the consultations and evolving Canadian values, and based on the experience gained since 2016, the government made the compassionate decision to relax some of the criteria in the bill, such as the 10-day waiting period following approval. We heard from people who are suffering and who have had to go through a long process before choosing to end their lives this way. These people were supported throughout the process, they were evaluated, and then they were told they had to wait another 10 days. There were other ways to write the law in order to better protect Canadians and reduce the suffering of those seeking to exercise their constitutional right.

[*English*]

Hon. Pierre J. Dalphond: Thank you, Senator Gold, for this well-thought-out presentation. I recognize the excellent tradition of learned attorneys for the Attorney General of Canada.

My question is about the exclusion of mental illness. In your speech you said that under Bill C-14 a person who is suffering from a mental illness could possibly have access under the current regime. Evidence has also come before the committee that people suffering from a mental illness who are also suffering from a comorbidity — cancer or a terminal illness — are not denied access to MAID. It has also been represented that in some provinces people were provided access to MAID for the sole condition of suffering from a mental illness considered to be irremediable and bringing insurmountable suffering.

In this context, isn't it fair to say that Bill C-7 proposed to roll back access to MAID in such cases?

Senator Gold: Thank you for your question. I didn't quite understand your reference to the Department of Justice, but I'll let that pass.

It is true that in some cases, Quebec and otherwise — and I made reference in my speech — there is a possibility of claiming constitutional exemption on a case-by-case basis, based upon the evaluation, and courts have granted that. That's a good thing. But that's not the same thing as legislating it across the board when there is an absence, as I said — and forgive me for belabouring the point — of established criteria that could govern the medical profession generally and a lack of consensus amongst the medical community that we're at the right time. Well, there is no consensus that we're ready to legislate broadly beyond the personal exemption.

There was another important point that you raised that I wanted to refer to. With your indulgence, let me try to remember it because it was an important question.

[*Translation*]

Senator Dalphond: Is it reasonable to deny MAID to a person on the grounds of protecting that person, especially in cases involving mental illness, when that same person has the right to refuse medical treatment to prolong their life, such as cancer treatment, without the state intervening to force that person to receive the treatment?

Senator Gold: Thank you for the question. Again, and it is an occupational hazard as a jurist, I must insist on the criteria in *Carter*. To me, the crux of the matter — and I know that views are divided here in this chamber — is not consent. Yes, we may run into problems from time to time, but the important thing is that the scope of the constitutional right is based on a medical condition that is irremediable. We have to keep that in mind because it is entirely legitimate to say that a particular decision is not good. As I said earlier, if a person is suffering and no longer has autonomy, they may decide that it is over, and the Criminal Code must not only protect that person, but also protect the physicians or the nurse practitioners who are helping. However, it is not the definition of the constitutional right that we are seized with here today. We have to incorporate criteria into the bill, criteria that are entirely independent of a judge's decision. As you know full well, honourable colleague, that is quite the distinction. The government's position is that we are not there. That is why we did not legislate it the way you might have liked.

[*English*]

Hon. Salma Ataullahjan: Senator Gold, will you take a question? Thank you for your speech, Senator Gold. The UN Special Rapporteur on the rights of persons with disabilities warned earlier this year:

> If assisted dying is made available for persons with health conditions or impairments, but who are not terminally ill, a social assumption could be made that it is better to be dead than to live with a disability . . . .

• (1710)

Senator Gold, how can we ensure that those who choose MAID are not making the choice because of social stigma, isolation, a lack of access to personal assistance or disability-related services or, as one person put it, "suffering caused by social neglect?"

Senator Gold: As I tried to express in my remarks, I take this very seriously, and the government takes it seriously. We should all take this seriously.

The best answer I can give you is that through Bill C-7, the government has tried to put into place a series of safeguards — such as the minimum 90-day period to make sure the assessment is done properly, and others — to ensure that to the fullest extent possible, the person seeking MAID knows what he or she can count on by way of support and what their alternatives are. That there are different levels of support for wealthy people in big cities and less wealthy people — or even wealthy people — in remote areas is an inescapable fact. However, the government's position, as I repeat, is that challenging though these issues are — and Bill C-7 really tries to address them — they cannot be a reason to deny the constitutional rights of those who, when they make a free and informed choice, choose to access it.

In that regard, the government is not naive that there aren't challenges to accessing proper medical care in this country. But it does have confidence that the vast majority of doctors and nurses who provide guidance and assistance to persons with disabilities who may seek this, do so professionally, compassionately and fully respecting the criteria set out in the law. There is no guarantee that somebody, in the despair of their circumstances, may say, "I don't want to do this anymore." Of people seeking medical assistance in dying, there will be cases of "if only they had more supports." Provincial governments, the federal government, the not-for-profit sector and all citizens have to do better and more. We need to.

As I said, nothing that I can say about government plans or government money takes away the fact there aren't enough social services equally distributed in this country. But again, we're dealing with the Criminal Code response to a constitutional case. We're not dealing with — and can't deal with — the state of our country's health, much less the inequalities that are a structural feature of living in this country.

Senator Ataullahjan: Senator Gold, during the Legal Committee hearing, doctors and experts advised that the 90-day assessment period is not long enough. Would you agree or disagree with that?

Senator Gold: I am looking at the sponsor to correct me, but I believe this is the minimum period. Again, trust is an important factor. We legislate not because we trust everybody to act as angels, but in cases like this we have to trust our medical professionals. We have to trust those who have sworn an oath to assist and to save lives. I don't think there is a doctor or a nurse in this country who doesn't struggle when a patient comes to them and says, "I have had it, my suffering is intolerable." It boggles the mind to think we would assume that the great majority of our health professionals are anything other than caring, compassionate people in cases like this.

I have confidence that the great majority of doctors and health care professionals who choose to participate in this regime — what a terrible word — and choose to participate in helping individuals seek a dignified and peaceful end to their life of suffering will take the time necessary. In some cases, it may be that less time is appropriate; in some cases, it may take years before one can really be satisfied with the criteria of the law, that the condition is really irremediable.

Bill C-7 and our Constitution respects the autonomy of individuals to refuse treatment, but it also has measures to protect us. It's not an either/or. It's not a question of being paternalistic. We live in a world where we have to balance these things depending on the circumstances. It's hard. These are tragic choices. It's not a tragedy for us, as senators, to be wrestling with it. It's a privilege to be participating in this.

But underneath this law, there are the tragic trade-offs that philosophers have been educating us in for millennia. Not everything fits together. Choices have to be made. Compromises have to be made. Bill C-7 is an honourable compromise in the face of a tragically but deeply human condition that is suffering at the end of life or suffering that is intolerable.

Senator M. Deacon: Thank you, Your Honour. I removed my question, respectfully.

Senator Kutcher: Your Honour, I also removed my question. I'll deal with my question in my remarks.

Hon. Yonah Martin (Deputy Leader of the Opposition): I remove my previous supplementary question, but I have a different supplementary. It's a very important one, so if I may just continue where Senator Ataullahjan left off. The point about the 90 days is important. I understand it's a minimum, but when we have minimums, that too could potentially put someone at risk.

What I raise to you is that there have been delays across the board. As an example — it's unrelated — the government is asking a student that is enrolled in a school to wait 12 months for her visa to be renewed. So a minimum of 90 days seems quite short.

In fact, we know that it can take at least 90 days to get an appointment with a rheumatologist or other pain specialists. Often it takes between 150 and 200 days to get placed in a long-term care facility, so the minimum 90 days alarms me and others. As you say, compromises have to be made. Would the government be open to an amendment on the minimum, given the situation with the current pandemic and the delays that we are experiencing across the board?

Senator Gold: Perhaps I could begin my answer by reminding the chamber, because for many of us, though not all of you, this is a new phenomenon in this Parliament. It is not simply the government that has to be open to a change in legislation. And it's not only us. It is also the parties in the other place, because this is a minority government.

If my memory serves me well, an amendment along these lines was considered in the other place, and it didn't pass. That doesn't mean it could not be introduced here, but I think if you look at the votes in the other place, it will probably give you an idea of where the government stands on that, or at least stood at that time. Your question is a more important one than trying to predict how a government and the other opposition parties in the other place might react were an amendment to pass here. I mean, we're not there yet. I would love to be at third reading and having this conversation, and we will.

• (1720)

This is too serious for me to be flippant. Please don't misunderstand me. For some, it's much too long a period of time, and for others it's way too short. That doesn't mean that 90 days — just because it falls somewhere in the middle of different evidence and inputs. But it was the government's considered view that 90 days was a reasonable minimum to at least ensure that the assessment, once it begins, can take place in an effective way.

Again, I return to my point: Any health care professional will take his or her time to make sure that the assessment is done properly. The minimum period, even though it may prolong the suffering of somebody for the 90 days, at least will ensure that vulnerable people are not rushed to a decision or allowed to rush to a decision before all proper evaluations have been completed.

[*Translation*]

Hon. Raymonde Saint-Germain: Honourable senators, I rise today to comment on Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), a vitally important bill that has human and very direct impacts on people who are obviously very vulnerable at that stage in their lives.

This is the second time in less than five years that the issue of medical assistance in dying has been examined in this chamber. We must now examine this bill through the lens of the Quebec Superior Court decision commonly known as *Truchon*.

This historic ruling leads us to reconsider the basic facts about what we want for everyone and for ourselves, namely the ability to die in dignity.

Quebec led the way in Canada when it comes to medical assistance in dying. As of 2009, the Quebec National Assembly began to seriously, empathetically and thoroughly examine this issue through the Select Committee on Dying with Dignity, whose report laid the foundations for the Quebec legislation that was passed in June 2014 and that has now been in effect for over five years.

[*English*]

In Quebec, if there is one certainty in this matter, it's that it is no longer possible to question the acquired rights of people who are suffering and are at the ends of their lives. Public opinion today largely supports the principle of medical assistance in dying and their ability to give free and informed consent. As a senator of Quebec, I have a duty to take these elements into consideration when studying this bill.

This societal debate, conducted under the aegis of a cross-party parliamentary commission, was held during my mandate as Quebec's Public Protector. I therefore took part in the discussion on Bill 52, An Act respecting end-of-life care. At the time, I had identified several principles which guided me throughout my reflection. I believe that they are just as applicable today and must be considered in the study of Bill C-7.

These principles are: recognition of the fundamental importance of the right to life; respect for the free and informed choice of the individual; practical access to end-of-life palliative care; and, fundamentally, respect for everyone's right to die with dignity.

It is in light of these guiding principles, as well as the *Truchon* decision, that I have reviewed this bill. Of course, the constitutional angle must be considered in the analysis of any bill. That being said, even from this perspective, legal opinions vary as to the constitutionality of Bill C-7. In my view, this angle is not the most important one.

My remarks will focus on another angle — that of human impacts.

I will now share with you some of my findings on Bill C-7. I believe that the government has struck an acceptable balance at this stage between putting in place strong safeguards and respecting the free and informed decisions of those who require medical assistance in dying.

The bill softens the controversial measure of mandatory final consent at the time of administering medical aid in dying for those whose death is reasonably foreseeable. I believe this is a good decision as many experts had argued that this measure, in many cases, fuelled the fear of patients that they would no longer be able to give their consent in a timely manner, only adding to and prolonging their suffering unnecessarily. However, this change is accompanied by strict standards such as the signing of a prior written agreement with the medical nurse or nurse practitioner.

I would also like to address the ambiguity surrounding the issue of mental illness. In this bill, the government has made the decision to exclude — as a sole requirement — mental illness from the criteria for obtaining medical assistance in dying. So it is not accurate to say that mental illness is totally excluded. It is excluded as a sole requirement.

This is an extremely complex and multifaceted issue. At stake are the fundamental rights of people suffering from mental illness but also their protections against sometimes unpredictable illnesses. In excluding this requirement and in relying on the conclusions of the planned review of the act, I believe that the government has acted with due caution in this case. The potential impacts of including mental illness in the criteria for medical aid in dying are too great to be adopted prematurely. They require further attention.

That being said, in considering this bill, we will need to think carefully about this dilemma between inclusion and exclusion focused on mental health. We must exercise our sober second thought and ask ourselves if the consultation and the study on this issue are enough to justify full inclusion at this time. Are we convinced that we have access to all the needed expertise which would be required to make an informed decision? For my part, I am not.

We also need to look at what constitutes free and informed consent and ensure that suffering people never feel pressured in any way to accept medically assisted treatment to die.

During the pre-study conducted by the Standing Senate Committee on Legal and Constitutional Affairs, I took notice of the testimonies in which some patients spoke of having been recommended in an insistent and unwanted manner to resort to assisted dying. I found this very worrisome.

It is essential, dear colleagues, that medical aid in dying remains a last resort in cases where suffering is unbearable and inhumane and is requested after careful consideration. The call for medical assistance in dying must not be the result of the lack of access to quality palliative care, nor should the provision of other types of care, such as psychological and psychiatric services, be underestimated. Access to medical assistance in dying should go hand in hand with access to these types of services, which are, unfortunately, often severely lacking.

I note that, by deciding not to appeal the *Truchon* decision, the government implicitly agreed to this new standard of unforeseeable natural death. However, its inclusion in this bill must be accompanied by strong safeguards to ensure the protection of vulnerable people.

• (1730)

I therefore welcome the addition of safeguards such as the requirement for a minimum reflection period, the numerous validations of informed consent and the possibility of providing the person with the necessary means of communication so that they can withdraw the application at any time.

I would now like to draw your attention to a concern that came to my attention during the reading of Bill C-7. I am referring to the issue of the capacity to consent for people suffering from mental disorders. Although mental illness is not a single requirement for obtaining medical assistance in dying, a person suffering from a disorder related to a mental illness can still access it as long as it is combined with another accepted requirement. In addition, certain illnesses can cause physical and mental suffering for those affected.

I want to strongly emphasize that a person living with mental illness is not necessarily incapable of consent. When I was Quebec's public protector, I heard the testimony of patients who had been refused treatment or unjustly placed in psychiatric care when they asked, with lucidity and with full possession of their means, for treatments related to physical disorders.

Bill C-7 is based, among other things, on rigorous assessment by medical and nursing practitioners. I want to ensure that the quality of this assessment and the compliance with the associated criteria are respected so that any person with the capacity to consent is able to do so without being discriminated against on the basis of a history of mental disorder.

When the act is reviewed, it will be crucial to look at the various aspects I have mentioned here, which are the effectiveness of the safeguards, the waiver of final consent, the exclusion of mental illness as a sole requirement and the capacity to consent.

We will also have to bear in mind the issue of inequality in timely access to palliative care. Inaccessibility of this type of service is very real and may increase depending on the region, province or territory. It is a well-known reality in isolated regions as well as in Aboriginal communities. This is what is commonly known in Quebec as "postal code inequality." As senators, we have a duty to fight that.

Medical assistance in dying is a last resort, and it must remain so. Above all, we must ensure that the most vulnerable have the opportunity to improve their living conditions. I am therefore giving conditional support to this bill, which I believe is reasonable at this time. My support is conditional since I believe that my support is linked to a solid parliamentary review of the law, tantamount to the Quebec commission that studied the issue from 2009 to 2012. I have high hopes that the consultation upon which the committee will base its conclusions will be as complete and as serious as the Quebec commission was in order to conclude with all required clarity.

I now conclude, colleagues, by reiterating the importance for patients to be able to exercise their right to consent. When a person has full capacity to consent and meets the criteria set out in this bill, there is no doubt in my mind that the final decision should rest with them. I believe our role is not to limit or infringe on the rights of our citizens, if they so wish to use such rights.

I also want to say that our personal beliefs or values should not, in a debate like this, take precedence over social acceptability. In Quebec, as well as in other parts of Canada, the right to die with dignity, on one's own terms, is accepted. Out of respect, I will, therefore, not go against the consensus of the people I have the duty to represent in this chamber.

Thank you.

Some Hon. Senators: Hear, hear.

Hon. Pamela Wallin: Honourable senators, I appreciate all the debate and discussion we've had so far today, because, of course, I would like to support this bill. I am a firm believer that MAID should be accessible in a modern and educated society — one with the luxury of health care paid for by taxpayers.

This belief comes from lived experience: from watching loved ones suffer through a slow descent into hell because their own personal plea for a dignified death fell on deliberately deaf ears. I believe that our current medical-assistance-in-dying laws should reflect the will of Canadians and their clear and growing desire to have the right to choose a dignified and respectable death.

Unfortunately, since the passage of Bill C-14 four years ago, and the rejection of many Senate amendments, we still witness people with intolerable suffering being driven to end their lives earlier than they want, we have heard the sad stories of rural Canadians unable to receive proper or timely MAID assessment and administration and we have seen seniors continue to live out the last years of their life in agony or, worse yet, suffering from the profound pain of not knowing who they once were.

This is cruel and unusual punishment. It is a burden upon those whom we owe the most: our mothers, fathers, loved ones and elders. It is a deliberate burden imposed by ill-considered laws. The rules are unfair and even fall short of what the Supreme Court said was constitutional and fair.

In the latest version, Bill C-7 primarily addresses the "reasonably foreseeable" clause struck down by the Quebec court. It would allow two paths to MAID: one for those whose death is reasonably foreseeable and one for those whose death is not. This has raised the ire of many advocates whom I fear may have been misinformed, and so many of the fears are unfounded.

Accessing MAID should always be a clear matter of personal choice. This is at the core of my belief in and argument for advance requests: personal choice, informed choice and a choice made with a sound mind. Let us state our wishes early and, if need be, often, but let them be heard and respected.

There are some reasonable improvements offered in this bill that allows a MAID recipient whose death is reasonably foreseeable the option to give, in advance, the required final consent to MAID before their inevitable death is actually imminent. This is a step in the right direction. It gives some relief in cases such as Audrey Parker, the 57-year-old Stage IV breast cancer patient who had to choose to end her life early rather than risk losing the capacity to consent.

Although "Audrey's Amendment" is welcome change, it seems that Bill C-7 is actually creating more, newer concerns.

One issue for many, as we have heard, including from some of our colleagues in this chamber, is the exclusion of mental illness as the sole underlying cause in cases where death is not reasonably foreseeable. During the pre-study of Bill C-7, many witnesses pointed out this clause may be unconstitutional. I'm sure the courts will have a view, but when we use a phrase such as "mental illness," we must define it. The bill is also unclear as to whether a neurodegenerative disease such as Alzheimer's or any other form of dementia would disqualify someone from accessing MAID. Is it a physical illness or a mental illness? Is their death reasonably foreseeable? Or has the life they knew already been lost?

• (1740)

One in four Canadians over the age of 85 suffers from dementia, and their death may not be reasonably foreseeable. But these numbers alone — the so-called "silver tsunami" — reinforces that the demand for advance requests in this country will only grow. Even the government's own consultation, with more than 300,000 Canadians, found that almost 80% indicated support for advance requests. Even more supported advance requests in the case of dementia.

Colleagues, I believe it should be our right to choose a death that is the least painful and preserves our sense of self. If I'm diagnosed with dementia or lose my conscious capacity for final consent to MAID, I should have been able to make an advance ask and to have a loved one or a power of attorney help me fulfill a request that was made with a clear mind. That is what an advance request is, and I believe that it is really no different from the do-not-resuscitate orders that are in practice in this country every day of the year, or advance directives that people have put in wills or in notes in their doctors' offices.

We cannot continue to turn a blind eye. The simple act of choice has the overwhelming support of Canadians. Yet again, a parliamentary review to consider advance requests, mental illness as a sole underlying condition in mature minors was promised this year. The review requirement was an amendment to the legislation that senators fought hard to make sure was included in the final legislation. It didn't happen. And now the Minister of Justice has indicated that no such review will take place, at least not until after Bill C-7 becomes law. So, why that arbitrary position?

We have already lost, in my mind, four years since the last debate with studies whose authors were not allowed to make recommendations or come to any conclusions, never mind conclusions that were binding. We were promised action, and we didn't get it. Never mind that public opinion is being ignored. I don't mean the voices of lobby groups, which are well heard. I mean the public.

So here we are again facing another contrived deadline. No time for proper debate or amendments or improvements; just pass the bill and we will promise we will do what we didn't do last time and appear to have no intention of doing this time, either. That is, to deliver a law that meets the needs of Canadians.

I know my patience is short, but my frustration is also great. This bill is a prime example of the kind of legislation that senators can fix. It's our job, it's our expertise, it's our obligation to take a second look. We are obliged to fix a bill if we can and if it needs it, and this one does.

I support the intent of MAID legislation. I believe that we can adequately address the need for palliative care, provide assistance and support and, most importantly, protection for those with disabilities. But I think we can also allow MAID for those who truly want it. That's not what this bill does.

We are facing what feels like a deliberate end run. As the December 18 court deadline approaches, the government should have reacted earlier, not last Friday night. But they wanted again to back us up against a deadline. There is absolutely no reason, legal or otherwise, to hand us a bill at the eleventh hour and expect us to take a quick look and rubber-stamp it. It offends me and it offends this institution. Perhaps the government should take more time to try to get it right and take the time to listen to Canadians, to listen to the courts and to show some respect for the work of their parliamentary colleagues in the Senate of Canada.

As experience has taught us, it is easier to fix a proposed bill now than try to fix a law later. Thank you.

Some Hon. Senators: Hear, hear.

Hon. Judith G. Seidman: Honourable senators, I rise today at second reading to speak to Bill C-7, An Act to amend the Criminal Code (medical assistance in dying).

In September 2019, Madam Justice Baudouin ruled in *Truchon v. Attorney General of Canada* that the "reasonably foreseeable natural death" eligibility requirement of the Criminal Code, as well as the end-of-life requirement in the Quebec Act Respecting End-of-Life Care, both violate sections of the Canadian Charter of Rights and Freedoms and are unconstitutional and ineffective.

Bill C-7 is a legislative response tailored to this court ruling. The bill proposes a number of amendments to the Criminal Code, namely the repeal of the "reasonably foreseeable natural death" eligibility criterion and the creation of two sets of safeguards to be applied depending on whether a person's natural death is reasonably foreseeable or not.

Honourable senators, in order to begin to consider Bill C-7, we might first reflect on the historical context of this debate. Parliament has debated medical assistance in dying — MAID — for more than two decades. Yes, in 1994, the Senate of Canada's Special Committee on Euthanasia and Assisted Suicide opposed changes to the Criminal Code to permit, "voluntary assisted death."

Twenty years later, in 2014, the National Assembly of Quebec passed the Act Respecting End-of-Life Care, which allowed terminally ill individuals to request and receive MAID. The provincial law was the first of its kind in Canada, a monumental movement towards providing MAID under certain circumstances.

In February 2015, a pivotal shift in Canadian society occurred when the Supreme Court of Canada ruled in *Carter v. Canada* that the Criminal Code laws prohibiting MAID defied sections of the Canadian Charter of Rights and Freedoms that protect an individual's right to life, liberty and security. The ruling struck down statutes of the Criminal Code:

> . . . insofar as they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.

As a result, Parliament was faced with a challenging task: how to design a framework for MAID that balances the autonomy, liberty and dignity of individuals who suffer from grievous and irremediable diseases with the need to protect the lives of vulnerable individuals.

In July 2015, the Harper government established the External Panel on Options for a Legislative Response to *Carter v. Canada*, mandated to study issues fundamental to a framework on MAID. In December 2015, both houses of Parliament established a Special Joint Committee on Physician-Assisted Dying, whose purpose was to review the report published by the panel, a report from the provinces and territories, consult with Canadians and relevant experts and make a recommendation to the federal government for a national framework on MAID.

Honourable senators, I had the distinct honour and privilege to serve with four of my Senate colleagues on this committee of 22 parliamentarians. Over a five-week period, early in 2016, our committee received more than 100 independent briefs and heard from 61 witnesses who brought legal, social and ethical considerations.

As I stated in my second reading speech on Bill C-14 in June 2016, it was for me, "a serious period of soul searching," and perhaps one of the most remarkable and demanding of my years as a parliamentarian.

While there was overwhelming support for the establishment of a framework on MAID, witnesses also emphasized the urgent need to improve palliative care in Canada and to provide better resources and services to individuals with disabilities, mental illness and dementia.

The special joint committee heard important testimony and debated the key question of eligibility requirements for MAID, notably whether terminal diagnosis should be a requirement. Memorable are the words of a renowned constitutional expert, who argued that while it was not impossible for Parliament to require that the condition be terminal, such a law will be more susceptible to a constitutional challenge. On the other hand, an ethics professor was clear that only individuals with four weeks to live should qualify. Another asked for "an advanced state of irreversible decline." Another spoke of the arbitrariness of terminal illness and moral justification.

• (1750)

Finally, our special joint committee concluded that limiting MAID to individuals with terminal illness would unjustly prolong the suffering of Canadians with grievous and irremediable conditions. For this reason, we recommended:

> That medical assistance in dying be available to individuals with terminal and non-terminal grievous and irremediable medical conditions that cause enduring suffering that is intolerable to the individual in the circumstances of his or her condition.

The federal government tabled Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), on April 14, 2016, which established a national, overarching framework for MAID.

What stunned many, including myself, was the addition of "reasonable foreseeability of natural death" as an eligibility criterion — language which was inconsistent with that used in *Carter* and which contradicted the recommendation made by our special joint parliamentary committee.

This new clause, welcomed by some and challenged by others, gave rise to serious and emotionally charged debate here in our chamber.

Many experts had agreed that this language was overly restrictive and had serious implications. Joseph Arvay, the lawyer who argued the *Carter* case before the Supreme Court, stated that Bill C-14:

> . . . insofar as it has a reasonable-foreseeability clause, is contrary to the *Carter* decision and is unconstitutional and cannot be justified by invoking section 1 of the Charter . . . .

Benoît Pelletier, a member of the External Panel on Options for a Legislative Response to *Carter v. Canada*, reminded us that the *Carter* decision was based on values of individual autonomy, human dignity and integrity. He stated that these values apply to individuals who are not necessarily at the end of their lives. These are personal, basic equality rights.

In my own second reading speech on Bill C-14, I urged the Senate to ". . . amend the bill to be true to the eligibility language of the Supreme Court *Carter* ruling, no more, no less" and remove section 241.2(2)(d): ". . . their natural death has become reasonably foreseeable . . . ."

The Senate continued to grapple with these issues for weeks and finally agreed to build in a five-year parliamentary review to Bill C-14 to evaluate the most challenging ethical issues, in the expectation that we would have collected informative data and experience. Evidence-based decision-making relies on quality data.

Honourable senators, I take the time for this extensive historical overview because it sets the stage for where we find ourselves now.

Four and a half years ago, we wrestled with the implications of the inclusion of the "reasonable foreseeability of natural death" clause. Today, we wrestle with the implications of its removal.

During the week of Senate pre-study of Bill C-7, just days ago, a number of stakeholders and experts raised serious concerns. Advocates for the disability community fear that the expansion of the eligibility criteria to individuals whose natural death is not reasonably foreseeable will send a clear message to Canadians living with disabilities: Your lives are not of equal value.

Other critics are concerned about the provision in Bill C-7 that requires individuals whose natural death is not reasonably foreseeable to merely be informed of — instead of having access to — counselling, mental health supports, disability supports, community services and palliative care, before receiving MAID. In other words, the bill makes their dying easier than living.

Another serious concern is whether access to MAID is easier than access to palliative care.

I would be remiss if I did not emphasize the recommendation on palliative care in the report of our special joint committee that has never been fulfilled. The recommendation was to establish a national secretariat on palliative and end-of-life care to implement a pan-Canadian strategy with dedicated funding.

Most worthy of being debated here and now again, these issues must be considered in the context of the original *Carter* ruling and the oversight data that Bill C-14 mandated, collected by Health Canada during these intervening years.

MAID deaths accounted for 2% of all deaths in Canada in 2019, according to the *First Annual Report on Medical Assistance in Dying in Canada*, just released in July. Of the persons who received MAID in 2019, 82% were reported to have received palliative care services, most for a duration of two weeks to one month. According to the reporting practitioners, less than 2% of persons did not have access to palliative care services at all.

The report also found that 41% of MAID recipients were reported to require disability support services, with 90% having received these services. According to Health Canada data, 4% of people were identified as needing support services and did not receive them.

There are serious gaps in the data, though. For example, it does not indicate detailed reasons for doctors' refusal or patients' withdrawal of requests. Data collected were based solely on written requests. In fact, many assessments for MAID are taking place with the written requests only being completed once a finding of eligibility has been determined. Persons having made a verbal request, assessed, and found to be ineligible are not being captured.

I must note here that Bill C-14-mandated oversight through a national data collection system meant to provide evidence-based data is critical to updating this piece of legislation. Important gaps must be identified and remedied.

Honourable senators, it is evident that the conversation around death and assisted dying has always been complex and, as many have said, very personal.

Over the decades, public opinion on this matter has been shaped by religious and cultural values, compassion for the suffering and the vulnerable, individual experiences, and the growing body of medical experience and science.

There is no denying that medical assistance in dying continues to raise ever-evolving moral and ethical questions that will be debated well into the future. And yet, now, we have a duty as parliamentarians to remain disciplined and focused on the purpose of Bill C-7 as a response to the Quebec Superior Court decision.

As we move forward, we will once again struggle with this legislation, but we need to concentrate on the task before us: How to comply with the *Truchon* ruling in a way that respects the autonomy, liberty, equality and dignity of competent individuals who suffer from grievous and irremediable diseases, and at the same time protects the most vulnerable. Once again here, too, in the chamber of sober second thought, we demonstrate the profound and compassionate debate of which we are capable.

Colleagues, one last thing. Please do not lose sight of the urgent need for the statutory five-year review of Bill C-14. I hope that we in the Senate will insist on being party to this review as soon as possible in the new year.

Thank you.

Some Hon. Senators: Hear, hear.

Hon. Stan Kutcher: Honourable senators, I rise today to speak to Bill C-7.

I want to acknowledge the many communications I have received from Canadians expressing their deeply felt concerns about this bill and the wider issues that they perceived with MAID. There were many perspectives; there was no consensus.

I also acknowledge how personally challenging this work has been, not only for me but for all of us as we wrestle with the vexatious issues that this bill reflects as well as the problematic components that we find in it.

• (1800)

We are tasked with bringing sober second thought, which includes application of critical thinking, and attempts to avoid the cognitive shortcuts that serve to solidify *a priori* conclusions that are based primarily on emotions. Through this, we seek to balance what we consider to be just and right.

Hon. Lucie Moncion (The Hon. the Acting Speaker): I am sorry to interrupt.

Honourable senators, it is now six o'clock. Pursuant to rule 3-3(1), and the order adopted on October 27, 2020, I am obliged to leave the chair until seven o'clock unless there is leave that the sitting continue. If you wish the sitting to be suspended, please say "suspend."

Some Hon. Senators: Suspend.

The Hon. the Acting Speaker: We will resume debate at seven o'clock.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE

On the Order:

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

Hon. Stan Kutcher: Honourable senators, I was saying that this is a difficult task we have as we seek to balance what we consider to be just and right with what we understand the Charter has framed, and it is not easy.

I come to this challenge with the added perspective of a psychiatrist who has for about four decades served to try to alleviate suffering experienced by persons who have a mental disorder — in Canada and across the globe. I have seen discrimination and violence against those whose mental disorders are considered to be not real illnesses but an expression of a demon-haunted world or a demonstration that the person suffering is less than human.

I know the strengths and weaknesses of treatments that are available for mental disorders and that their effectiveness is not substantially different from that found in all of medicine. I know that many people with a mental disorder will get better, but I also know that a small number will experience a grievous and irremediable chronic course despite trying every treatment available to them. I know that the suffering of those with mental disorders is no less real or painful than the suffering of those who have any kind of severe, chronic and life-destroying brain disorder.

We know that many people with a mental disorder have been relegated to second-class citizen status, and this is not okay; that they have been assumed, because of their mental disorder, to not have the capacity to live their lives as they see fit. This is why I find the exclusion of mental illness as the sole reason for provision of MAID in Bill C-7 egregious; it does not treat people who have a mental disorder equally before the law.

We know that having a mental disorder may — but does not necessarily — impede rational decision making at sometime during its course. We know that a person can both have a mental disorder and be fully competent to make complex decisions about their own life; that a competent person, with or without a mental disorder, has the right to choose how they conduct their life, even if we disagree with that choice. Their autonomy supercedes paternalism.

As a society that values individual autonomy, we understand that because someone disagrees with their choice does not mean that the person making that choice is incapable of making it. Simply put, a person's capacity and their right to choose are not dependent on what others think of their choices. If permitted by law, it is the right of a competent person who has a grievous and irremediable mental disorder to be able to choose how they live. Based on the same logic, I think it is the right of a competent person who has a grievous and irremediable mental disorder to be able to choose how they die.

However, the individual making their choice must be competent to do so and must be provided with appropriate support in their decision making. Highly trained health professionals following careful, considered analysis are able to determine if an individual with a mental disorder does or does not have rational decision-making capacity. Indeed, psychiatrists, geriatricians, family doctors and others are frequently asked to apply these evaluation skills to determine if this is the case, in legal and therapeutic situations.

This brings me specifically to the mental illness exclusion clause and its accompanying Charter Statement. It reads: "For the purposes of paragraph (2)(a), a mental illness is not considered to be an illness, disease or disability."

This clause subordinates the reality and richness of an individual's life into what is a faceless and potentially stereotyping category that is then used to define what a person is deemed to be. Bill C-7 substitutes a diagnosis for a person. This is dehumanizing.

This bill assumes that people who have a mental disorder do not have agency; that they do not have decision-making capacity; and that they cannot determine how they will live their lives or how they will choose to complete their lives — simply because they have a mental disorder. It perpetuates centuries-long stigmatization of those living with mental disorders as incompetent and incapable beings, and it ignores that the request for MAID is based on a competent person's decision that their suffering is unbearable to them because of their grievous and irremediable disorder. It is the result of the totality of their experience, not based on the diagnosis.

Bill C-7 would, however, allow for MAID provision to persons who have both a physical and mental illness, even if the mental illness is the predominant cause of the suffering, but not for those who have a sole irremediable mental illness. It makes a criminal of a health care provider who has participated in MAID for a person with a sole mental disorder, while at the same time it respects the professionalism and competency of a health care provider who has participated in MAID for a person who has both a mental disorder and another illness. This is indefensible.

The Charter Statement defines a mental illness as a condition that is primarily within the domain of psychiatry. In my over 40 years of practising medicine, I have never heard an illness defined in that way.

Yet, the reality is that perturbations in function of the brain and nervous system — be they classified as disturbances of emotion, cognition, behaviour, movement, or any other brain function — are treated by many different health care providers, including, but not limited to, psychiatrists, neurologists, neurosurgeons, neuroradiologists, family doctors, nurse practitioners, pharmacists and others.

Similar treatments are used for different classifications of brain disorders. For example, epilepsy and bipolar disorder can both be successfully treated by the medications carbamazepine and sodium valproate.

These different classifications often coexist. For example, major depressive disorder occurs frequently, perhaps in up to 50% of individuals with Parkinson's, Huntington's and Alzheimer's.

The Charter Statement then argues that the exclusion is based on the inherent risks and complexity of MAID for persons who suffer solely from a mental illness. However, there is no unique or different inherent risk of complexity for mental disorders than that found in any chronic brain disease, including the certainty of a cure, the effectiveness of treatment and the risk for suicide.

First, there is no cure for many chronic brain conditions such as Parkinson's, Alzheimer's, schizophrenia and bipolar.

Second, treatment for these disorders serves primarily to decrease symptoms and improve functioning; and treatments for mental disorders are equally as good or equally as poor as those for all chronic brain diseases.

Third, the presence of a severe and chronic illness is, by itself, an elevated risk factor for suicide. This elevated risk is not only found in persons with a sole mental disorder.

For example, the Canadian Community Health Survey found that, in young adults, attempted suicide was four times higher in those with chronic illnesses such as asthma and diabetes. Suicide rates in persons with cancer are twice as high as in the general population and eight to ten times higher in persons with Huntington's.

The statement continues that for mental disorder, ". . . evidence suggests that screening for decision-making capacity is particularly difficult, and subject to a high degree of error . . ."

In the field of medicine, there is no such thing as screening for decision-making capacity. What highly trained clinicians conducting decision-making capacity analysis do is not screening. On the contrary; decision-making capacity is determined through comprehensive and careful analysis that includes cognitive and emotional aspects as well as determination of suicide intent. In addition, the assessor continues the social, family and other pertinent factors, including the treatments provided, treatments that yet could be provided, and the individual's willingness to engage with any further treatment.

Furthermore, there is no substantive evidence to conclude that a properly conducted competency assessment is subject to a high degree of error. There may be disagreement amongst clinicians who are assessing patients with a mental disorder in considering for MAID, as happens in all medical diagnostic ascertainment. But disagreement is not error; disagreement is disagreement.

• (1910)

The one study that addressed this issue in the Netherlands found that disagreement occurred in 12% of cases. That means that agreement occurred in 88% of cases. This statistic is comparable to the clinical diagnostic disagreement in a variety of brain disorders. Diagnostic disagreement is neither unique to nor of any greater magnitude in mental disorders.

The statement goes on to argue that the prediction of outcomes for persons with mental disorders is significantly below that of other chronic brain disorders, but we do not know that to be true. To actually support this argument, a substantial body of evidence based on multiple prospective studies comparing outcomes for individuals who have a mental disorder to individuals with other chronic brain disorders is required. Then, based on that data, it is necessary to develop algorithms that demonstrate significant differences in outcome prediction for individuals amongst different disorders at different points in time during the course of those disorders. To my knowledge, and, boy, I have looked, no such studies and no such predictive algorithms exist.

The statement then concludes as an observation that increasing numbers of cases of MAID have occurred in the Benelux countries and that there is a wide range of mental illnesses in respect of which MAID has been provided. This suggests that if MAID was available for Canadians with mental disorder as a sole condition, it would open the floodgates to MAID, and that very high numbers of persons receiving MAID would have a sole mental disorder. Yet, data from these countries collected for over a decade shows that this feared tsunami has not occurred.

The range-of-illnesses-involved argument is a red herring. There is a wide range of physical illnesses for which people access MAID. There is no significantly larger or significantly smaller range of mental compared to physical disorders in the application of MAID. Yet, the wide range of physical disorders in MAID raises no concerns in the Charter Statement for Bill C-7. Perhaps yet another stigmatization directed towards those who have a mental disorder.

Honourable senators, I understand that, with the mental illness exclusion clause, the government may be seeking more time to conduct a review and determine a fulsome process for those seeking MAID for a sole mental disorder. It does not mean that I agree with that reasoning, and I am not certain that such a review would occur in a timely fashion. I also neither condone the stigmatizing language used in the clause nor accept the Charter Statements that have been provided to justify this exclusion.

The bill that has come from the other place includes an amendment that applies an additional safeguard and MAID assessments. This provides greater comfort, and I am pleased that this is now in the bill. In addition, however, I maintain that a further amendment is needed — a sunset clause that would remove the existing mental illness clause within a reasonable period of time. This could be considered during committee study. During the sunset period, the government could put into place all the reviews of this issue that it wishes. Furthermore, a sunset period would allow national medical and nursing professional organizations time to create an accredited interdisciplinary education and training program in MAID assessment and delivery. This would help ensure that every Canadian, regardless of their place of residence, could reliably receive a similar quality of MAID assessment and delivery.

Honourable senators, thank you for taking my remarks into your considered deliberations as we all work to better understand and address Bill C-7. We are engaged in a difficult and challenging task. If there ever was a time for sober second thought, that time is now. Thank you. *Meegwetch*.

Some Hon. Senators: Hear, hear.

The Hon. the Acting Speaker: Senator Kutcher, your time is up, and we have senators who would like to ask questions. Would you like to request five more minutes to answer questions?

Senator Kutcher: Please, Your Honour.

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

Hon. Senators: Yes.

Hon. Paula Simons: Thank you, Senator Kutcher, for that beautiful and important speech. I'm grateful that we have you as a psychiatrist here. This isn't a political question. This is a question where I'm legitimately seeking information.

Bill C-7 doesn't define mental illness. There are all kinds of conditions that are physiological, neurological, biochemical and that cause symptoms that we would classify as mental illness. Someone who has epileptic seizures might be prone to develop postictal manic psychosis. Someone who has had a head injury or has a frontal lobe tumour or the beginning of Lewy body dementia might exhibit behaviours of mental illness. Is there such a thing as mental illness? What is the difference between a psychiatric illness and a neurological illness?

Senator Kutcher: That is an excellent question, Senator Simons, and I would be happy to spend the next six or seven days discussing that with people, but I don't think that will be possible. Let me try to be as concise as I can.

What we understand now — I have to say now, because our understanding changes because the nature of science is that it changes over time as we get better understanding — is that what we call mental disorders are perturbations of brain function in the cognitive emotional behavioural regime areas of our lives and that these perturbations are out of the range of normative on various scales of measurements that we use, and they cause substantive functional impairment and are associated with a host of other difficulties in a person's life. So they have major negative impacts on life. That's how we would understand it now.

It was understood differently centuries and decades ago. It may be understood differently in the future, but right now, that's how we understand it.

So the difference, say, in Parkinson's disease is that about half of Parkinson's patients will have a major depressive disorder. It shows that there are problems with the brain circuits, the chemistry in the circuits. Those circuits are that way because of genetic reasons. They are that way because of environmental reasons. A head injury can cause damage to different parts of the brain which then changes the way that the circuits operate, leading to a mental disorder when there may not have been one previously.

It's an incredibly complicated area. The problem with the bill is that it calls something a mental illness without ever defining it, so we really don't know where the parameters are. Because of that problem with the definition, it's able to exclude all sorts of people on that basis because they may have seen a psychiatrist.

If you have hypothyroidism and you have a profound depression because of your thyroid disease and you happen to be treated by a psychiatrist, would this bill exclude you?

Senator Simons: Do you think it's a legitimate line of demarcation? Is there a hard border between what is a mental illness and what is a physical illness such that it is reasonable to exclude an entire class of people from the legitimate exercise of the constitutional right?

Senator Kutcher: In my opinion, senator, we still suffer from centuries of alienism in which people who had what we now call mental disorders were shut off and put away from society, where they were chained, where they were put into institutions, where they were kept out of sight. That was with the most severe disorders such as psychosis.

We have gone past that alienist tradition. We are now moving away from silos, away from looking at people as only what their diagnosis is. We are trying to understand people holistically. We are trying to understand the issues that they face. A more modern approach to this would be to call it a mental disorder and to look at it from that perspective.

Senator Simons: Thank you.

Hon. Frances Lankin: Senator Kutcher, would you take another question?

Senator Kutcher: Certainly, Senator Lankin.

Senator Lankin: Thank you for your remarks. Let me say thank you to Senators Seidman, Saint-Germain and Wallin as well. All of this contributes to our ability to think through these difficult issues. I appreciate hearing from you because of your professional expertise and experience in both practising and in research. You talked about the ability to —

• (1920)

The Hon. the Acting Speaker: Senator Lankin, I'm sorry to interrupt again, but Senator Kutcher's time has expired again. Senator Kutcher, are you asking for another five minutes?

Senator Kutcher: If it pleases the Senate, yes.

The Hon. the Acting Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Lankin: Thank you, colleagues in the chamber. You talked about consent to treatment, capacity to consent, and I appreciate and understand the remarks you made there.

At one point in time you also talked about suicidal ideation. In this I get somewhat confused because there are examples that we all know about major depressive disorders and other circumstances where people experience a desire to commit suicide, yet I've always rejected the phrase "right to suicide." It's a right to medical assistance in dying. They are different.

I'm just wondering if you could explain a little bit more about whether we are at risk of creating conditions for people who may be, because of their illness, seeking to commit suicide and making use of the MAID provisions from this bill and from Bill C-14. Thank you very much.

Senator Kutcher: Thank you for that excellent and erudite question, senator. I think that sometimes the language that people use confuses others. When we use "physician suicide" or "assisted suicide," it assumes that suicide and medical assistance in dying are the same thing. It's not.

As someone who has worked with people who have been acutely suicidal as a result of mental illnesses, as someone who has actually written a text on the assessment of suicide and as someone who has had a beloved family member die of suicide — I come at it from all those different perspectives — suicide is not the same as physician-assisted dying.

The American Association of Suicidology, for example, has listed 15 different ways that physician-assisted aid in dying is different from suicide. They conclude suicide and physician aid in dying — which is the American phrase they use — are conceptually, medically and legally different phenomena.

In MAID, there is a very careful and comprehensive assessment made of a person's emotional and cognitive state. Senator Gold earlier talked about some of the cognitive and emotional factors in a major depression. Yes, absolutely those things can happen. It is the duty and the skill set of the assessor to ensure that MAID is not the same thing as a wish to die by suicide. It is part of the competencies of the assessor, and we have to trust that the assessor can do their work. They are trained to do that. I did that my whole professional career, and other people are trained to do that.

In a MAID assessment, we have a stepped process. All issues of a person's life are considered. Families and friends are very often involved in the decision, and a very thorough analysis of suicide intent, which is different from ideation. Ideation is very common. Intent is much less so. Suicide intent is analyzed, and it's involved.

That is so different from suicide. Suicide is a lonely act. It's often impulsive. It usually occurs in times of great emotional anguish, and it doesn't have sober second thought as part of it. MAID does have sober second thought worked into it. When suicide occurs, it causes great distress to families and friends. It leaves very little — I'm talking from personal experience — it leaves very little peace to those who are left behind. People are left with guilt. They are left with self-blame, and that kind of negative emotional experience. If you have experienced a suicide in your family or of a close friend, that stays with you for a lifetime.

MAID is different. People have decided to die. They are often with their families. They are often with their friends. The decision is made. They can discuss this decision. They can say goodbye. Over and over again I have sat with families of young people, older people and elderly people who have chosen to take their lives for a variety of different reasons. And one of the things over and over —

The Hon. the Acting Speaker: Sorry to interrupt you again, Senator Kutcher. We still have three senators who would like to ask questions. Are you asking for another five minutes?

Senator Kutcher: If it pleases the Senate.

The Hon. the Acting Speaker: Is leave granted, colleagues?

Hon. Senators: Agreed.

Senator Kutcher: Over and over again, what I hear from people is "we never had a chance to say goodbye."

[*Translation*]

Hon. Renée Dupuis: Would Senator Kutcher take another question?

Senator Kutcher: Certainly, Senator Dupuis.

Senator Dupuis: Senator Kutcher, the Association des médecins psychiatres du Québec released a report in November that has the following to say about suffering. On page 32, the report says, and I quote:

> The very existence of intolerable suffering as a criterion is puzzling. . . . If suffering is entirely subjective, then it is odd that it would be an eligibility criterion, since there is nothing more to assess once an individual confirms that they are experiencing intolerable suffering.
>
> Most observers agree that mental disorders can be just as responsible for suffering as other medical conditions . . . .

What do you think about this statement from the Association des médecins psychiatres du Québec?

[*English*]

Senator Kutcher: Thank you for that question, senator. Suffering is a highly personal construct, and it is not unidimensional. The issue of suffering is part of the human condition, and it ranges from okay, tolerable, it will end, to something where there is no hope, "there is nothing else for me" and "I just cannot bear to go through with it."

I think it is the height of hubris for other people to determine that an individual's suffering is what they deem it to be instead of accepting it for what the individual deems it to be.

Hon. Marty Deacon: Thank you, Senator Kutcher, for the gift of your speech and your responses to incredible questions so far this evening.

I want to come back to the valuable thinking around the sunset clause. You also said we need to look at something that is a process, an assessment, a common understanding that helps folks from coast to coast to coast. That is very diligent in that way.

So when we were moving towards that hope, I wonder if you could comment more on the rigour. I think we have all received many communications — many reports, many groups — who have a perception that this mental health area is a rubric or a checklist that is not nearly as diligent as it is.

Are you comfortable with the language we have so far? Or do you think there is anything that we could be doing in that way that helps folks immediately understand that this is a very thought-through process? The rigour seems to be a national criticism.

Senator Kutcher: Thank you for that question, Senator Deacon. You are so right. It is essential that the assessments done, are of the highest quality, are of the absolutely highest standard and that they are reliable. I mean that in the statistical sense. An assessor, whether they be on one coast or another or somewhere in between, will do the job as well as anybody else doing that same job somewhere else. In order to do that, I think that that the quality —

• (1930)

The Hon. the Acting Speaker: Senator Kutcher, I am sorry to interrupt you one more time. Your time has expired. Would you like another five minutes?

Senator Kutcher: If it pleases the Senate.

The Hon. the Acting Speaker: Is leave granted, colleagues?

Hon. Senators: Yes.

The Hon. the Acting Speaker: Please go on.

Senator Kutcher: There have been attempts to create some training programs — additional training — for individuals in addition to their medical training, whether it is as a family physician, a nurse practitioner, a psychiatrist, an intern or a palliative care doctor. There is a recognition in the profession, and I can tell the chamber today that there is great interest in addressing this in a more comprehensive manner to ensure that people who are conducting MAID assessments do it in the very best way possible.

Senator M. Deacon: I have a follow-up on the last piece that Senator Kutcher just touched on, and that was the common standard. In what we have seen in the last five or six years, is there now, in our medical schools in Canada, the effort to standardize this aspect of training for the incoming crop of doctors?

Senator Kutcher: Thank you for that question, senator. I can't speak for the medical schools. I can tell you that there have been discussions and three other senators in this chamber have been involved in those discussions with national bodies, medical and nursing, including Indigenous physicians across Canada. There is an appetite for ensuring that the assessments that are being made are of the highest quality and reliability.

Hon. Howard Wetston: Thank you, Senator Kutcher, for your comments this evening. They are very helpful in trying to understand the nature of this issue that's before the Senate.

The question I have is that mental disorders can indeed be chronic — I think you're saying that — but it seems their prognoses are difficult to predict for a variety of reasons. I'm not sure of this, but I have read the suggestion that there is a paucity of relevant, large, longitudinal studies in some areas of psychiatric medicine. Patients may get better or get worse due to psychological factors beyond the control of mental health providers. Do you have any comments with respect to that?

I'll also ask you my second question, which will be straightforward. Is there also the possibility that there is an absence of high-quality psychiatric care throughout the country, and therefore that lack of availability could potentially jeopardize the opportunity for some individuals to get high-quality psychiatric assessments?

Senator Kutcher: Thank you for those two questions, senator. Let me deal with the second one first. Yes, there is a spottiness of the availability of psychiatric care across this country. Everybody knows that. It is an area that I and many people in this chamber have been working at for many years to improve. I think we still have a long way to go. We are better than where we were 20 years ago, but we still have a long way to go. I think there are ways that we can do that. A mental health parity legislation might be a way to help move that. Transfer payments to the provinces that are linked to specific investments in mental health care would go a long way to doing that. There are many tools that we have in our tool box should we choose to use them.

To your first question, you raise a fundamental point and I did mention it in my discussion. In order to make the argument of a mental disorder for any individual at any particular point of time in the trajectory of their illness, you would actually need to have multiple studies that would compare a person's trajectories over time and be able to use those comparisons to create algorithms that would predict what the outcome will be for the individual. Sadly, senator, I am not aware — and if anyone is aware, please educate me — of any studies which do that, nor am I aware of any algorithms that have been created that can predict for any individual what the course of their illness will be.

Senator Wetston: Thank you.

Hon. Douglas Black: Honourable senators, my comments this evening will be very brief and I will try to keep them at a high level. I want to thank my colleagues for this absolutely tremendous debate and insight into the important conversations that we are having. I also want to acknowledge the thousands of folks that have reached out to our offices expressing their various points of view.

Colleagues, a month ago, my dear Aunt Hazel exercised her rights under the assisted dying framework. For her, that was the right thing to do, not only to end her suffering, but to end the suffering of our family. She would tell us, as she told me on a number of occasions, that the right to access assisted dying must go further than it exists today and must go further than envisioned by Bill C-7. My recent personal experience will form the basis of my comments today.

I will begin with a quick analogy. As we all know, Wayne Gretzky, the hockey icon, is famous for his observation that, "I don't focus on where the puck is; I focus on where the puck is going to be." In my view, over a period of time — and we can discuss that period of time — this debate is going to end with a universal right to end one's life in accordance with guidelines for Canadians. Our job will be to set those guidelines.

It is very difficult for the Senate, as we saw, and I was fortunate enough to participate in the debate five years ago. It's very difficult because of politics and because of the views that exist; the divergence of attitudes that exist. It's very difficult for a government to go to where the puck is going to go. That's why we are dealing with this incrementally. My view is that if we do not act decisively now, this Ping-Pong will continue for the next decade. We are going to make changes. For example, we just heard the extraordinarily interesting presentation by Senator Kutcher on mental health. We are going to, in theory — or it will come back that the Government of Canada will not agree with any amendments we put forward on mental health. Fine, so that will happen. That will end up at the court, of course. And in a year, or two or three, the court will tell us that it is a violation of the Charter and we will be back here in some June or some December trying to move MAID forward.

This is all that's happening now. Bill C-7 is just part of this game of Ping-Pong. We've missed this opportunity. We've had the opportunity for five years. It was a compromise that was settled to sit down and spend the time that is necessary to do the thinking required to avoid the process we are in now. For whatever reason, that did not happen and that is a lost opportunity. That's why my position on this will be that unless we can affect significant amendments to this legislation, we should be urging the Government of Canada to refer this immediately to the Supreme Court of Canada by way of its reference powers. In that reference, there would be an instruction to the court to consider the issues we're dealing with now and will deal with over the next decade: advance directives, mature minors, this issue around folks with mental challenges and those with disabilities, as well as some directions on guidelines.

• (1940)

That will be my goal through this process; to actively support amendments that get us to the end game, and I would encourage other senators to perhaps consider thinking that way as well.

Now, senators, on timing, I was so pleased to hear Senator Gold today. Thank you for your comment respecting timing, because yesterday when I heard Senator Petitclerc, who did an excellent job as well in her presentation, indicate that we were hoping to complete debate tonight, committee tomorrow, and vote on this on Thursday, I thought that just cannot happen. That just cannot happen, and Senator Gold, thank you for reflecting on that.

Finally, I would observe that the record should show that we have lost at least the last two to three years, when we could have been studying this matter, when we were supposed to be studying this matter. I did raise the questions — and any number of you, my colleagues, have been raising them, both in the chamber and outside the chamber — "Where is the study group?" and "Where are we on this?" Our colleague Senator Wallin has been extremely aggressive on this point over the last 24 to 36 months, yet nothing came forward.

There has been plenty of time to deal with this in a holistic way or to refer the matter to the court. None of that has been done. That is fine. We're here again, at the end of December, endeavouring to fix a deeply flawed piece of legislation. But we should not be tricked by that, colleagues. We have to do what we need to do to make this right for Canadians, to avoid the type of suffering that I personally saw my aunt go through.

Canadians have lost valuable time, some cruelly. It is now our time to act, to either amend Bill C-7 in a meaningful, substantial way or defeat it and have the matter referred to the Supreme Court of Canada. Colleagues, thank you for the privilege of sharing my thoughts with you.

Some Hon. Senators: Hear, hear.

Hon. Victor Oh: Honourable senators, I rise today to speak to Bill C-7, An Act to amend the Criminal Code (medical assistance in dying).

Let me begin by reminding you of Bill C-14 and the bill's clause that mandates a five-year parliamentary review. This review would provide concrete data and, therefore, offer the government the appropriate evidence to ensure that the existing safeguards have been effective. In turn, this would allow us to make the necessary adjustments. However, we have had no such review.

This bill states the government's proposal is to broaden access to MAID before we even have the chance to study the existing legislation. Even worse, they are asking us to do this in a matter of days.

This extension is because of a Quebec Superior Court ruling, yet we have had no further direction from the Supreme Court of Canada on this matter since the *Carter* decision. Given that many experts have suggested that this legislation directly violates the *Carter* ruling, I believe this legislation is premature.

When Minister Lametti was asked about his apparent decision to forgo the five-year review, he said there would be an eventual review in Parliament. While I look forward to a five-year review, I'm concerned that this process is backwards. Essentially, the government is considering expanding MAID without reviewing whether its current safeguards are firm enough. This is very troubling considering the life and death nature of this bill. It is important to review any data to justify the removal of key safeguards.

Given that the government has proposed such changes in this bill without evidence, I'm worried about the proposal. The government is openly considering extending assisted dying to "mature minors." Colleagues, we are talking about Canada's youth. This creates a possible power imbalance between doctor and patient, especially when the patient is under the age of 18.

Additionally, it strengthens the idea that psychiatric euthanasia is a highly effective means of suicide. This creates a slippery slope that has been experienced in other countries that have expanded their assisted suicide program.

For example, Dr. Scott Kim, who is familiar with international assisted suicide programs and who testified before the Senate committee, cautioned about the dangers of becoming too comfortable with euthanasia. He notes that under the current law in the Netherlands, a child as young as 16 can qualify for assisted dying if they are undergoing psychological suffering. He also warns that it is not easy to distinguish between a patient who is suicidal and one who qualifies for psychiatric euthanasia, because they share many key traits.

This is particularly problematic in Canada, where access to mental health services is shockingly insufficient. Less than 25% of Canada's youth with mental health concerns have access to appropriate specialized treatment. Mental health services in Canada are inadequate, especially for vulnerable populations. It is very troubling that the government is taking no action to address this gap before it considers expanding MAID.

Access to palliative care is also insufficient. The committee heard during the pre-study that palliative care in Canada is "a national tragedy." It is grossly underfunded and under-prioritized. It is sad to know that Canadians who qualify for MAID can get their assessment and receive MAID in less time than it takes to go through a palliative care consultation.

When the government is pressed about palliative care, especially in the context of MAID expansion, they are happy to provide numbers in the billions that have been invested in numerous programs. However, information from the Canadian Association for Long-Term Care paints a clearer picture. When the government boasted that the 2017 Federal Budget included a historic $6-billion investment over 10 years for home and community care, long-term care was not included. The National Housing Strategy does not include long-term care. The Home Support Worker Pilot program for foreign caregivers does not include employment in long-term care. The 2019 Federal Budget did not include investments in long-term care.

• (1950)

The federal government handed over $340 billion in COVID-related spending in the first quarter of this year. Not a single dollar was committed to supporting long-term care — not one dollar, colleagues.

The government's eagerness to give Canadians a better way to quote, "die with dignity," which may soon include youth, before they have taken any action to ensure Canadians who are suffering have the ability to live with dignity is appalling.

Already in Canada, we are seeing it happen before our eyes. The same government which is casually proposing to remove safeguards is the same government that defended the need for them only a few years ago, and as I say, the lack of Minister Lametti's effort to carry out the five-year review demonstrates a government eager to extend rather than assess the provisions in the MAID system.

Honourable senators, I'm opposed to Bill C-7 in its current form because of the premature removal of safeguards. However, my greatest concern is the careless approach that this government has taken with the delicate issue of life and death of Canadians.

The willingness of this government to move rapidly without enough evidence is irresponsible. I urge this chamber to exercise great caution and give Bill C-7 the detailed review it requires.

Thank you, colleagues, for your attention.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Julie Miville-Dechêne: Honourable senators, I rise to speak at second reading of Bill C-7, which seeks to expand medical assistance in dying. I am not an expert on this matter, but I have read about, reflected on and experienced, through the people around me, the consequences of the gaps in psychiatric care and palliative care.

This truly is a difficult debate. It is about people with serious illnesses who have names and faces and are living a life of suffering, such as Sue Rodriguez and Nicole Gladu, and who did a brilliant job of defending their right to choose medical assistance in dying. It is impossible not to support their quest. However, I feel that in this debate, we must not overlook the thousands of anonymous, vulnerable sick people who are not so visible, who are not before the courts, but who are living challenging lives replete with obstacles and who might choose medical assistance in dying because society has not given them the means they need to make them want to keep living.

I profoundly disagree with any analysis to the effect that these social issues are not relevant to the study of this bill, suggesting that we, as senators, should focus only on the court rulings and Charter rights and ignore the reality of the social context. I reject this purely legal viewpoint. Fundamental individual rights are not exercised in the abstract, but rather in an imperfect society, and it is not paternalistic, as I heard someone say yesterday in the Senate, to be concerned about the lack of choice offered to the most vulnerable. From my perspective, these are collective issues that are no less important than individual rights.

I have no moral or religious objection to using MAID to put an end to intolerable suffering. However, one of the safeguards in Bill C-7 seems clearly inadequate, and I'll come back to it later.

I'm worried about possible abuses. We heard in committee that it's not uncommon for doctors to talk to their patients about MAID before they have even expressed a desire to die. That is unacceptable, considering the definite influence that doctors have over their patients. Cases reported in the media suggest that patients who did not meet the legal criteria have received MAID. I have seen this.

The idea of expanding access to medical assistance in dying concerns me because the agreement that we came to in Quebec on this issue was not respected. A decade ago, we had a long, respectful societal debate on the Quebec bill on medical assistance in dying, which involved non-partisan public hearings. Under that agreement, people at the end of their lives were supposed to have access to palliative care and psychological care as needed. The agreement also held that medical assistance in dying could be a solution for hastening the end of life for patients who were unable to get sufficient relief from their suffering even after receiving all of the required care for their condition.

The reality is that medical assistance in dying has been available in Quebec since as early as 2015, but palliative care at home has failed to materialize.

Yet the Quebec Act respecting end-of-life care reaffirms the right to receive palliative care in institutions or at home.

In Quebec, palliative home care teams were supposed to be created throughout the province in 2018 to provide palliative care at home. These teams were to be set up because three quarters of end-of-life patients wanted palliative care at home.

However, to date, only one such team has been put in place, in a neighbourhood in Montreal. Meanwhile, access to medical assistance in dying is mandatory everywhere in the province. Obviously, there is a double standard.

The Association québécoise des soins palliatifs estimates that 90% of Quebecers at the end of life do not have access to a home care team to provide round-the-clock support at home.

In its first report on medical assistance in dying, released in 2018, Health Canada stated that 16% of candidates, or 874 people, had received no palliative care, while 854 others had received palliative care for less than two weeks before dying. According to Dr. Gallagher, those numbers clearly indicate that the system failed, because many of those people undoubtedly suffered for months without access to quality palliative care.

If we can't provide all end-of-life patients with medical relief for their suffering, that will likely be the reason some will choose MAID. That is the danger.

Let's come back to Bill C-7. There are eligibility criteria to guide the medical practitioners, but the problem lies in the following safeguard: The bill mentions that the candidate for MAID must be informed of the means available to relieve their suffering and other support services. But if those services don't exist, then what are we talking about?

With the best will in the world, no physician authorizing medical assistance in dying can force the system to provide services to a depressed or disabled person who is being left to their own devices, just as no physician can offer a gravely ill person palliative care at home if these services are not available in their area.

Therefore, this safeguard is meaningless. It's just empty words, because no one can guarantee at this point that the candidate for MAID did or could receive the services warranted by his or her condition.

It seems to me that we are putting the cart before the horse. To have real choice, candidates for MAID need a guarantee of services and care. If it becomes easier to obtain medical assistance in dying than to obtain palliative care, psychiatric care or disability support services, what kind of society are we living in?

Yesterday, I heard it said in this chamber that we need not concern ourselves with these issues because health and social services are a purely provincial jurisdiction. In that case, we must ask ourselves the following question: Can we expand medical assistance in dying across the country without knowing if the necessary care and services will be available in the provinces? This is a complex constitutional issue, but the federal government could certainly do a better job of funding health care.

[*English*]

On mental illness, I agree with the government's caution, temporarily not expanding MAID to people with mental disorders as their sole underlying medical condition. Some experts say it is often impossible to predict the trajectory of a mental illness, and therefore, to decide on its irremediable nature. In addition, suicidal thoughts are closely linked to mental illness. So how do you know if the person with a mental disorder has made an informed and thoughtful decision about requesting assistance in dying, or if their desire to end their life is a symptom of their mental disorder? Several equally credible psychiatrists, including our esteemed colleague Dr. Kutcher, disagree with this opinion, and his speech was really forceful. I'm far from being insensitive to this reality. I have witnessed great suffering experienced by people with mental illnesses. However, as there is a division in the medical professional community on this matter, I believe the precautionary principle should apply. I also agree with the government caution due to a critical lack of psychiatric services.

• (2000)

In the Netherlands now, data shows that 70% of people who have received MAID in a psychiatric context are women. Studies show that in general, women make more suicide attempts than men, but fewer die from suicide because they use less drastic means to try to end their life. However, the availability of MAID would allow them to go all the way.

In Canada, certain mental disorders are more prevalent among women, and this tendency is strongly linked to their higher exposure to social and economic inequalities such as discrimination and gender-based violence. Victims of domestic violence who suffer both from mental illness and a serious or irremediable illness would be eligible for MAID. Therefore, according to constitutional lawyer Karine Millaire, the expansion of MAID could have undesirable and adverse effects on these particularly vulnerable groups of women. She fears their choice thus made would not be truly free and informed, since choices are themselves shaped by systemic inequality.

[*Translation*]

I'd now like to talk about persons with disabilities. This is obviously not a homogenous group, but it is clear that Bill C-7 has sent shockwaves among disability advocates, who have spoken out about the vulnerability of those they represent.

According to former Lieutenant Governor of Ontario, David C. Onley, nearly 25% of Canadians have a disability. According to Statistics Canada, Canadians with disabilities are more likely to be single, female, unemployed or underemployed, living in poverty and living with more than one type of disability.

A university professor in Montreal contacted me and told me that she had seriously contemplated suicide because she could not get an accurate diagnosis on her degenerative disease. If MAID had been offered when she was suffering greatly and experiencing acute episodes, she may have chosen that option, but she ultimately found proper medication and treatment. She said that, in an ideal world, MAID with solid safeguards would be acceptable, but we don't live in an ideal world.

Paradoxically, recognition of the right of Nicole Gladu and Jean Truchon, each of whom had different disabilities, to freedom and security is perceived as discrimination by many other people with disabilities. Professor Emerita Catherine Frazee was outraged that Bill C-7 proposed to increase access to death for a single group: people with disabilities. "Why us?" Ms. Frazee asked the Senate committee. "Our equality with other people is being challenged," she said. As you can see, this interpretation of the right to equality differs from that of the Superior Court in *Truchon*, and Inclusion Canada would like to argue this interpretation of the law before the Supreme Court.

According to Professor Trudo Lemmens, the risk of abuse is real. When people with disabilities are grappling with debilitating pain, financial difficulty and the prospect of being abandoned in institutions and denied all necessary care, many of them might turn to MAID as a solution.

The context of this parliamentary debate is far from ideal. I know the government didn't choose to debate Bill C-7 at this particular moment, but we're in the middle of a pandemic, a pandemic that has disproportionately affected people with disabilities.

A recent Statistics Canada survey showed that the pandemic had a very negative impact on their employment, income and ability to pay rent and buy groceries. That could be one reason for the cries of despair that are being heard from organizations that represent people with disabilities when it comes to Bill C-7.

Yes, the majority of Canadians are in favour of medical assistance in dying, but a recent Angus Reid poll indicated that they also want us to take into account the fact that making MAID available could increase pressure on seniors and people with disabilities to choose death so as not to be a burden to their families or society.

Of course, no bill can get unanimous support and governing is about making difficult choices. However, the Senate is responsible for taking into account the impact that expanding access to MAID will have on the most vulnerable members of society.

Thank you for listening.

[*English*]

Some Hon. Senators: Hear, hear!

Hon. Denise Batters: Honourable senators, I rise today to speak to the second reading of Bill C-7, medical assistance in dying.

To begin, I wanted to address the language used in this debate. Academics and experts have built a whole parallel vocabulary to distance us from the reality of assisted suicide. It should be called medical assistance in dying, they insist, but it isn't assisting in dying when death is not imminent or reasonably foreseeable, as in Bill C-7; it is assistance to die. Assisted suicide is asking the state to end the life, and that life, that person, is not a case of MAID. That person is a life gone forever. No matter where you stand on this issue, we cannot lose sight of the gravity of that. This is exactly why we cannot and must not rush the deliberation of this bill, honourable senators.

Because this bill is so important to Canadians, our Senate Legal Committee proactively conducted a significant pre-study on the subject matter of expanding access to assisted suicide like in Bill C-7. We heard from 81 witness, almost 30 hours in five full days of hearings, from all sides of this issue. Senators who have been here for many years have never seen anything like this. Almost none of those 81 witnesses from either side agreed with the approach the federal government has taken here.

Witnesses told us about the substantial, widespread concerns they had on all aspects of this matter: the likely unconstitutionality of this bill; the lack of consultation with the disability community and Indigenous voices; the proposed removal of safeguards; and the Trudeau government's rush to expand assisted suicide to those who do not face imminent death, while forecasting expanding access further in the near future to include people suffering from mental illness as a sole underlying condition.

There are so many problems with this bill that it is difficult to squeeze them into 15 minutes. Today I will focus on the two I found most concerning: the effect of Bill C-7 on Canadians living with disabilities, and Justice Minister Lametti's hint when he appeared before us that the exclusion of mental illness from assisted suicide in Bill C-7 may only be temporary. It is surprising, but telling, that all of the major national disability groups are united in their opposition to expanding MAID as outlined in Bill C-7. Representatives of these organizations have stated clearly that if Bill C-7 passes as is, they will launch a constitutional challenge because this bill violates their section 15 equality rights.

Remarkably, even the three ministers who appeared before us — Lametti, Hajdu and Qualtrough — demonstrated only tepid support for Bill C-7. It is notable that former Justice Minister Jody Wilson-Raybould, who guided the first assisted suicide bill — Bill C-14 — through Parliament, even voted against Bill C-7 in the House of Commons last week.

The Trudeau government has ignored the disability community on this critical issue. When Minister of Employment, Workforce Development and Disability Inclusion Carla Qualtrough appeared before our Senate committee, she referred to persons with disabilities who would qualify for assisted dying under Bill C-7 as a "subset." It appears that Minister Qualtrough's response was to suggest that the strongly voiced concerns expressed by leaders of Canada's disability rights movement might be overstating that actual risk. But that a minister of the Crown would use wording that implies she dismisses a group of people — Canadians with disabilities who suffer grievously, intolerably and irremediably — as too few to matter is shocking. However, it is indicative of the discrimination that people living with disabilities face under Bill C-7.

Disability advocates and legal experts have made a compelling case that Bill C-7, which removes the requirement for reasonable foreseeability of death, would violate the section 15 Charter rights of persons living with disabilities. Section 15 of the Canadian Charter of Rights and Freedoms guarantees every person equal protection and equal benefit of the law and the right not to be discriminated against on several enumerated grounds, including on the basis of disability.

• (2010)

Distinguished law professor Isabel Grant told our committee that a section 15 analysis of Bill C-7 must answer two questions. First, does the bill make a distinction based on one of the protected grounds, that of disability? Clearly, yes. We know from the *Eldridge* decision that a law need not discriminate against all people with disabilities in order to be found discriminatory. It is beyond question that Bill C-7 makes a distinction based on disability. Some persons with disabilities, those whose suffering is intolerable, will be offered death as a solution to that suffering, while other Canadians will have their intolerable suffering met with suicide prevention efforts to try and restore meaning and hope to their lives. People with disabilities who suffer intolerably will be offered death as a solution.

The second question we should ask under section 15 is whether the distinction made by a law is discriminatory; that is, if it reinforces, perpetuates or exacerbates the historical disadvantage or stereotypes experienced by people with disabilities. Bill C-7 perpetuates the stereotype that some people with disabling conditions are better off dead.

Bill C-7 is discriminatory in the most profound and insidious way because it says to people with disabilities that their lives, unlike the lives of non-disabled Canadians, are not worth fighting for. It is no defence to a section 15 challenge to argue that assisted suicide is not mandated but rather only offered as a choice to those who want it. Much of the suffering of people with disabilities in Canada stems from social inequalities they can face on a daily basis — poverty, inadequate housing, unemployment, lack of access to treatment, social isolation. The list is long.

The Supreme Court *Fraser* decision this October stated explicitly that ". . . differential treatment can be discriminatory even if it is based on choices made by the affected individual . . ." precisely because systemic inequality shapes the choices that are available to people. The choice of assisted suicide may really be no choice at all.

B.C. Aboriginal Network on Disability Society executive director Neil Belanger wrote this in a recent op-ed:

> Rightly, and without hesitation, we override the autonomy rights of homeless, Indigenous and 2SLGBTQ-plus persons who are not living with disability, illness, or disease but who seek a premature death when their suffering becomes intolerable. We create policies and programs to help them live robustly instead.
>
> But in the case of persons with disabilities, the government suggests we should look into their eyes and say, "You're right. People like you do have a good reason to die and we are going to help you make it happen.'"

Lawyer David Shannon has quadriplegia. In a recent column he wrote about Bill C-7, Shannon reflected on how his life is meaningful and what someone like him would miss by choosing assisted death:

> And truth be told, I have accomplished a lot in my life. I've crossed our great country by the power of my wheelchair — coast to coast. I've jumped out of an airplane at over 25,000 feet. I've made it to the North Pole and planted an accessible parking sign. I've written a book, performed in plays and on TV. I've received my law degree and been a Human Rights Commissioner. And I am an Order of Ontario and Order of Canada recipient. I've loved and been loved. My proudest accomplishment is that I lived.

Shannon went on to write:

> If Bill C-7 passes, words will be enshrined in law, signed by the Parliament of Canada, essentially saying, "Go ahead. Kill yourself. We will help because living with a disability must be totally unbearable." Bill C-7 introduces legislation that will violate my human rights and the rights of all people with disabilities. Yet no one seems to care.

Honourable senators, we have the power right here and right now to show that we care about the lives of people living with disabilities in our country. We cannot allow this government to make these Canadians second-class citizens under this law.

Bill C-7 currently excludes mental illness as a sole underlying condition from an expanded MAID regime. Some claim that this exclusion is discriminatory and stigmatizing to people with mental illness. They have floated the idea of creating a sunset clause to allow further study into this issue. I am vehemently opposed to such a proposal, as are many medical and legal experts, because it will sunset the lives of vulnerable Canadians.

There is a contradiction inherent in allowing patients suffering with mental illness as a sole underlying condition to access assisted death. The standard of care in psychiatry is to prevent suicide, to preserve life and to offer hope. An intense trust relationship between doctor and patient is required for the successful treatment of so many mental illnesses. We would be asking medical practitioners to break that trust and abandon suicide prevention measures in order to facilitate a patient's suicide.

As many of you know, I am a family survivor of suicide loss. My husband, MP Dave Batters, died by suicide, days short of his 40th birthday, after struggling with depression and anxiety. I have seen up close the failures of our mental health system. There are problems of accessibility, costs, stigma and an utter lack of resources that stand in the way of people getting the help they need. The answer to those barriers is to fix that system, not to confirm a mentally ill patient's feelings of hopelessness and offer them the lethal means to suicide. The answer is certainly not to end their lives for them.

Mental health professionals have told us that there is no consensus in the medical community about the irremediability or predictability of mental illness. Any access to MAID for mental illness as a sole underlying condition in the current environment is premature. This will never be resolved within a matter of months.

As for whether the exclusion of psychiatric MAID is discriminatory, psychiatric expert Dr. Sonu Gaind told our committee:

> . . . evidence shows that there are significant differences with mental disorders that warrant treating them differently for MAID. Failing to do so would be discriminatory.

He went on to say:

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

Because of the nature of mental illness, suicidality is often a symptom of the disease. We heard testimony that there is insufficient evidence to determine which individuals with mental illness are seeking MAID as a symptom of their illness. How could we, in good conscience, offer assisted death as an option in place of treatment?

Unfortunately, as I know personally all too well, people die every year by suicide — more than 4,000 Canadians every year. In 2019, more than 5,600 died by assisted suicide in Canada. That was a 26% increase from the year before.

We are in the middle of a global pandemic where the solution to stopping the spread of COVID-19 has meant isolating ourselves from contact with other people. That isolation, with the increased stress and anxiety of economic uncertainty and decreased social supports, has brought a shadow pandemic of mental illness. Suicides will continue to rise. There is a very high correlation between suicide and mental illness; 90% of people who die by suicide have a mental illness. And one of the major risk factors for death by suicide is having access to the lethal means to do it. Bill C-7 not only directly delivers those lethal means to suicide, but it also shifts the daunting responsibility for carrying out that choice from the patient to the impersonal state.

One factor that frequently deters people from attempting suicide is the possibility that they might not actually die. Bill C-7 asks the state to assist to ensure suicide is completed. There is no return. It is precisely for this reason that we must maintain rock-solid safeguards around assisted suicide. Even the Supreme Court, in its 2015 *Carter* decision, agreed that the risks inherent in permitting a physician-assisted death can be identified and very substantially minimized through a carefully designed system imposing stringent limits that are scrupulously monitored and enforced.

Senators who have been here for several years will remember how we wrestled with what those safeguards should be during our deliberations on the original assisted suicide bill, Bill C-14. Now, not even five years later, the Trudeau government seeks to remove many of those safeguards in Bill C-7. This bill would remove the 10-day waiting period between a request for assisted suicide and the completion of the assisted suicide. This is very concerning given that witnesses at our Legal Committee testified about the highly unstable nature of suicidality, telling us that patients may fluctuate between whether to live or die even within the same day.

In closing, we found during our intensive pre-study that we have insufficient evidence about the predictability and irremediability of mental illness; a lack of consensus in the scientific community about the ability to assess capacity for psychiatric MAID; the spectre of looming constitutional challenges from Canadians with disabilities who contend Bill C-7 is discriminatory and devalues their lives; and a lack of government consultation with some of our most vulnerable populations. We are nowhere close to a resolution on any side of this issue. As parliamentarians, we are bound to uphold the Constitution and protect the rights and dignity of all Canadians. We must take the time we need to ensure that vulnerable Canadians are protected.

For all of these reasons, I will vote against this bill at second reading. Our Legal Committee pre-study gave us a substantial and frightening preview of Bill C-7. Protecting the lives of vulnerable Canadians demands that the Trudeau government go back to the drawing board. I hope you will join me to send them that message. Thank you.

Hon. Donald Neil Plett (Leader of the Opposition): I would like to ask the honourable senator a question, if she will take one.

The Hon. the Acting Speaker: Senators Batters, will you take a question?

Senator Batters: Yes, I will.

• (2020)

Senator Plett: Thank you, Senator Batters, and thank you for your remarks. I think overall you and I are very much on the same side of this particular issue.

I want to talk a little bit, if you would, Senator Batters, about the slippery-slope scenario. You talked about Bill C-14, and of course you were part of the debates, as was I. Then, as now, we were not debating on whether or not assisted suicide should be legal. If we would have debated that, I think we both would have voted against the bill, as we did. But, again, we are not debating on whether it's legal.

The Hon. the Acting Speaker: Senator Plett, I'm sorry to interrupt. Senator Batters' time is up. Senator, are you asking for five more minutes?

Senator Batters: Yes.

The Hon. the Acting Speaker: Is leave granted, colleagues?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Please go ahead.

Senator Plett: So, we had some parameters set in front of us on Bill C-14. They are now being changed drastically, not because of the courts in Quebec, but because the minister and this government took an opportunity — when they could have appealed a court decision, they took an opportunity — rather than to bring in a bill. You talked about the former justice minister voting against Bill C-7 now, and the present justice minister voted against Bill C-14 because he didn't think it went far enough. I want to talk about the slippery-slope scenario, and I want you to give me your opinion on it.

We are being told, "Let's just approve a little more and that's how far it will go." Yet, Minister Lametti has made it clear that he is an advocate of having mental health as the sole criteria. He has talked about having mature minors being allowed to ask for assisted suicide.

Could you give me your opinion on where you see us going if we allow this to continue the way we have? I am with you. I'm inclined to vote against the bill. Not because I'm voting against assisted suicide, even though I'm opposed to it, but clearly because of the safeguards that are being removed.

Senator Batters: Thank you very much, Senator Plett. To start out with, first of all, I really wish that the justice minister would have appealed that court decision. It was a lower court decision. I think a lot of people when they hear "Quebec Superior Court" almost equate it to the Supreme Court. It isn't. It is the lower court in Quebec. They didn't even appeal it to the Quebec Court of Appeal, which would have helped a lot to get some better clarity, because Bill C-7 is supposed to be based on that lower court decision, but actually, many of the things that are contained in Bill C-7 go much beyond what *Truchon* contains, including the removal of those safeguards. The 10-day safeguard — that wasn't in *Truchon* — that that should be removed. The two independent witnesses — that was not in the *Truchon* decision — that that was supposed to be removed. It was a very specific decision about a specific issue.

Then, like you say, I think that the slippery slope is well in effect here and it very much concerns me. Particularly on those two issues you mentioned: on the issue of mental illness as a sole condition, and on mature minors. You will also recall that we tried to put some additional safeguards into that first bill, Bill C-14, at the time, to try to safeguard as much as possible, even more so than now. So yes, that definitely concerns me that the slippery slope could continue. That's why I think we need to make it very clear, and Canadians expect it to be clear. In fact, there are many Canadians out there right now who think that terminal illness is a requirement for assisted suicide in Canada, and it is not.

I really hope that Canadians are starting to pay attention to this very important debate because it has the most fundamental of impacts: life and death. Thank you.

The Hon. the Acting Speaker: Supplementary, Senator Plett?

Senator Plett: Senator Batters, you have been a champion of mental health issues. As a matter of fact, I attended a banquet a few years ago where you were honoured for —

[*Translation*]

Senator Dupuis: I rise on a point of order, Madam Speaker. I'd like to know who senators are supposed to address when they rise to speak. Senator Plett seems to be directing his speech to Senator Batters, but since he is turning his back to the microphone, we can't really hear what he is saying. Could you please ask him to speak into the microphone?

[*English*]

Senator Plett: Your Honour, I'm not sure whether you want to rule on a point of order here, because it seemed to me that Senator Dupuis raised this as a point of order. Certainly, I want to accommodate her and make sure she can hear me. I hope she can do that now.

The Hon. the Acting Speaker: Yes, I will take it under advisement.

Senator Plett: Thank you very much, Your Honour. Thank you, Senator Dupuis, for correcting me again as you so aptly do and so often do. I certainly always appreciate that admonition.

Senator Batters, as I was saying — and for the benefit of Senator Dupuis I will repeat. You have been a champion of mental health. I attended a banquet with you a few years ago where you were honoured for the work you have done on the mental health issue. I think all Canadians owe you a debt of gratitude for what you have done. So thank you, Senator Batters.

We have talked about the lack of palliative care in our country, the lack of resources and money that are being put into palliative care. Can you tell me a little bit about the lack of resources that we have combatting the mental health issue, as opposed to just coming up with a way of giving these fine people that have a long, productive life or could have a long, productive life ahead of them, giving them a needle or a pill, that we rather, work with them and help them recover —

The Hon. the Acting Speaker: Senator Plett, sorry to interrupt once again.

Senator, your time has expired. Would you like another five minutes?

Senator Batters: Yes, if the chamber will grant it.

The Hon. the Acting Speaker: Is leave granted, colleagues?

Hon. Senators: Yes.

Senator Batters: Thank you very much for those kind words, Senator Plett. Yes, that is something that I have consistently tried to draw to everyone's attention. I find it very sad. My husband passed away 11 years ago, frankly in part because of the significant gaps that existed in the mental health care system in Canada. And even for someone like Dave, who was — we were well off. He had many advantages. He was a member of Parliament. But despite all of that, if someone like him couldn't get good help despite everything we tried, it makes me very fearful for people who have many more vulnerabilities than we did.

We really saw the gaps that existed. Frankly, it makes me quite sad every time I see that, despite this many years and this much effort, many things are getting better, but the utter lack of resources that still exist across Canada in the mental health care resources is dire actually. That's what we should be focusing on, not giving people an easier way to choose that devastatingly final choice of suicide. There is no return from that. So what we need is to provide these people help, not easier access for them to die. Thank you.

Senator Plett: Thank you.

Hon. Kim Pate: Honourable senators, when I first read Bill C-7, I wanted to support it, not only because I greatly admire and respect Senator Petitclerc and value her leadership and work on this, and in so many other spheres. Who can argue with providing all people, including those with disabling health — including mental health — issues, with the right to choose MAID?

Well, it didn't take long, in fact — just reading the accounts of litigants like Jean Truchon — for me to question where Bill C-7 is leading us. The limited and inequitable choices available to Mr. Truchon left him with inadequate and unacceptable options to live. He chose death rather than face continued institutionalization after he was not provided with the health, economic and social supports he needed in order to stay living in his own home.

In British Columbia, Madeline is seeking medical assistance in dying because she is unable to go further into debt to pay for treatments that make her pain more bearable. She is calling for measures like guaranteed livable income to give people actual choices, not merely the pretext of choice by providing her access to death.

• (2030)

In Ontario, Roger Foley described feeling coerced into medical assistance in dying when he was told it would cost $1,800 per day to stay in hospital or face forcible discharge that would leave him without the supports he needs. He said, "assisted dying was easier to access than safe and appropriate disability supports to live."

In Quebec, Archie Rolland arranged to be removed from his respirator after the closing of the Montreal Chest Institute left him institutionalized in a long-term care setting that could not meet his needs in a humane way. He told the media that it was "not the illness that was killing him"; he was tired of fighting for compassionate care.

Every national and Indigenous disability organization tells us that Bill C-7 is discriminatory legislation. They warn that it reinforces ableist stereotypes that life with a disability is not worth living, and effectively absolves the government from doing more to support and uphold their Charter-protected human rights.

Disability organizations support the rights of their members to have choices, and most, in fact, support medical assistance in dying. Given the lack of actual opportunities to live, however, they called on us to hold fast in Bill C-7 to the requirement that natural death be reasonably foreseeable.

Former Ontario Human Rights Commissioner and disability rights expert Dr. Catherine Frazee asks why we might be comfortable with the idea of people with disabilities being able to choose early death when we deny this choice to others. If the answer is to alleviate "suffering," she warns us about the dangers of ableist stereotypes. Poverty, isolation, racism, institutionalization and lack of access to basic services too often cause and exacerbate suffering, particularly for those with disabilities. The result is suffering that is not an inevitable or inherent part of a medical condition but rather the result of systemic ableism, exclusion, discrimination and a lack of meaningful access to health, income and social supports.

In the words of musician, educator and activist Scott Jones, it is not his paraplegia, but ". . . society disables me, isolates me and cages me in."

Dr. Frazee asks "why only us?" If the answer Bill C-7 prompts us to give relates to the autonomy rights of those with disabilities, it behooves us to consider what choices we are actually offering people. Do we really want to send the message that offering those who are suffering a painful life the option of medical assistance in dying meets Canada's duty to uphold the human and Charter-protected rights of persons with disabilities?

A distinction must be made between less robust civil liberties and formal equality analyses offered in Bill C-7 and substantive equality guarantees enshrined by section 15 of the Charter. Formal equality is based on providing everyone, from the most to the least privileged, with identical treatment, an approach most of us, and certainly the Supreme Court in *Kapp,* recognize actually produces inequality.

Imagine the effects of new rights and opportunities contained in Bill C-7 for "Madeline," who is living in pain that is unbearable but treatable, taking only half the recommended treatments to stretch them out and stay alive for as long as possible as she runs out of the means to pay for her care. Compare her situation to that of someone living with a lesser degree of economic marginalization who is able to fully afford treatment.

Who will be more likely to look to the solution provided by Bill C-7? Who will be more likely to feel that the only outcome the law and the health care system contemplate for them is to die?

According to the Supreme Court, substantive equality looks not only at the "choices available to individuals but at the social and economic environments in which they play out." The *Fraser* decision demands that we scrutinize how law has shaped the actual choices available to those with disabilities, particularly women and those who are racialized, poor, abuse survivors, institutionalized, or otherwise marginalized.

The so-called "choice" that many people will face under Bill C-7 will be between not having their needs met due to untenable economic, health or living situations, on the one hand, and death on the other. Most of us would agree, it is no choice at all.

For decades, many doctors have refused to treat prisoners because they cannot guarantee that any treatment or medical intervention offered or provided in prison is truly voluntary. The Correctional Investigator reminds us that meaningful choice is horribly distorted, in particular for those who are trapped in — and requesting medical assistance in dying from — federal prison cells. He offers horrific case studies of medical assistance in dying.

His latest report calls for a moratorium on MAID in prisons because of constraints on "free and informed consent, personal autonomy, free will and choice," and inadequate access to medical transfer options to health supports that mean people who could be treated in the community are instead left to languish in prison, in pain and in despair. For prisoners, we need to ensure that those who are ill, have disabilities or are dying, have meaningful access to transfers out of prison to receive the health or palliative care they need.

A growing number of constitutional experts tell us that Bill C-7 breaches Canada's obligations to those with disabilities. Bill C-7 responds to a decision of the Quebec Superior Court striking down a federal law as unconstitutional. If that is all we need to create new law in Canada, then why has the government not remedied the growing number of cases across Canada — from trial courts, to courts of appeal to the Supreme Court of Canada — where mandatory minimum penalties have similarly been ruled unconstitutional? The federal government has had no qualms about keeping these unconstitutional laws on the books for years, allowing inconsistencies in the Criminal Code to grow between jurisdictions.

Out of all the constitutionally invalid laws to tackle, why prioritize a response that Canada's international obligations and our Supreme Court's decision in *Fraser* suggest will undermine substantive equality?

According to the UN Special Rapporteur on the rights of persons with disabilities, Bill C-7 violates the UN Convention on the Rights of Persons with Disabilities, to which Canada is a signatory. And as a signatory to the convention, Canada has been called on to put into place adequate safeguards to "ensure that persons with disabilities do not request assisted dying simply because of the absence of community-based alternatives and palliative care." Seven out of ten Canadians agree.

As Senator Miville-Dechêne eloquently discussed, Bill C-7 requires medical practitioners to give patients information about alternatives to medical assistance in dying, but the government is failing to ensure that meaningful housing, health and income supports are accessible in practice.

In Nova Scotia, services are illusory in light of a discriminatory, government-imposed, 25-year freeze on new community-based services for persons with disabilities and a wait list of over 1,600 people. Experts before the Standing Senate Committee on Legal and Constitutional Affairs characterized Bill C-7's reassuring message that people in Nova Scotia would be told about the supportive options available to them before opting for medical assistance in dying as a "cruel sham."

Here in Ontario, last week the premier supported an incredibly discriminatory recommendation to cut the number of individuals receiving disability supports by removing access to appeal if benefits are denied, further limiting already shamefully inadequate supports. The 1995 Special Senate Committee on Euthanasia and Assisted Suicide's call to the government to make palliative care a core value of the health care system was reiterated by the Standing Senate Committee on Social Affairs, Science and Technology in 2000, and in a 2005 followup report by Senator Carstairs.

Bill C-7 will exacerbate inequality in the absence of Canada Health Act and Canada Social Transfer national standards to ensure meaningful and systemically equitable access to palliative care and other alternatives to medical assistance in dying.

• (2040)

One witness at the Legal Committee reminded us that among the difficult decisions that Bill C-7 requires is "which mistakes do we not want to make?" Plowing ahead with this legislation and reviewing its effects later will cost lives.

Bill C-7 might, at best, grant rights to some, but — and this is a very significant "but," colleagues — for those with the fewest resources and supports, it will generate and entrench discrimination. We should not layer the option of choosing death in non-end-of-life situations on top of ongoing inequality of access to necessary health, social, economic and housing supports and services. We must ensure that we do not expand the right to die without also investing in the right to live.

As senators, we have a responsibility to challenge the status quo when we deem it unjust.

Some of the views of our predecessors in this place are more than cringeworthy. From Senate support of genocidal policies of eugenics to indentured servitude, to forced removal of Indigenous children, institutionalization and sterilization, we can look back at a long and shameful history of failing to meet our responsibility to uphold minority interests. As law professor Jonas-Sébastien Beaudry reminded us yesterday:

> No one denies that Bill C-7 opens up access to medically assisted [death] in the name of respect and compassion, but we should remember that oppression has a habit of being packaged as a benefit for the oppressed.

This year, in the wake of deaths of Black and Indigenous peoples, we renewed commitments to ally with our Black, Indigenous and other racialized colleagues, in this and the other place, to fight racism in policing and health care, in particular. Senator Boyer's urgent call to study the forced sterilization of Indigenous women and the documentation of this atrocity as an ongoing issue here and globally, combined with the pandemic-generated amplification of pre-existing inequalities, underscore the vital imperative that we not merely voice support, but we must also represent those who are too often forgotten, dehumanized, treated as of less value or unworthy of constitutionally enshrined equality protections.

Regardless of where we came from, any one of us, we in this place all enjoy a great deal of privilege. With this privilege comes responsibility, particularly with respect to the most marginalized whom, because they are under-represented in both this and the other place, we have a duty to represent.

Let's do our job and reject the government's inadequate response to inequality, and demand more than what is offered by Bill C-7.

Meegwetch. Thank you.

[*Translation*]

Hon. Marie-Françoise Mégie: Honourable senators, I rise today to speak to Bill C-7 on medical assistance in dying. It was passed by the other place on December 10, 2020, with 213 votes in favour and 106 against. Those who supported this legislation were from all political parties, including about 15 Conservative members. More than two thirds of MPs supported this legislation.

This bill includes the government's response to the ruling of the Quebec Superior Court in *Truchon*. The *Truchon* decision dealt with the provisions of the Criminal Code relating to medical assistance in dying and provincial legislation relating to end-of-life care in Quebec. In its decision, the court found that the provision under which individuals are eligible for MAID only if their natural death is reasonably foreseeable contravened the Canadian Charter of Rights and Freedoms.

This provoked a reaction from certain disability rights groups, but what we can say is that a physical disability alone is not an eligibility criterion for MAID. All the factors must be included. Let me tell you a brief story to illustrate my point. I had a patient who was severely disabled, to the point that in order to smoke a cigarette, he needed to wear a flame-retardant apron and things like that. He told me that the day he was no longer able to smoke — it was his only pleasure in life — we had to let him go. At the time, MAID was not yet available. This happened a year later, as a result of the natural progression of his multiple sclerosis. We talked about the appropriate care in his case. He said, "Listen, doctor, whatever happens, send me to the hospital, do everything you can. I am still of sound mind."

That means that patients are not necessarily pressured into asking, "Okay, why do I feel this way? Others are requesting medical assistance in dying but I don't want to."

There are two other provisions that the government added to the measures in Bill C-7: the elimination of the 10-day waiting period between the request for MAID and its provision. Some professionals are saying that the government eliminated a safeguard, while others are saying that this could be more restrictive for them because their patients suffer when they have to wait 10 days. However, Quebec's commission on end-of-life care released a report showing that in practice, it takes an average of 18 days for the process to be completed, from the moment a patient requests MAID to the time the medical assessments are done — and two doctors are required. I remind senators that throughout this process, the patient needs to see family, make plans for the process and think about the funeral. The patient isn't just suffering and waiting for the days to pass. The patient has some power over the situation.

I am wondering whether it is advisable to exclude mental illness when it is the sole underlying medical condition. I know that our colleague, Senator Kutcher, spoke about that at length. However, the suffering resulting from mental illness will not give people access to medical assistance in dying, so there is a distinction being made between people suffering from a mental illness and those who have a physical illness, disease or disability. There is significant debate on whether that distinction is appropriate for people who are living with a mental illness and whether it would constitute discrimination that could be justified under the Canadian Charter of Rights and Freedoms.

Access to medical assistance in dying for people with mental disorders was the subject of a comprehensive discussion paper published by the Association des médecins psychiatres du Québec, which talks about developing an assessment process for a more specific request for MAID. In December 2018, the Council of Canadian Academies also published an expert report on the state of knowledge on medical assistance in dying where a mental disorder is the sole underlying medical condition. There were many opinions, but no consensus. However, the discussions are progressing.

Even as all of our attention is focused on MAID, we must also deplore the scarcity and non-existence of palliative and mental health care. With respect to mental health, if the current regime allowed it, and given that the Council of Canadian Academies found no irregularity here, we have to wonder why MAID should be restricted to these people. Then again, eligibility criteria assessment is highly complex.

For one thing, the notion of capacity to give free, informed consent can vary depending on the progression of a disease. That alone indicates the importance of a long observation period. It is also important to consider the possibility that a person's health might improve. A person in crisis may ask to die, but with the help of a health professional or a care team, that person can recover from the crisis and live a good life. They will then ask themselves, “What if I had chosen to die?” Thoroughly thinking things through is crucial.

Quebec engaged in that thinking process during yesterday’s Forum national sur l’évolution de la Loi concernant les soins de fin de vie, a conversation about medical assistance in dying for people with mental illness.

• (2050)

Since we’re on the subject, I noted some confusion in our discussions between medical assistance in dying and palliative care. I’d like to take this opportunity to quickly set the record straight. Although my comments may sound academic, you will understand them. Palliative care is active, holistic care provided by an interdisciplinary team to individuals who no longer respond to curative treatment and are suffering from serious or incurable illnesses. Its goal is to relieve pain and other symptoms without hastening or delaying death, while maintaining the best quality of life possible. It takes into account psychological, social and spiritual factors. Palliative care is offered by health care professionals. It is a critical component of care that is part of a continuum of care.

To be clear, MAID is not part of palliative care. It is an end-of-life option requested by the individual. It is administered by a health professional, but only after a thorough assessment by two doctors, or by two health care professionals, who give their opinion on eligibility based on predetermined criteria. MAID is for individuals suffering from a serious and incurable disease or a disability that causes enduring and intolerable pain and resulting in an advanced state of irreversible decline in the patients’s capacities.

According to the document released by Quebec’s commission on end-of-life care, medical assistance in dying remains relatively rare. In Quebec, deaths by MAID represented 2.6% of the total number of deaths. The average age of people receiving MAID was 73. More than three quarters of the people who requested MAID suffered from cancer, 80% were receiving palliative care and 96% were told they had six months or less to live.

Quite separate from illness, there are times when a healthy person might inquire about medical assistance in dying. That doesn’t mean that if they become ill, they’ll definitely request it. It could be regarded as a kind of insurance policy. Not everyone who receives palliative care is clamouring to receive MAID. For those individuals, palliative care is one option among many. They have chosen to be supported by professionals, by a team of caregivers and by their family until the end.

The reason I’m providing this quick overview is to explain that there won’t be any sort of “open bar” policy, as some people seem to fear, and no flood of requests for MAID as soon as Bill C-7 passes.

As a final point, I’d like to explain the tools available to relieve suffering. In palliative care, there is continuous palliative sedation, which relieves the suffering of individuals at the end of life by rendering them unconscious, continuously, until their natural death. The purpose of medical assistance in dying is to relieve suffering, but it also leads to death.

Honourable colleagues, there is no doubt that the cultural connotation of death and the taboo surrounding it, associated with societal changes, can greatly influence the nature of our debates on MAID. The lack of resources for palliative care and mental health care could also colour our debates. As we discuss medical assistance in dying, I urge the provincial and federal governments to increase access to palliative care and mental health care.

I would be in favour of Bill C-7 provided that the promised review, the comprehensive review of Bill C-14 that is scheduled for June 2021, takes place. We will have a duty to once again look at these critical issues that affect us all and deeply move us. I am sure that we will be able to improve the MAID regime even more and bring in better safeguards for the good of all Canadians who might use it. That would be their choice. Thank you.

Hon. Senators: Hear, hear!

Senator Pate: Thank you, Senator Mégie.

[*English*]

I had the pleasure, along with other senators, after our visit to Laval prison, to visit the palliative care centre that was your vision and that you developed. It is one of a few such centres that I have ever seen in the country, let alone internationally.

I wonder if you would be willing to provide information to the committee when they study Bill C-7 in order to have an example of the sorts of options that you spoke about eloquently. Many of us had the privilege of meeting with staff and folks there who developed your vision, which I understand is your life’s work.

[*Translation*]

Senator Mégie: Thank you for the question. Here’s what happened with the palliative care centre. This centre accepts end-of-life patients with cancer or a chronic illness. What I can share is that the majority of people who are admitted to the palliative care centre are afraid of dying. That may seem ironic, but it’s the truth. They keep an eye on what little medication we give them to make sure we don’t try to speed up the process.

Those who haven’t been properly prepared for this transition tend to think, “This is it, I’m in palliative care, I’m going to die, so the staff here are going to hurry up the process.” It takes many days to convince them otherwise. We tell them that they chose palliative care in order to receive care until their natural death. We’re not there to rush the process. That’s not the role or philosophy of palliative care. When people are admitted, they come under the care of the doctor, the nurse, the social worker and the whole team. We also invite a spiritual leader from the individual's community to visit and support them until the end. The patient receives care, without suffering.

[*English*]

Senator Pate: I think it would be extremely helpful for the Legal Committee to have more information about that model. It is an incredibly supportive model that addresses the issues we talked about in terms of the importance of providing wraparound supports to individuals so that they do not feel they need to consider medical assistance in dying when, in fact, they have the choice.

Would you be willing to provide that information to the committee?

[*Translation*]

Senator Mégie: In writing? Gladly.

The Hon. the Acting Speaker: Senator Mégie, your time has expired. Are you requesting five more minutes?

Senator Mégie: If the Senate agrees.

[*English*]

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

Hon. Senators: Agreed.

[*Translation*]

Hon. Claude Carignan: Senator, you worked in palliative care homes. What I know about such homes is this: Many are operated by non-profits that don't have enough money and often turn people away for lack of space. Was that your experience when you worked in palliative care homes? If so, how great a shortfall was there, and what community fundraisers did they have to do to cover their costs?

Senator Mégie: Typically, palliative care homes in Quebec receive 40% of their budget and have to cobble together the remaining 60% through various fundraisers we do. All of these homes are operated by non-profits, so they have to raise 60% of what they need to keep things going.

• (2100)

With respect to the number of people waiting, there are times when that happens, but not always, especially now that more money is going to home care. That can potentially put home care nurses in very human conflict of interest situation. For example, they may determine that it is not yet time for a patient to move into palliative care and that the patient can remain at home for a while longer, which justifies the budget allocated. However, the patient's health continues to deteriorate. Because that person might be a good candidate for admission to a palliative care unit, that kind of situation can slow admissions, but it is intermittent.

(*At 9 p.m., pursuant to the order adopted by the Senate on October 27, 2020, the Senate adjourned until 2 p.m., tomorrow.*)

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