



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Wednesday, December 16, 2020

The Honourable LEO HOUSAKOS,  
Acting Speaker

## CONTENTS

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

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## THE SENATE

Wednesday, December 16, 2020

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

Prayers.

### SENATORS' STATEMENTS

#### MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

**Hon. Pat Duncan:** Honourable senators, respectfully and with gratitude, I live and speak to you from the traditional territory of the Kwanlin Dün First Nation and the Ta'an Kwäch'än Council.

Colleagues, on December 10 I was honoured to attend a signing ceremony at the Kwanlin Dün Cultural Centre. This is the same site where the National Inquiry into Missing and Murdered Indigenous Women and Girls began their hearings. For those of you who are not aware, the cultural centre sits on the banks of the Yukon River and has a location for sacred fire. The signing ceremony began with a prayer at the sacred fire and remembrance of the missing and those who have gone on.

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls published on June 3 last year had 231 recommendations. With the signing ceremony I attended, the Yukon is the first of the provinces and territories to give life and meaning to prepare a strategy to address the recommendations. Senators will know that I don't give my signature lightly. The signing ceremony was the declaration of my commitment to the Yukon strategy. That commitment reads:

Together, and as an individual, I am committed to do my part to take action for the implementation of Changing the Story to Upholding Dignity and Justice: Yukon's MMIWG2S+ Strategy, and initiatives that contribute to the vision set out in the Strategy. . . .

I commit to be accountable to families, survivors, other partners, contributors, and Yukoners for implementation of this Strategy.

The declaration was read aloud and signed by me; the member of Parliament; ministers Bennett and Monsef of the Canadian government; Yukon's premier; ministers of the Yukon government; all party representatives in the Yukon Legislative Assembly; the grand chief of the Council of Yukon First Nations; all 14 First Nations chiefs in the Yukon; all municipalities; and the RCMP, the only police service in the Yukon.

It was an incredibly moving and positive ceremony. Colleagues, I give thanks to have been included. I am also incredibly encouraged by the work that has gone into the creation of this strategy, because the key concept throughout the process has been partnership.

The heart of the strategy, which is as much a vision statement as a practical plan, includes 31 priority actions under these four paths and takes a Yukon approach encouraging all Yukoners to see themselves as part of the solution.

I would like to share with you comments made by Chief Doris Bill of the Kwanlin Dün First Nation. She said, in part:

All of the advocates, family members, and survivors that have fought so hard for so long should see today as an important step forward in restoring dignity and justice for Indigenous women, girls and Two-spirit+ people.

Doris Bill went on:

The government should not lead all actions. We will develop plan with partners, and there is much work ahead. Alone, the burden would feel heavy. But if we each carry something, it will feel lighter.

Colleagues, now is a traditional time when we look forward to lighter and brighter days ahead, as we do with the launch of this strategy and by signing on to this strategy. Thank you for the opportunity to present it to you today. I will share this document with you by mail in the future. Thank you. *Mahsi'cho. Günáchish*

**Some Hon. Senators:** Hear, hear.

#### OVERSEAS KOREAN POLITICIANS COUNCIL

**Hon. Yonah Martin (Deputy Leader of the Opposition):** Honourable senators, we, as senators, have the privilege of representing our region and province or territory, and as senators of Canada, we represent our great and expansive nation. We are also able to lead bilateral or multilateral parliamentary associations and friendship groups, and work with stakeholders and industry leaders, and advocate for causes and issues that are important to us.

Like all honourable senators, we are part of organizations and groups.

One such group, the Overseas Korean Politicians Council held a virtual conference during the weekend, which I helped to organize. It is a network of legislators of Korean descent from around the world who convened online in multiple time zones; legislators from England, France, Uzbekistan and Russia were online with us long past midnight from their time zones. One participant even called in from his hospital bed. It was historic in the fact that it was an inaugural virtual conference, with the theme Unforgettable 2020: #ONE OKPC.

But what made it truly historic was the attendance of several trailblazing female politicians. A member of the Washington State House of Representatives, the first Korean-American female to be mayor in the United States and President of OKPC, Cindy Ryu; retired three-term minister and an MLA of Northwest Territories, Sandy Lee, the first Korean-Canadian female politician in our history; Member of Parliament for Port Moody—Coquitlam, Anmore & Belcarra, Nelly Shin, the first Korean-Canadian elected to the house in Canadian history; representative-elect for Washington's 10th congressional district, Marilyn Strickland, and representative-elect of California's 39th congressional district, Young Kim, two of the first three Korean-American women elected to the U.S. Congress — the third is representative-elect to California's 48th congressional district, Michelle Steel — five-term member of Parliament of New Zealand Melissa Lee, the first and only Korean in their history; and recently elected leader of the liberal opposition in the Legislative Assembly for the Australian Capital Territory, Elizabeth Lee.

So as the first Korean-Canadian senator, it was a special moment of reckoning to be virtually together with so many of my soul sisters and dozens of current serving politicians from around the world. What we share is the indomitable spirit of our ancestors throughout Korea's long and dynamic history, who fought, survived, and overcame powerful invaders and oppressors. We are part of a growing diaspora of 7.8 million people around the world, including a national community of more than a quarter-million people across Canada.

• (1410)

Whether in small or large communities, people of Korean descent around the world share the collective history of our courageous and noble ancestors. We have the seventy-fifth anniversary of the national liberation of Korea and the seventieth of the Korean War years, which began this year.

With that, I know that we have Hanukkah until December 18, so I wish the best to all my colleagues who are celebrating, as well as those in Canada and around the world, and blessings of the advent season to everyone. Thank you.

**Some Hon. Senators:** Hear, hear.

#### KWANZAA

**Hon. Wanda Elaine Thomas Bernard:** Honourable senators, I rise today to wish you a happy Kwanza. As I began to prepare for this year's celebration and the lighting of each candle on the *Kinara*, I was drawn to reflect on how the principles of Kwanza have been embodied by Black Canadians in 2020.

The first day of Kwanza is December 26. We light the black candle representing *Umoja* or unity. Unity will be the key in a post COVID-19 recovery process. We are all in it together.

The three red candles represent *Kujichagulia*, *Ujima* and *Ujamaa*. On day two, we light a candle for *Kujichagulia*, or self-determination, which represents divining, creating and speaking for one's self. This year I have been inspired by Black Canadian activists who have spoken out against the violence of anti-Black racism.

Day three, *Ujima*, celebrates collective work. As we build back better from COVID-19, we share the responsibility of planning a successful and sustainable recovery for Black communities.

Day four celebrates *Ujamaa*, or cooperative economics. Many Black business owners have prevailed through 2020. My grandson asked me what Black Friday meant, and I was proud to explain how Black business owners have reclaimed this phrase to promote Black-owned businesses.

The three green candles represent *Nia*, *Kuumba* and *Imani*. On day five, a candle is lit for *Nia*, the principle of purpose and building community. I applaud the leadership of the Parliamentary Black Caucus and the Black senators group, as they inspired change.

On day six, we light a candle for *Kuumba*, for creativity. The creativity of Black Canadians in all sectors has helped us to survive this year.

The last candle represents *Imani*, or faith. For many African-Canadians, our faith and spirituality have been integral to our survival since our arrival here. *Imani* will also guide many of us through the recovery process.

Honourable colleagues, I invite you to reflect on these principles during the winter break and how they can influence our recovery process in the new year. Happy Kwanza to all.

**Some Hon. Senators:** Hear, hear.

#### THE BORLAND FAMILY

**Hon. Mary Jane McCallum:** Honourable senators, I would like to pay tribute to the host families that billeted residential school students as we left the residential schools across Canada. The majority of students were placed in private homes in the towns and cities where we were to continue our high school. Most families didn't know what we had undergone.

I had the great privilege and luck to be placed in the home of Mr. and Mrs. Borland in Portage la Prairie, Manitoba. I still keep in touch with my host family and came to see Ian and Billie as my surrogate parents. They are 94 today. I was also welcomed by their children, Lorne, David and Doug.

I want to thank the Borland family for allowing me into their sacred space, their home and family. I lived with them for two years and was welcomed as part of the family.

Billie taught me what it meant to be truly accepted and integrated into a family unit, and what it meant to be in a safe environment mentally, physically, emotionally and psychologically. She folded us into the rhythm of the household while she immersed herself in our school lives. She renewed in me, in my memory and spirit, what hospitality and inclusiveness looked like — what I remembered from my childhood before I went to residential school.

Ian and Billie put up with my loud music and late nights. I'm sure I intruded into their lives, but they never made me feel a burden. They always remained patient and nonjudgmental. In many quiet ways, they let me know I was part of the family.

To this day when I visit Ian and Billie, we have conversations about the relationship between the Indigenous and non-Indigenous communities, and they remain active in hiring Indigenous peoples in the shop they own in Portage.

Ian and Billie, you remain two of the most influential people in my life who have helped me to believe in myself, to be responsible for myself, to realize that I'm part of Canada and to know that I am loved and that I matter. Thank you for your love and commitment. It was only later in life that I realized what a comfort and guidance you were in my transition from residential school into society. You have been a critical touchstone in my life. I love you. Thank you.

**Some Hon. Senators:** Hear, hear.

#### EXPRESSION OF THANKS FOR FRONT-LINE WORKERS

**Hon. Brian Francis:** Honourable senators, I rise today to pay tribute to the front-line workers who have gone above and beyond in recent months. Thank you to the members of the Canadian Senators Group for transferring their spot to me.

The coronavirus pandemic has posed an unprecedented threat to the health, social and economic well-being of individuals, especially the most vulnerable among us. Over the past 10 months, more than 460,000 people in Canada have contracted this virus. While more than 377,000 have recovered, over 13,500 people have died. As we mourn the loss of fathers and mothers, sons and daughters, brothers and sisters, neighbours and friends, and as we begin to support survivors dealing with lingering side effects, let us also remember to thank the front-line workers who put themselves and their families at risk to deliver critical services, often for low wages and few benefits.

Among them are those who stock groceries; deliver packages; prepare food; drive public transportation; care for the sick and injured, as well as for seniors and other adults in need of assistance; those involved in the research and development of diagnostics, treatments and vaccines, as well as in its distribution and administration; those who keep us informed, connected and

entertained; those who teach children and youth; and many others who carry out the essential tasks that have kept our society and economy functioning this year. These men and women are true heroes and heroines, and deserve not just respect and gratitude but adequate protection and support.

Here in Prince Edward Island, we've been extremely fortunate. There have been only 89 confirmed cases to date. This is in large part due to the hard work and sacrifices of people like Chief Public Health Officer, Dr. Heather Morrison; Chief Nursing Officer Marion Dowling; Mark Spidel, Deputy Minister of the Department of Health and Wellness; Terry Campbell, Director of Support Services at the QEH; Dr. Greg German, medical microbiologist; and the personnel working in laboratories, as well as doctors, such as Jan Rogerson, Martha Carmichael, Aaron Sibley and Trevor Jain, and all their allied health care professionals and support staff, as well as their respective families.

This list is not exhaustive. There are too many examples of Islanders and Canadians who have gone above and beyond this year. Colleagues, join me in sending our love and appreciation to all of the everyday heroes and heroines of the pandemic, at home and abroad. To them we are forever indebted. *Wela'lin*. Thank you.

• (1420)

#### PUBLIC LIBRARIES ACROSS CANADA

**Hon. Tony Dean:** Honourable senators, I rise today to recognize Ms. Cyndi Stockman, the librarian at the Elk Lake Public Library in the Township of James, Ontario. In August of this year, I was working at our remote camp in Northern Ontario and needed a secure internet connection to conduct some Senate business. I scoured local municipal offices, government service centres and MPs' offices, but all were effectively shut down. My search then narrowed to Elk Lake, which is a 45-minute drive west of Temiskaming Shores, Ontario.

Elk Lake is a small and pretty town on the Montreal River, fuelled by a sustainable forest industry, wilderness camps and lodges, and a dynamic community of 420 residents. It began as a mining boomtown with the discovery of silver in the surrounding James Township in 1906, with a population at one point exceeding 10,000 people. Interestingly, some of those mines are currently active again due to the global importance of cobalt, which is often co-located with silver deposits.

In Elk Lake, I was told, "You should talk to Cyndi." I was fortunate to be put in touch with the local librarian, Cyndi Stockman. Ms. Stockman dropped everything, cancelled business appointments, drove over and opened up the Elk Lake Public Library for a couple of hours to allow me to conduct my work in a private and secure environment. I am tremendously grateful for Ms. Stockman's kindness, which was, of course, also a reminder of the many benefits offered by public libraries across our great

country. If there were to be any public thanks for her kind gesture, Ms. Stockman would want me to focus on these broader benefits.

Simply put, public libraries enrich us all with their access to books. Of course, they go far beyond books. While strengthening neighbourhoods and championing the cultural lives of communities, libraries are hubs that serve as centres of learning, job searches, professional development, information on health and the arts and ensuring educational opportunities are provided for everyone, regardless of their socio-economic status. The library is a community space for all of us. As you know, honourable senators, it is a sanctuary for many who want to step out of the cold, read a newspaper, connect with others or experience some quiet time in their often busy, disrupted or just-in-time lives.

No matter where we live in Canada or how we arrived here, our local library is a sanctuary for learning and for letting go — a place for people and families to enjoy, relax and spend time together. With countless resources at our fingertips, millions of books, DVDs and CDs to borrow, our public libraries are more important than ever. Thanks again to Cyndi Stockman and the thousands of librarians and staff across this country for making and sustaining our libraries as centres of learning, community building and a little bit of quiet time. Thank you.

**Hon. Senators:** Hear, hear.

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## ROUTINE PROCEEDINGS

### ETHICS AND CONFLICT OF INTEREST FOR SENATORS

REPORT PURSUANT TO RULE 12-26(2) TABLED

**Hon. Judith G. Seidman:** Honourable senators, pursuant to rule 12-26(2) of the *Rules of the Senate*, I have the honour to table, in both official languages, the first report of the Standing Committee on Ethics and Conflict of Interest for Senators, which deals with the expenses incurred by the committee during the First Session of the Forty-second Parliament.

(For text of report, see today's Journals of the Senate, p. 281.)

## CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT

BILL TO AMEND—SECOND REPORT OF FOREIGN AFFAIRS AND  
INTERNATIONAL TRADE COMMITTEE PRESENTED

**Hon. Peter M. Boehm,** Chair of the Standing Senate Committee on Foreign Affairs and International Trade, presented the following report:

Wednesday, December 16, 2020

The Standing Senate Committee on Foreign Affairs and International Trade has the honour to present its

### SECOND REPORT

Your committee, to which was referred Bill S-2, An Act to amend the Chemical Weapons Convention Implementation Act, has, in obedience to the order of reference of December 2, 2020, examined the said bill and now reports the same without amendment.

Respectfully submitted,

PETER M. BOEHM  
*Chair*

**Hon. Leo Housakos (The Hon. the Acting Speaker):** Honourable senators, when shall this bill be read the third time?

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

## THE SENATE

MOTION TO EXTEND TODAY'S SITTING ADOPTED

**Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate):** Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That, notwithstanding any provision of the Rules, previous order or usual practice, when the Senate sits today, it continue beyond 4 p.m., if necessary, and adjourn at the earlier of the end of Government Business or 9 p.m.

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

**Hon. Senators:** Agreed.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

## THE SENATE

### NOTICE OF MOTION TO AMEND THE *RULES OF THE SENATE*

**Hon. Scott Tannas:** Honourable senators, I give notice that, two days hence, I will move:

That the *Rules of the Senate* be amended:

1. by replacing rule 3-6(2) by the following:

“Adjournment extended

**3-6.** (2) Whenever the Senate stands adjourned, if the Speaker is satisfied that the public interest does not require the Senate to meet at the date and time stipulated in the adjournment order, the Speaker shall, after consulting all the leaders and facilitators, or their designates, determine an appropriate later date or time for the next sitting.”;

2. by replacing rule 4-2(8)(a) by the following:

“Extending time for Senators’ Statements

**4-2.** (8)(a) At the request of a whip or the designated representative of a recognized party or recognized parliamentary group, the Speaker shall, at an appropriate time during Senators’ Statements, seek leave of the Senate to extend Statements. If leave is granted, Senators’ Statements shall be extended by no more than 30 minutes.”;

3. by replacing rule 4-3(1) by the following:

“Tributes

**4-3.** (1) At the request of any leader or facilitator, the period for Senators’ Statements shall be extended by no more than 15 minutes for the purpose of paying tribute to a current or former Senator.”;

4. by replacing rules 6-3(1)(a), (b), (c) and (d) by the following:

“Leaders and facilitators

(a) any leader or facilitator shall be permitted up to 45 minutes for debate;

Sponsor of a bill

(b) the sponsor of a bill shall be allowed up to 45 minutes for debate at second and third reading;

Critic of a bill

(c) the critic of a bill shall be allowed up to 45 minutes for debate at second and third reading;

Spokesperson on a bill

(d) the spokesperson on a bill from each recognized party and recognized parliamentary group, except those of the sponsor and critic, shall be allowed up to 45 minutes for debate at second and third reading; and

Others

(e) other Senators shall speak for no more than 15 minutes in debate.”;

5. by replacing rule 6-5(1)(b) by the following:

“(b) the time remaining, not to exceed 15 minutes, if the Senator who yielded is a leader or facilitator.”;

6. by replacing the portion of rule 7-1(1) before paragraph (a) by the following:

“Agreement to allocate time

**7-1.** (1) At any time during a sitting, the Leader or the Deputy Leader of the Government may state that the representatives of the recognized parties and recognized parliamentary groups have agreed to allocate a specified number of days or hours either.”;

7. by replacing the portion of rule 7-2(1) before paragraph (a) by the following:

“No agreement to allocate time

**7-2.** (1) At any time during a sitting, the Leader or the Deputy Leader of the Government may state that the representatives of the recognized parties and recognized parliamentary groups have failed to agree to allocate time to conclude an adjourned debate on either.”;

8. by replacing rule 7-3(1)(f) by the following:

“(f) Senators may speak for a maximum of 10 minutes each, provided that a leader or facilitator may speak for up to 30 minutes.”;

9. by replacing rules 9-5(1), (2) and (3) by the following:

“(1) The Speaker shall ask the whips and the designated representatives of the recognized parties and recognized parliamentary groups if there is an agreement on the length of time the bells shall ring.

(2) The time agreed to shall not be more than 60 minutes.

(3) With leave of the Senate, the agreement on the length of the bells shall constitute an order to sound the bells for that length of time.”;



10. by replacing rule 9-10(1) by the following:

“Deferral of standing vote

**9-10.** (1) Except as provided in subsection (5) and elsewhere in these Rules, when a standing vote has been requested on a question that is debatable, a whip or the designated representative of a recognized party or recognized parliamentary group may defer the vote.

*EXCEPTIONS*

*Rule 7-3(1)(h): Procedure for debate on motion to allocate time*

*Rule 7-4(5): Question put on time-allocated order*

*Rule 12-30(7): Deferred vote on report*

*Rule 12-32(3)(e): Procedure in Committee of the Whole*

*Rule 13-6(8): Vote on case of privilege automatically deferred in certain circumstances”;*

11. by replacing rule 9-10(4) by the following:

“Vote deferred to Friday

**9-10.** (4) Except as otherwise provided, if a vote has been deferred to a Friday, a whip or the designated representative of a recognized party or recognized parliamentary group may, at any time during a sitting, further defer the vote to 5:30 p.m. on the next sitting day, provided that if the Senate only meets after 5 p.m. on that day, the vote shall take place immediately before the Orders of the Day.

*EXCEPTIONS*

*Rule 12-30(7): Deferred vote on report*

*Rule 13-6(8): Vote on case of privilege automatically deferred in certain circumstances”;*

12. by replacing rule 12-3(3) by the following:

“Ex officio members

**12-3.(3)** In addition to the membership provided for in subsections (1) and (2), the Leader of the Government, or the Deputy Leader if the Leader is absent, and the leader or facilitator of each recognized party and recognized parliamentary group, or a designate if a leader or facilitator is absent, are ex officio members of all committees except the Standing Committee on Ethics and Conflict of Interest for Senators, the Standing Committee on Audit and Oversight, and the joint committees. The ex officio members of committees have all the rights and obligations of a member of a committee.”;

13. by replacing rule 12-8(2) by the following:

“Service fee proposals

**12-8.** (2) When the Leader or Deputy Leader of the Government tables a service fee proposal, it is deemed referred to the standing or special committee designated by the Leader or Deputy Leader of the Government

following consultations with the leaders and facilitators of the recognized parties and recognized parliamentary groups, or their designates.

*REFERENCE*

*Service Fees Act, subsection 15(1)”;*

14. by replacing rule 12-18(2)(b)(ii) by the following:

“(ii) with the signed consent of the majority of the leaders and facilitators, or their designates, in response to a written request from the chair and deputy chair.”;

15. by replacing rule 12-27(1) by the following:

“Appointment of committee

**12-27.** (1) As soon as practicable at the beginning of each session, the Leader of the Government shall move a motion, seconded by the other leaders and the facilitators, on the membership of the Standing Committee on Ethics and Conflict of Interest for Senators. This motion shall be deemed adopted without debate or vote, and a similar motion shall be moved for any substitutions in the membership of the committee.

*REFERENCE*

*Ethics and Conflict of Interest Code for Senators, subsection 35(4)”;*

16. in Appendix I:

- (a) by replacing the words “(*Porte-parole d’un projet de loi*)” at the end of the definition of “Critic of a bill” by the words “(*Critique d’un projet de loi*)”;
- (b) by deleting the definition “Ordinary procedure for determining duration of bells”; and
- (c) by adding the following new definitions in alphabetical order:

**“Designated representative of a recognized party or a recognized parliamentary group**

The Senator designated from time to time by the leader or facilitator of a recognized party or a recognized parliamentary group without a whip as that group or party’s representative for a purpose or purposes set out in these Rules. (*Représentant désigné d’un parti reconnu ou d’un groupe parlementaire reconnu*)”;

**“Leaders and facilitators**

The Government Leader and the leaders and facilitators of the recognized parties and recognized parliamentary groups (see definitions of “Leader of the Government”, “Leader of the Opposition” and “Leader or facilitator of a recognized party or recognized parliamentary group”). (*Leaders et facilitateurs*)”; and

**“Spokesperson on a bill**

The lead Senator speaking on a bill from each recognized party and recognized parliamentary group, as designated by the leader or facilitator of the party or group in question. (*Porte-parole d'un projet de loi*); and

17. by updating all cross references in the Rules, including the lists of exceptions, accordingly; and

That the *Ethics and Conflict of Interest Code for Senators* be amended by deleting subsection 35(5), and renumbering other subsections and cross-references accordingly.

• (1430)

**ETHICS AND CONFLICT OF INTEREST FOR SENATORS**

COMMITTEE AUTHORIZED TO MEET DURING SITTINGS OF THE SENATE AND HOLD HYBRID OR ENTIRELY VIRTUAL MEETINGS

**Hon. Judith G. Seidman:** Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That, the Standing Committee on Ethics and Conflict of Interest for Senators be authorized:

- (a) for the duration of the current session and notwithstanding rule 12-18(1), to sit even though the Senate may then be sitting; and
- (b) to hold hybrid meetings or to hold meetings entirely by videoconference, notwithstanding any provision of the Rules or usual practice and taking into account the exceptional circumstances of the current pandemic of COVID-19; and

That the provisions of subparagraphs 7 to 10 of the order adopted by the Senate on November 17, 2020, concerning hybrid meetings and meetings entirely by videoconference, apply in relation to any hybrid meetings of the committee or any meetings that are entirely by videoconference.

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

**Hon. Senators:** Agreed.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

[ Senator Tannas ]

• (1440)

COMMITTEE AUTHORIZED TO REFER PAPERS AND EVIDENCE FROM THE FIRST SESSION OF THE FORTY-THIRD PARLIAMENT AND BY THE INTERSESSIONAL AUTHORITY

**Hon. Judith G. Seidman:** Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That the papers and documents received and/or produced by the Standing Committee on Ethics and Conflict of Interest for Senators during the First Session of the Forty-third Parliament, and by the Intersessional Authority be referred to the Standing Committee on Ethics and Conflict of Interest for Senators.

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

**Hon. Senators:** Agreed.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

[*Translation*]

**ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES**

MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTINGS AND ADJOURNMENT OF THE SENATE AND HOLD HYBRID OR ENTIRELY VIRTUAL MEETINGS—LEAVE DENIED

**Hon. Paul J. Massicotte:** Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

That, the Committee on Energy, the Environment and Natural Resources be authorized, for the purposes of its consideration of Bill S-3, An Act to Amend the Offshore Health and Safety Act:

- (a) notwithstanding rule 12-18(1), to sit on December 16 and 17, 2020, even though the Senate may then be sitting;
- (b) until December 18, 2020, and pursuant to rule 12-18(2), to meet during an adjournment of the Senate; and
- (c) to hold meetings entirely by videoconference, notwithstanding any provision of the Rules or usual practice and taking into account the exceptional circumstances of the current pandemic of COVID-19; and

That the provisions of subparagraphs 7 to 10 of the order adopted by the Senate on November 17, 2020, concerning hybrid meetings and meetings entirely by videoconference, apply in relation to any hybrid meetings of the committee or any meetings that are entirely by videoconference.

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

**Some Hon. Senators:** No.

**The Hon. the Acting Speaker:** Leave is not granted.

[English]

## QUESTION PERIOD

### NATURAL RESOURCES

#### CARBON TAX

**Hon. Denise Batters:** Senator Gold, in last fall's election campaign, your Trudeau government promised they would cap the carbon tax at \$50 a tonne in 2022. In February, you repeated that promise here, stating:

. . . I've been advised the government remains committed to the pricing plan . . . to a maximum of \$50 per tonne from the year 2022 onwards.

Now the Trudeau government has revealed they will hike the carbon tax by 240%, to a whopping \$170 per tonne by 2030. To dodge parliamentary accountability, Prime Minister Trudeau announced this right after the House of Commons adjourned last week — another massive broken Liberal promise delivered just in time for Christmas. How can Canadians trust your government when it continually betrays them?

**Hon. Marc Gold (Government Representative in the Senate):** Senator, thank you for your question. I think the answer to the question is that Canadians can trust this government to deliver on its promise to be serious about fighting climate change. This government's announcement builds on the Pan-Canadian Framework on Clean Growth and Climate Change. It puts real meat on the bones, if you will allow that expression, to reach its 2030 Paris targets and eventually get to a net-zero economy in 2050, which is a goal that many leaders and citizens support.

• (1450)

The carbon tax will increase significantly, by \$15 per tonne each year until it reaches \$170 per tonne by 2030. The plan also spends \$15 billion in greenhouse gas reduction. Importantly, as I mentioned in this chamber, when and as the carbon tax increases, Canadians will be receiving quarterly rebates estimated to, in many cases and provinces, make Canadians better off in their pockets than they would be.

This is a concrete example of how Canada will move ahead to remain and become more competitive in a world that is increasingly focused on new technological and greener solutions.

**Senator Batters:** Senator Gold, Western Canadians have had a terrible year. Right after a devastating oil downturn, exacerbated by your Trudeau government's empty energy policies, a pandemic and economic crisis hit. A huge number of westerners have lost their jobs and are struggling just to make ends meet. A skyrocketing carbon tax will drive up the cost of everything, from gas to groceries, from home heating to the cost of flights.

For farmers in my province of Saskatchewan, an increased carbon tax will hike their cost of doing business because it will cost more to dry grain and carry their agricultural products to market. Meanwhile, increased trucking prices also mean higher prices for consumer products, and farmers are squeezed at both ends.

Senator Gold, on Monday you said, ". . . there will be a steady increase in the carbon tax until we reach our targets." What is your target; sticking it to the West?

**Senator Gold:** Thank you for your question, senator. We all know, and the government knows as well, that it has been a difficult year for all Canadians, but certainly those in the agricultural sector. You are right to point out the challenges that grain farmers have experienced and will continue to experience because of the cost of drying grain, and the government is aware of this.

This is not a question of sticking it to the West. On the contrary, this is a question of supporting industries in the West and everywhere else to transition, as many innovative companies in Alberta, in your province and across this country aspire to do.

With regard to the West, notwithstanding the magnitude of the increase in carbon taxes — an approach supported by economists around the world, conservative and more progressive economists alike — it is estimated that by the time 2030 rolls around, which is part of the way towards the internationally set 2050 targets, a family of four in Alberta will get about \$3,240 in rebates. So this is designed to help those families cushion whatever increases there are, in prices at the pump.

### HEALTH

#### SUICIDE PREVENTION

**Hon. Yonah Martin (Deputy Leader of the Opposition):** Honourable senators, my question for the government leader in the Senate concerns a motion which passed in the other place unanimously last week. It was brought forward by B.C. Member of Parliament Todd Doherty and calls on the government to establish a national suicide prevention hotline which consolidates all suicide crisis numbers into three digits: 988.

Leader, I know that the Minister of Health has said she likes this idea. However, as Senator Frum reminded us last week, the current government supported a motion in 2018 to immediately

designate the IRGC as a terrorist entity in Canada and that has yet to take place. It's clear that we will need to keep pressing the government to make 988 a reality as well.

Senator Gold, when does your government expect to come forward with a plan and timetable for the implementation of a 988 national suicide hotline?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for your question. I don't know when the plan will be coming forward, but I will inquire and certainly report back.

The importance of providing resources to those who find themselves tragically contemplating suicide, or those who fear that loved ones are, could not be more important. Thank you for raising this.

**Senator Martin:** Thank you. This question is so important while we are talking about MAID. We want to prevent the kinds of suicides that we are all very much concerned about.

The work to establish a 988 hotline will require close collaboration with our provinces and territories. Do you know whether the Government of Canada has engaged with provinces and territories in this regard?

**Senator Gold:** I don't know whether they have, but I can assure you that when they move forward with this initiative, if that is in fact what the government does — I will inquire — they will collaborate with the provinces and territories, as you'd expect them to and as they must.

[Translation]

## FINANCE

### BANK OF CANADA'S MANDATE

**Hon. Diane Bellemare:** Since I will not be asking a follow-up question, I will take the liberty of contextualizing my question, which builds on the question I asked last week. It has to do with the Bank of Canada.

I haven't asked the Leader of the Government very many questions in the past for all sorts of reasons. However, today, I'm trying to see how useful Question Period is and whether the Government Representative can answer my question. Even though I doubt he'll be able to answer right away, I hope that he will be able to do so at a later date.

The question comes from Mario Seccareccia, a professor emeritus who, in May 2018, sent former minister of finance Bill Morneau a letter signed by more than 60 Canadian economists. In that letter, the minister is asked to review the Bank of Canada Act, which was enacted in 1934 and has been amended several times since.

The signatories to the letter asked the government to clarify the mandate of the Bank of Canada Act so that it can ensure price stability and pursue the goal of full employment in Canada. They also asked that the five-year agreement process in place since

[ Senator Martin ]

1991 be incorporated into the act. Finally, they asked that transparency measures regarding the conduct of monetary policy be included in the act.

Leader, Mr. Seccareccia asked me to ask you whether the current Minister of Finance intends to follow up on that letter. Even though a delegation from the group of 60 economists has already explained the scope of the letter to the minister, the minister has not sent a written response. Will the Minister of Finance follow in the footsteps of New Zealand, which included in its legislation —

**The Hon. the Acting Speaker:** I would like to remind honourable senators that this time is for questions, not debate. Senator Bellemare, can you ask your question more succinctly?

**Senator Bellemare:** Here's my question: Will the Minister of Finance act on that letter?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you, Senator Bellemare. I'll look into it and keep you posted. Would you please send me a copy of the letter so I can familiarize myself with the details and look into it?

[English]

## BUSINESS OF THE SENATE

### STATUS OF ANSWERS TO WRITTEN QUESTIONS

**Hon. Percy E. Downe:** Senator Gold, yesterday you indicated how much you have come to appreciate Question Period in the Senate as a means of holding the government to account. I wonder if you also have the same appreciation for written questions, which, unfortunately, have gone unanswered for a very long time in the Senate.

• (1500)

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for your question, senator. The short answer is yes. I have respect for the opportunity in this place for senators to pose questions to the government and, might I add, to the chairs of committees, because I like to spread the pleasure. I don't want to be selfish.

I do my best to request the answer when I don't have it, and I do my best to follow up with the government so that answers come back as quickly as possible. "As quickly as possible," for those with experience in government, does not necessarily mean as quickly as we would like or as I would like. However, I am doing my best, and we are making progress in getting responses back, as a recent flurry of responses indicates.

**Senator Downe:** In the last Parliament, over 85% of the written questions were not answered before we prorogued. These questions were asked by senators because, in most cases, Canadians have asked them to find out the information. We obviously want to give back to those Canadians who inquired about various situations that they are interested in that the government is undertaking. It is very important to get these responses.

Given that your predecessor took to heart the commitment the federal Liberal Party made in the 2015 election to be more transparent and open, and when Senator Harder was in your position, he tried to make sure that the questions were answered within 40 sitting days in most cases, greatly appreciated by all the senators. Now we seem to have reverted to the previous situation in the Senate — waiting months and months for answers. Could you inquire of your staff if they could speed up the answers, so we could have some this week before we rise?

**Senator Gold:** Senator, thank you for your question. I think what is implicit in your question is an understanding of — and I ascribe to it — gratitude for the hard work that my predecessor Senator Harder did. I'm trying very much to live up to the standards that he set, so I will certainly continue to make best efforts.

I am making no excuses for whatever delays there may be for the requests that you've made. Our officials, who are responsible for providing these actions, have been somewhat preoccupied and busy, not only in dealing with the pandemic, but also in responding to requests for documentation in the other place.

All of that said, we will use our best efforts to respond, and that's my commitment to you.

## FISHERIES AND OCEANS

### HERITAGE LIGHTHOUSE PROTECTION

**Hon. Patricia Bovey:** Honourable senators, my question is for the representative of the government. Senator Gold, first I want to thank the government for opening up some funding for small regional heritage sites that are absolutely destitute during COVID-19. A few thousand dollars made a huge difference.

However, there is one part of our *patrimoine* that was left out — our lighthouses. As you know, I inherited Senator Greene Raine's lighthouse file. I have kayaked to some working ones and climbed some decommissioned ones that are under restoration. The latter are amazing pieces of Canadian history with an important future role. They preserve our heritage and are beacons for the future, participating in scientific ocean whale research and projects on shipping and effects on marine life and more, in keeping with Bill C-55. One on Vancouver Island has installed solar panels, which means they have no hydro bills.

These organizations raise their own money. They have some provincial assistance and in the case of Sheringham Point on Vancouver Island, they have received federal support with hydrophones and monitoring equipment from DFO, no cameras and no support for their work for the work of the federal government itself. I know that's the case for many.

Senator Gold, how can these heritage lighthouses access federal support, which, in my view, should involve Heritage, Fisheries and Oceans, and Innovation, Science and Economic Development, so they can be engaged to the full with the much-needed scientific research going forward?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you very much for your question, senator. I became very aware of the importance of our lighthouses when I served as deputy chair of this chamber's Standing Senate Committee on Fisheries and Oceans. The work of Senator Greene Raine in this regard really was an inspiration to all of us.

The government advised me that Fisheries and Oceans and the Canadian Coast Guard will continue to work to identify responsible new owners for those cherished lighthouses that you mentioned, and certainly those that were nominated under the Heritage Lighthouse Protection Act. Parks Canada Historic Sites and Monuments Board will continue to collaborate with DFO to facilitate the designation of as many heritage lighthouses as possible to ensure the protection of their heritage character for the benefit and enjoyment of generations to come.

Currently, Parks Canada administers 11 heritage lighthouses and includes 6 national historic sites. They're used for various program requirements, including interpretation, visitor facilities and, of course, the protection of species at risk.

In October, the minister responsible for Parks Canada announced the designation of Cape George Lighthouse, Bras d'Or Lake, in St. Peter's, Nova Scotia; and Annandale Range Rear Lighthouse in Annandale, Prince Edward Island as heritage lighthouses under the act. With these new designations, a total of 102 lighthouses in eight provinces have now been protected under the Heritage Lighthouse Protection Act, so the government is acting. Thank you for your question.

**Senator Bovey:** I believe it would be beneficial to the monitoring and research of our oceans and lakes if we can utilize these existing assets to further the research. The University of Aberdeen has used lighthouses as field stations to further its research on the effects of man-made and natural environmental changes on marine mammals and seabirds, amongst other areas of research. Lighthouse stations along the B.C. coast have measured ocean temperature for the past 100 years, adding to our understanding of warming oceans.

Senator Gold, I wonder if you could make inquiries as to what kind of funding is available to enable lighthouses as centres of scientific research, coupled with their, as you say, very important work of heritage. There are gaps, and we could fill those gaps very effectively if you could give some indication of assistance that they might expect.

**Senator Gold:** Senator, I will certainly make inquiries, but you will allow me to observe that scientific research at any site requires not only federal government funds for the physical space but also requires the engagement and planning of the community of researchers and scholars. So in addition to the inquiries I would make, I encourage those who wish to see these sites used for those purposes to seek their partnerships with the local academic and other research communities so a plan can be brought forward that involves the research being proposed and the suitability of the site for that research. That would certainly make a stronger case in any given funding application or inquiry.

[*Translation*]

## NATIONAL DEFENCE

### CANADA-CHINA RELATIONS

**Hon. Pierre-Hugues Boisvenu:** My question is for the Government Representative in the Senate.

Senator Gold, as deputy chair of the Standing Senate Committee on National Security and Defence, I was deeply concerned by questions that my colleagues, Senator Housakos and Senator Ngo, asked you last week about the Chinese regime's interference in Canada's internal affairs. We know General Vance opposed the Canada-China joint military exercises that were supposed to have taken place in 2019.

We also know that the Prime Minister's Office interfered in that decision. The Prime Minister himself opposed General Vance's decision to cancel the operation.

My question is the same as my colleagues': Why is the Prime Minister so accommodating and naive in his approach to a government we should all be wary of, especially in the context of military operations?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for your question, senator.

The government is not at all naive about the issues that have been dominating our difficult relationship with China recently. As I've explained many times in this chamber, our relationship is very complicated. Perhaps I repeat that too much and people are getting tired of hearing me say it all the time. However, we must not forget the human issues, among others, that are involved in any approach we take with China.

• (1510)

Canada continues to work, not only on its own, but also with its allies, to keep Canadians safe as well as to protect our domestic affairs against interference and against the risks posed by any country.

**Senator Boisvenu:** If the government is not naive, then it's definitely being highly imprudent. As you know, the U.S. Army and the Canadian Armed Forces make up NORAD. When foreign forces, like China, are invited to conduct operations on Canadian soil, there is a risk that those forces could gain access to

privileged information about the U.S. Army. However, in this case, we know that the U.S. government intervened to oppose such practices.

How can the government jeopardize a relationship as vital as the one between Canada and the United States, one that is vital to protecting Canadian soil?

**Senator Gold:** Thank you for your question. I don't agree with the claim that Canada is jeopardizing its relationship with the United States. Just look at the headlines lately, and you'll see that Canada and the United States are working together in several areas when it comes to our relations with China and at great cost to Canada as regards the two Canadian hostages. Canada and the United States enjoy an extremely profitable alliance, and we will continue to work together to defend our common interests.

[*English*]

## STATUS OF WOMEN

### NATIONAL CHILD CARE PROGRAM

**Hon. Kim Pate:** My question is for Senator Gold, the Government Representative in the Senate. As you know, this month marks the fiftieth anniversary of the Report of the Royal Commission on the Status of Women.

In committing to implement a national childcare program as part of the COVID-19 response and recovery, the government has reiterated how the Royal Commission underscored the necessity of childcare services for women's social and economic equality. The Royal Commission also proposed a form of guaranteed basic liveable income as another key part of upholding women's equality and recognizing their contributions to Canada's society and economy through both paid and unpaid labour.

Given the commitment in the Speech from the Throne, as the government meets with provincial and territorial counterparts to coordinate the implementation of a national childcare program, what commitments envisioned by the Royal Commission will be made to ensure that these services work in tandem with vital and adequate national income supports for those who are most marginalized?

**Hon. Marc Gold (Government Representative in the Senate):** Honourable senator, thank you for your question and for your ongoing advocacy on these important issues.

The relationships and conversations between this government and its provincial counterparts touching upon issues like child care and income support for Canadians, their families and children are ongoing. The government remains committed to working with its provincial partners, whose jurisdiction is exclusive in so many areas upon which your comments touched. It will require some engagement and consensus between federal, provincial and territorial governments before any concrete national plan could be envisaged. But that work is the bread and butter of federal-provincial relations, the importance of which has been highlighted during this crisis but predated it and will continue even beyond it.

## FINANCE

### DISABILITY BENEFITS

**Hon. Kim Pate:** Senator Gold, given the commitment in the Speech from the Throne and the indication when Minister Hajdu was here around the value of the national guidelines that have been put in place during COVID-19; and given the commitment also to people with disabilities, the issues that we're dealing with now with Bill C-7 and in light of the Ontario government signalling it may reduce rights of those receiving disability benefits, what steps is the government taking in particular, then, to ensure that adequate supports are in place for those living with disabilities who are living under the poverty line?

**Hon. Marc Gold (Government Representative in the Senate):** Again, thank you, senator. The government is working with its counterparts to find solutions and to do what we can to address these important issues. Again, I fear that I repeat myself when I say that issues of basic income are matters that need to be studied more thoroughly and experimented with more thoroughly in this country. It is regrettable that pilot projects were not continued in certain areas, which would have given us more information. But this is not something that the federal government can or should do unilaterally.

As we know from reading the newspapers, even the articulation of a desire for national standards has precipitated, from my province and others, a very strong, equivocal and negative reaction. This is Canadian federalism in what is perhaps its most frustrating aspect, especially as we look for national solutions to matters that have been and remain outside the scope of federal jurisdiction, beyond the ability to provide funding through various programs and mechanisms through the provinces.

## INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT

### SCIENTIFIC RESEARCH

**Hon. Douglas Black:** Senator Gold, my question concerns science. I think we can all agree that science is leading us out of the darkness of COVID. We can all see that science matters more than ever. Senator Gold, what we all know is that the role of government in supporting research in science is fundamental.

In countries where science is aggressively supported, such as Germany, the U.K. and the U.S., that's where science breakthroughs are occurring, where many of the best scientists are being attracted to and it is where the private sector is making investments in science beside government. We have seen this vividly with the development and manufacturing of COVID vaccines.

Unfortunately, Canada is a different story. We have no Minister of Science. Your government did away with that position in the last cabinet shuffle. Indeed, what we have is underfunding of science in Canada as has recently been pointed out by your Industry Strategy Council.

Senator Gold, will your government commit in the next budget to raising the allocation of funding for science from 1.5% to 2% of GDP, as is the case with our G7 partners?

**Hon. Marc Gold (Government Representative in the Senate):** Honourable senator, thank you for your question and for underlining the importance of science and the support for science. As someone who spent much of my professional life in the university community, and indeed in the research community in some respects, I share with you the importance of Canada having a robust and flourishing scientific culture.

This government has made significant investments in that area through universities, research networks and the like and it will continue to do so. I am not in a position to make a commitment as to what will appear in the budget. Once the budget lockdown is over, we will all have details. I have every expectation that it will be a budget that will both please many Canadians and attract vigorous comments in this place.

[Translation]

**The Hon. the Acting Speaker:** Honourable senators, unfortunately the time for Question Period has expired.

• (1520)

[English]

## 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. Donald Neil Plett (Leader of the Opposition):** Honourable senators, I rise today to add my voice to Bill C-7, a bill that seeks to expand the assisted suicide regime in Canada.

Colleagues, it is a rare opportunity to stand in either house of Parliament to debate legislation that determines the circumstances in which people live or die. I sincerely hope that each of us feels the weight of the decisions we make with respect

to this bill, and I hope that no one will feel compelled to bow to the pressure that the government is putting on the Senate as a result of their self-imposed time crunch.

As many of you will remember, I actively participated in the debates on Bill C-14 and proposed amendments to enhance safeguards. I expressed then that I was opposed to any form of assisted suicide. However, our vote on Bill C-14 was not a vote to legalize assisted suicide. That decision was imposed upon Parliament by the Supreme Court of Canada. The vote on Bill C-14 was a vote on parameters and safeguards.

While there were many disagreements as we strove to strike the right balance, I have said many times that those debates were the most compassionate and respectful that I have been a part of in this chamber. There seemed to be an understanding that each of us was coming from a place of compassion, even when we disagreed fervently. Sadly, the debate on this bill took a negative turn in the House of Commons when Minister Lametti dismissed the expression of dissenting opinions as partisan filibustering and an out-of-control “religious right.” I am grateful that this chamber has demonstrated empathy and respect for one another’s opinions as we deliberate these difficult issues.

Today, colleagues, we are not here because of a Supreme Court of Canada ruling. We are here because of a Quebec Superior Court ruling, made in one province by one judge — not the Supreme Court, not even an appellate court. The Trudeau government made a highly unusual and, in fact, unprecedented decision not to defend its own legislation, not to appeal this decision, and to instead use this as an opportunity to broaden Canada’s assisted suicide regime far beyond the requirements as set out by *Truchon*.

However, I will defer to the esteemed legal scholars in this chamber on matters of constitutionality. We are fortunate to have the insights of Senators Carignan, Batters and Gold — Senator Gold gave a very passionate speech yesterday — as well as Senators Cotter and Dalphond, and Senator Pate yesterday, speaking as a lawyer. This is just to name a few, colleagues. There are many more.

Our respectful debate went a little off the rails on Monday night, when my good friend Senator Harder suggested — after not being able to defend his claims that Conservative MPs were filibustering — that my question was trying to distract from the constitutional issues with this bill. I am not sure why Senator Harder believes that I would be trying to distract this chamber from flaws in a Liberal government bill, however, I can assure you all that I am not. I have many serious concerns with this legislation, which I will outline, and I think people like Senator Harder and I should leave the constitutional analysis to the experts.

Prior to my participation in the committee hearings on Bill C-7, I knew of the shocking decision of the government to not defend its own legislation. I also knew that existing safeguards had been removed, seemingly without rationale, and certainly before Parliament has had a chance to conduct the five-year review on our existing regime.

I am happy that Senator Gold has suggested that we start such a review in the Senate, since the House clearly cannot get their act together. Personally, I was opposed to assisted suicide expansion of any sort, and still am, however, I had no idea how frighteningly flawed this legislation was until I listened to the 81 witnesses who testified over the course of the week. Throughout my entire time in the Senate, I do not believe we have ever had a bill with such widespread disapproval — both from experts and those most profoundly impacted.

Each day, colleagues, seemed to paint a grimmer picture of where we are and where we would end up if this bill is passed in its present form.

We heard from international experts that this legislation will, in fact, make Canada the most permissive assisted dying regime in the world. Dr. Trudo Lemmens, an international health law expert, told the committee that under this bill, unlike all other jurisdictions, assisted suicide will not be treated as a last-resort option. This concern was raised numerous times throughout the committee’s study.

Every other jurisdiction in the world requires that all treatment options be made available and explored first, for people who may have years or decades of life left. As Dr. Lemmens told the committee:

This alters health care providers’ professional and legal obligations related to the standard of care. Patients cannot insist that physicians actively provide something that violates the professional standard of care and that is not medically indicated. Making access to some interventions conditional on trying other conditions first is not unusual and is a most minimal requirement when the active intervention required from physicians results in death. By only requiring that people have to consider all options, the bill fails to provide the protection that takes into consideration the uniqueness of the health care provider-patient relationship, the key supportive role of providers and the radical nature of MAID.

Under this proposed legislation, doctors have warned us that we are placing assisted suicide as simply part of a range of good medical care options. Doctors may be required to introduce assisted suicide to patients alongside all other therapeutic options. However, this is not just another option. This is the final option. This, colleagues, is irreversible.

We were warned by some of the experts most familiar with international assisted suicide regimes to proceed with great caution, especially in the context of one of the most troubling clauses of Bill C-7.

In cases in which natural death has been deemed to be reasonably foreseeable, practitioners would now be allowed to provide assisted suicide through advance consent, with no requirement for final consent if the practitioner has deemed that the individual has lost such capacity. As an apparent attempt at a safeguard, the bill stipulates that in cases where the person demonstrates, “by words, sounds or gestures, refusal or resistance to the administration of the substance to cause their death,” the advance consent arrangement would be invalidated.



However, the bill also states:

For greater certainty, involuntary words, sounds or gestures made in response to contact do not constitute a demonstration of refusal or resistance for the purposes of paragraph (3.2)(c).

There is no way this clause can be interpreted as anything but highly subjective — and, in my view, dangerously so.

The committee heard about a case of a woman with dementia in the Netherlands. While not unconscious, she was deemed incapable of decision making. She was provided medication to make her sleepy. Then an injection was provided and she physically resisted. The family helped the doctor to hold the patient down. She was ultimately injected with the lethal substance and died. I find this deeply disturbing.

• (1530)

Witnesses expressed that if this advance consent practice is to be permitted in Canada, any physical resistance to the ending of a person's life should put an immediate halt to the process.

Other jurisdictions have also sought to address the power imbalance that exists between physicians and patients by ensuring that all discussions about MAID are exclusively patient led. Dr. Ramona Coelho provided insight about the profound power and influence a physician has over a patient, especially a vulnerable patient with a lack of support, education or resources. It was described as a sacred trust for some populations. The mere mention of assisted suicide as an option to a vulnerable patient may be the only nudge they need.

We heard, colleagues, about Roger Foley, a man from London, Ontario, who has been diagnosed with a neurological disorder that limits his ability to move his arms and legs. While in the hospital for years, he repeatedly asked for help in finding adequate assisted home care. Instead, he was offered assisted suicide on at least four occasions by medical practitioners, when he demonstrated absolutely no interest in dying. He recorded one such incident which received widespread media attention. This incident even caught the attention of the UN Special Rapporteur on the rights of persons with disabilities, who ultimately wrote a sternly worded letter expressing great concern and strong recommendations.

Other jurisdictions have acknowledged this power imbalance and the risk of coercion that exists when physicians are offering assisted suicide to a vulnerable patient who has made no such request. Victoria, Australia, for example, enshrined the requirement into the legislation that discussion around assisted suicide must be patient led.

When I raised this with the Minister of Employment, Workforce Development and Disability Inclusion, she seemed as uncomfortable with this lack of protection as I am. She said she has grave concerns about the way Roger Foley was treated and offered that he is not alone. She said this conversation is not off the table.

When I asked if she would support an amendment to that effect, she said she would certainly be open to that. While I was pleased to hear that, I found it surprising that this amendment was in fact proposed in the other place at committee, and Liberal MPs had clearly received instructions to vote it down.

Colleagues, the idea that we would be opening this regime further and expanding assisted suicide to those with disabilities and chronic illness who are not approaching end of life before we have taken action to prevent coercion, such as in the case of Roger Foley, is preposterous.

Honourable senators, as you know, Bill C-7 expands access to assisted suicide to Canadians with disabilities who are not approaching end of life. The response from the disability community has been powerful and staggering and yet ignored by the government. Every single national disability organization in the country is opposed to this bill.

In fact, 72 organizations that serve Canadians with disabilities signed a public letter urging the government to appeal the *Truchon* decision. They gave several reasons why a failure to appeal would be disastrous for the disability community, including that the decision:

. . . may entrench stereotypes and exacerbate stigma for Canadians with disabilities, contributing to the adversity and oppression experienced by this vulnerable group.

As the executive vice-president of Inclusion Canada, Krista Carr said, "Our biggest fear has always been that having a disability would become an acceptable reason for state-provided suicide." She continued, "Bill C-7 is our worst nightmare."

The disability community is perplexed as to why the government would move forward with carving out one Charter-protected group, namely, those living with a disability, and offer them assisted suicide when they are not approaching end of life. They argue there are other disenfranchised groups that are discriminated against and also experience intolerable suffering. We know that suicide is more prevalent amongst those who experience systemic discrimination or societal devaluation, and thus prevention must be our primary focus.

Ms. Carr summed up the grave concerns of Canada's disability community when she said:

Including disability as a condition warranting assisted suicide equates to declaring some lives not worth living — a historically horrific premise with consequences that should terrify us all and clearly terrifies the disability community, including their families.

We know that feelings of suicide are powerful. Yet, as suicide prevention experts said, these feelings are often not sustained.

Dr. Leonie Herx from the Canadian Society of Palliative Care Physicians told the committee:

Desire for death and requests for MAID are often expressions of grief, anger, loss and despair as a response to a devastating diagnosis or a change in condition.

This often results in a MAID consult, even before palliative care has been involved.

Dr. Harvey Chochinov's published work in psychiatry and palliative care demonstrates that desire to die in the terminally ill fluctuates and often dissipates within two weeks. Colleagues, it would be irresponsible not to acknowledge that reality.

For example, David Shannon, an Ontario lawyer living with a disability, wrote about this bill in a column recently. He said when he was 18 years old, in his first year of university, he sustained a spinal cord injury in a rugby scrum that resulted in quadriplegia. It took him years to recover. He noted that while he was never suicidal, he knew many people in similar situations who were. He said if this proposed legislation was in place back then, he is sure that some doctor would have offered him the opportunity to die and his life would have been erased. He said:

Some good doctor would have gone to bed that night filled with smug righteousness, and sure she/he had done the right thing. I'm here to tell you this would have been a lie.

Colleagues, when the group most directly impacted by this legislation says, "this is our worst nightmare," we have a problem and we need to listen.

I want to thank the disability community for their advocacy, and I want them to know that they have been heard.

As you know, colleagues, this legislation creates a two-track system with two sets of safeguards, depending on whether death is reasonably foreseeable or whether it is not reasonably foreseeable. There are more stringent safeguards in place when a patient is not approaching the end of life. However, this legislation pre-emptively removes safeguards that were in place under the existing regime. Of course, this is before we have had a five-year parliamentary review as stipulated in Bill C-14 and before there is sufficient data available to justify the elimination of any existing safeguard.

For example, the government has removed the 10-day reflection period in the current regime. This is absolutely unjustifiable. The rationale for reflection periods internationally, whether 10 days or 14 days, came from the renowned, published work of Dr. Harvey Chochinov, referenced earlier, who found that desire to die in the terminally ill fluctuates and often dissipates within two weeks.

• (1540)

When Minister Hajdu was asked about removing this safeguard she stated that often when the formal request is made, this is long after difficult conversations with families and physicians, and that when this decision is finally reached, waiting for an additional 10 days is unnecessarily cruel.

However, the minister is missing the point entirely. We all know that safeguards are not put in place for what is often the case or for the clear, clean-cut cases described by the minister. Safeguards are put in place for the exact opposite purpose — to prevent unnecessary and wrongful deaths in situations where there is a grey area or where an assessing physician may not be

aware of the depressive suicidal ideations of the particular patient and whether those are fleeting. To completely remove any sort of reflection period is entirely irresponsible.

Dr. Harvey Schipper, professor of law and medicine and an expert on MAID, testified about the dangerous road we are on by moving too quickly and without evidence or understood experience down a pathway of immense societal consequence. I asked him about the removal of safeguards, and he said:

Well, I don't think we have the evidence to remove any safeguards.

He noted that, at this point, we have the most trivial data. He continued:

Certainly taking out the waiting period is really, really foolish. It's un-biological.

He also discussed the need to preserve the second independent witness, reminding the committee that we are talking about actively ending someone's life.

Even former Attorney General Jody Wilson-Raybould expressed great concern with the government seemingly ignoring the instruction of the Supreme Court of Canada in the *Carter* decision, both with respect to stringent safeguards and the need for clear consent. The government has clearly abandoned these directives from the Supreme Court by pre-emptively eliminating the most important safeguard and by allowing final consent to be waived.

Colleagues, it should be noted that the removal of these safeguards had absolutely nothing to do with the *Truchon* decision. More alarmingly, the government proposes to remove these safeguards without any sufficient data to justify it.

With the elimination of safeguards and the radical broadening of Canada's assisted suicide regime proposed in this bill, many physicians and practitioners are terrified by the lack of protection for them to legally opt out. Bill C-14 included an unenforceable clause that suggested no practitioner should have to participate in MAID against his or her will. However, we have seen, based on the provincial colleges' interpretation, that this has offered little to no protection for physicians.

This was a common theme throughout the hearings. While some have tried to dismiss this issue as a solely religious concern, it is abundantly clear that this is not the case. Many physicians have ethical concerns with actively participating in an individual's death, especially if they are of the professional opinion that there are other treatment options available. Now, with this being extended to Canadians with a disability who are not approaching end of life, many more physicians are concerned about being ethically and morally compromised.

The biggest misunderstanding in the conscience rights discussion is the idea that physicians should be forced to provide an effective referral. This is based on a misconception about what an effective referral actually is. As the Canadian Medical Association put it so aptly during our discussion on Bill C-14:

. . . a referral is effectively an endorsement of a procedure, and that is morally problematic for many practitioners.

Dr. Ramona Coelho noted the misunderstanding of the concept of referrals among some members of the committee. She explained that a referral is a doctor saying that something is good for their patient and that they are simply passing it on to a specialist to complete the care.

As mentioned earlier, with this legislation putting assisted suicide on an equal footing with other therapeutic treatment options, now more than ever physicians are asking for protection. For those worried about lack of access, please note that Alberta, British Columbia and Manitoba have already put in place robust self-referral mechanisms so that physicians can direct patients who require information about MAID to the appropriate resource. Therefore, there should be no duty whatsoever to refer.

Every doctor we have spoken to is more than willing to provide a phone number or a website so a patient can access the information they require. That is all these practitioners are asking for, colleagues.

We have heard from many who are planning to leave the country or stop practising medicine if this legislation passes as is. One way we can reduce the number of physicians leaving is if we protect them from having to participate in the process. When there is so much disagreement in the medical profession about the ethics of assisted suicide, this seems like a very reasonable ask in a pluralistic society and in the spirit of compromise.

The College of Physicians and Surgeons of Ontario has already jumped the gun by sending out a survey to physicians last week in anticipation of the new legislation. The survey asks for their input with incredibly biased, leading questions, such as: “Should patients be made aware of all of their options for end-of-life care?” or “Should a doctor impede access?”

Many physicians in Ontario are left wondering if this will later be used to reflect the widespread approval of doctors offering assisted suicide to patients, regardless of whether they asked for it or not. There is concern by doctors that this survey indicates that they are doubling down on the duty to provide effective referrals. Colleagues, this makes their simple ask for explicit conscience protections even more pressing.

Again, while some have tried to frame this as a religious freedom issue, that would be missing the point and only accounting for a portion of concerned practitioners. While we did hear this request from organizations representing a variety of faiths, we also heard from bioethicists, family care physicians, psychiatrists and palliative care physicians that a duty to refer against their professional judgment would pose overwhelming distress.

We heard from the Canadian Indigenous Nurses Association about the need for explicit conscience protections for Indigenous nurses and nurse practitioners. They want assurance that they will not have to participate if it is against their judgment or value system to do so. How can we possibly justify expanding this regime so radically without offering basic protection to our physicians and nurses?

Many Indigenous witnesses raised the concept of cultural safety. For example, Marilee Nowgesic, executive director of the Canadian Indigenous Nurses Association, told the committee that under the First Nations and Inuit health branch there are 672 nurses across Canada. The majority of these nurses are working in their home communities, small communities. In her words:

We know that this causes additional problems because then that nurse becomes marked, and that’s why I said there needs to be meaningful protection of the conscious rights of health care workers. Are they going to be punished because they didn’t execute their duty as a nurse? Or will they be punished by the community people for taking a life?

That is why we are trying to say put a pause on this situation until comprehensive consultation can be done.

• (1550)

On that note, colleagues, I hope the Indigenous voices in this chamber will participate in this discussion and offer their insight as to how we can strike a workable balance. This is a concern for many Indigenous practitioners and now, more than ever, we need to ensure the concept of cultural safety is a consideration.

Shamefully, the government did not engage in meaningful consultation with Indigenous peoples. Perhaps if they had, they would have had a better understanding of the serious concerns of the Indigenous communities prior to drafting this legislation. In fact, colleagues, the government did not consult whatsoever with Inuit or Métis, choosing to abandon their duty to consult on the most critical issue we or they will likely ever take part in or vote upon.

When I asked the four Indigenous groups who testified at committee whether, in their view, we must hit pause on this legislation, one of the witnesses said a soft “maybe” and the three of the four, without hesitation, an emphatic “yes, we need to hit pause.”

Perhaps the most common, overarching concern raised by witnesses over the course of our pre-study was that we are not offering most Canadians who qualify for assisted suicide a fair and honest choice between life and death, both in the context of supports for those living with disability or chronic illness and palliative care. In fact, by moving to broaden access to assisted suicide before we improve these systems, we are making it easier to die than to live.

We heard from the Canadian Society of Palliative Care Physicians that “the lack of access to palliative care in Canada is a national tragedy.” They cited a study from November 2020 that examined palliative care involvement in patients requesting assisted suicide and found it to be wholly inadequate. In this

study, two thirds of patients had no community palliative care physician, and 40% had no palliative care involvement prior to requesting death. Without access to high-quality palliative care in a timely manner, patients who are suffering may believe that assisted suicide is their only option.

Colleagues, how can we justify rapidly and profoundly expanding access to assisted suicide before we have offered patients another option? It has been argued in this chamber that these things can happen in tandem. Sure they can, but we know they are not. This was argued by the same people asking for this bill to be passed by Friday. There will be no improvement in access to care for patients by the time this bill receives Royal Assent. It is outrageous and frankly indefensible to offer patients death before we are offering them an opportunity for a reasonable life.

If palliative care was deemed an essential service and adequately funded across the country, Canadians would be presented with a real choice between life and death. Instead, we are moving to make Canada the most radical regime in the world while we are supposed to take comfort in the fact that improving access to care remains a “top priority” for this government. Colleagues, I cannot stress enough how unethical and immoral it is to increase access to assisted suicide before we have guaranteed access to palliative care for any Canadian who requires it.

The committee heard about Canadians who have requested assisted suicide due to loneliness, depression, social deprivation and lack of supports needed for living. We know that COVID-19 has amplified these problems.

Dr. Catherine Frazee, in what I would say was the most heart-wrenching and distressing testimony of the entire study, similarly warned the committee against this proposed expansion, especially given our abysmal existing support systems. She referenced two cases of concern, among many, that have been identified under the current law and, as she put it, under this radically expanded new law.

Many senators did not have the opportunity to hear Dr. Frazee speak. Many of you did, so I’m sorry to repeat this for those of you who did. For those who didn’t, I will tell you this story for the first time. It’s a story of two men that Catherine Frazee talked about.

Archie Rolland was a man with ALS. He had care in a facility that worked well for him. His ALS was very advanced and he required specialized care. Against his will and without his agreement, he was transferred, for cost-saving reasons, to another facility where staff were not trained. For him, the impact was profound. With people untrained in how to care for him in his unique circumstances, he would be left without any means of communication, without any means of controlling the computer, which he used to correspond and communicate with people and to get help when he couldn’t breathe. His life became “a living hell.”

When his mother was there to assist him, he documented all of his suffering with this inadequate care. He pleaded for trained personnel like he had before. If he had not attracted the attention of a reporter from the *Montreal Gazette* who brought his story to light, we would have known nothing about his life or his death.

In the end, Archie Rolland said, “It’s not the ALS that’s killing me; it’s my fight for better care, for decent care.” So he chose MAID. As Dr. Frazee said:

In the current monitoring system we have, he simply shows up as someone who chose MAID, and who was indeed near the end of his life. But that isn’t what he wanted. That isn’t what he chose.

The second case Dr. Frazee brought to our attention was that of Sean Tagert, who also had ALS. He had a wonderfully elaborate setup in his home with his family, where he shared custody of his 12-year-old son, to whom he was devoted. Mr. Tagert required two additional hours of home care per day — two hours, colleagues — and he fought for it with all his might until he continued to be denied the care that he required. He was told he would have to go to an institution and that he could not bring with him the extensive technology that was developed to give his life meaning and value, and he would have to move four hours away from where his son lives. So he wouldn’t be able to see him or spend time with him until the end of his days.

As Dr. Frazee concluded:

So he too chose MAID, and only because he brought it to public attention do we know about it. Otherwise, we would have no idea. He would just be another person who met all the requirements and received an assisted death. But he called the decisions of his local health authority — denying him the care that he needed — he called those decisions “a death sentence.” He didn’t die of ALS. He died of our neglect.

When I asked Dr. Frazee what we can learn from this in the context of Bill C-7, she said:

... the lesson we learned from all this is that even under the current law, which people say is too restrictive and has very extensive safeguards, people are suffering for reasons that are not because of their disabilities or their illnesses. They are suffering from social neglect. We’re not even paying attention to that. If we expand this system — I think this committee surely must now understand, with all the evidence that you’ve heard — that the problem is only going to worsen.

Colleagues, I sincerely hope she’s right. Surely, we must now understand.

• (1600)

However, Minister Lametti has decided to cavalierly dismiss these concerns and rather chalk up the widespread opposition to this bill again to the religious right, who cannot be controlled. Putting aside the offensive characterization of people of faith as a fringe group that needs to be controlled, the minister knows full well that this bill has been condemned by most experts who

testified at committee: physicians, international experts, the disability community, Indigenous organizations, constitutional experts, the former Attorney General who implemented *Carter* and, in fact, members of his own caucus. Instead, he would rather hide this horribly flawed legislation behind blatant mischaracterizations and perpetuate his party's belief that people of faith are to be discounted and dismissed.

The disdain and lack of respect for religious Canadians are, by now, well-established patterns for this government.

My views on this legislation and on everything I vote on in this chamber are truly shaped by my faith, by my upbringing and by my life experiences. Colleagues, I believe that is the case for all of us. Every one of us has deeply held principles and values that have been shaped by our life experiences. Sometimes, that includes our own personal faith.

The significant difference is that I believe Minister Lametti has every right to his opinion, his perspective and his belief. I believe that he should be heard. He, on the other hand, does not reciprocate that belief. I believe wholeheartedly that there can be a variety of valid opinions on this matter and on others, whereas this government has demonstrated that they believe there is a right opinion and a wrong opinion.

Yes, my beliefs have played a significant role in my values and especially my perspective on assisted suicide, and I make no apologies for that.

However, again, we are not debating the legalization of assisted suicide. Minister Lametti is well aware that none of the major issues with this bill are based on religious grounds, and yet he finds an opportunity to insult people of faith. All that faith groups have been advocating for is adequate conscience protections for physicians and medical practitioners. The government has ignored the concerns of Canadians throughout this entire process, and they are now moving forward to implement the minister's personal agenda.

We should remember that Minister Lametti voted against his own government in their response to *Carter* in Bill C-14, as he did not think the bill was permissive enough. The Senate, by contrast, has done an exceptional job of bringing key perspectives forward and examining this bill carefully. Minister Lametti, after blaming the religious right for this time crunch, is now telling the Senate to essentially ignore what we have heard and "really put [our] shoulders to the wheel" and get this bill passed by Friday.

Let's take a look at the timeline, colleagues. I went over this twice with you the other night in my questions, but I will, again, for the record, do it in my speech.

In September 2019, the Quebec Superior Court struck down the clause that death must be reasonably foreseeable. Of course, Minister Lametti did not appeal this decision because, clearly, this was going to be his opportunity to put in place the permissive regime he had always wanted.

The court gave the Trudeau government until March 2020 to revise the law. That is six whole months. Ministers Lametti and Hajdu tabled Bill C-7 in the last week of February, and they were

already running out of time. They asked the court for a four-month extension to July 2020. This letter said that the extension would "give Parliament time to consider and enact proposed amendments."

This extension was granted.

Then, as we got closer to July, the government asked for another extension, this time a six-month extension, citing the pandemic. This extension, again, was granted, bringing the new deadline to December 18, 2020. The government then prorogued Parliament to cover up their own scandal and, as a result, killed their own bill. Then, after Parliament returned, it took them a week and a half to table identical legislation. This happened October 5, 2020, more than two months ago now, colleagues.

They sent this bill to the Senate late last week and publicly called upon us to rush through this life-and-death legislation in a few days. It is truly appalling for a minister to put public pressure on the Senate to rubber-stamp legislation that is fundamentally flawed and, in my view, unpassable. This comes after his previous extension request in which he asked the court to give Parliament time to consider and enact proposed amendments.

The Senate already did a pre-study of this bill in order to accommodate the government's inept time management, and this is now how they respond.

Last Friday, Minister Lametti asked for an extension, yet this time, the request is remarkably shorter, demonstrating, again, his lack of respect for this chamber. He requested an extension only until the end of February, which, in reality, would give the Senate three sitting weeks to debate the bill, study the bill at committee, consider amendments, vote on amendments and send the bill back to the House. I suppose he figures it will not take very long to dismiss all the work of this chamber and reject our amendments, as they have consistently done.

Even with this extension request, the minister says he is still hopeful the Senate will rush this bill through in a few days. In the minister's letter requesting a deadline extension, he states:

While there is a Government Representative in the Senate, there is no Senate caucus affiliated to the party forming government, which makes it difficult to predict the timeline of the bill passing through the Senate.

Essentially, he is saying that the independent senators in this chamber, exercising their independence on this critical legislation, are posing a problem for him for his government's unreasonable timeline. No, minister, the blame for not meeting the deadline does not rest with the independent senators who are simply doing their jobs by scrutinizing this legislation. It also

does not rest with the Conservative MPs who dared to raise on debate at third reading. The blame for another missed deadline lies squarely with this government.

Then the Trudeau government, through Senator Gold, our leader here in the Senate, presents a plan of action. I know he must have had a difficult time doing this, and I appreciate the cooperation we've had even today. However, I will read this, because I think it came from Minister Lametti:

This was the deadline we were given. Monday, we would do second reading. Tuesday, we would finish second reading. We would have a second reading vote and refer it to committee on Tuesday. Wednesday, we would have committee study. Thursday, the committee would report back. Report stage on third reading debate. Friday, third reading debate and vote, and Royal Assent or report to the House with amendments.

I'm not sure where in that time frame there would have been time for any amendments or, indeed, sober second thought.

More importantly, this timeline was a slap in the face to Canadians who have testified, who have been writing to us and calling our offices, advocating for vulnerable Canadians. This chamber has never — and I sincerely hope will never — spent one week debating the circumstances under which Canadians live and die, certainly not after the heart-wrenching testimony we heard from those most affected.

• (1610)

I am very pleased that we have been able, together with the cooperation of the leader in the Senate, to come forward with reasonable timelines.

And we will now not pass this bill at third reading on Friday. In light of this undue pressure from the government, it should be noted that we did get the opinion of constitutional experts on the last day of pre-study. Not one of them believed that it was necessary to proceed with this bill because of the arbitrary deadline imposed by the Quebec Superior Court. They explained exactly what would happen if the law was struck down in Quebec and remained in place in the rest of Canada. Operationally, it would work well, and it would likely lead to an eventual Supreme Court of Canada review, which would be very appropriate given the many ways this bill contravenes the *Carter* decision.

So with all due respect, Minister Lametti, regardless of the response to your extension request, this Senate has no intention of rushing this legislation through this house.

I want to thank Senators Jaffer, Batters, Campbell and Dalphond, and indeed the entire committee, for their work in bringing forward a wide range of witnesses — I have never seen as extensive a committee study and certainly not a pre-study — and for ensuring that this legislation received the thorough pre-study review it deserves.

I also want to thank all of the brave witnesses for their compelling testimonies. You have all enriched our perspective, and we now have a much deeper understanding of what we are being asked to vote on.

Colleagues, typically at second reading I recommend that we pass a bill so that it can undergo further study at committee. However, I have already reviewed it extensively. I struggled to vote in favour of this bill proceeding at any stage. While there are many Canadians who still feel they have been left out of this conversation and who deserve to be heard, this bill is so dangerous that I am eager to put a stop to it at the soonest opportunity.

Colleagues, I look forward to listening to the rest of the debate. My caucus colleagues and I, of course, will still consider how we will vote at second reading. Thank you very much for your time.

**Some Hon. Senators:** Hear, hear!

**Hon. Jim Munson:** Would the honourable senator take a question?

**Senator Plett:** Certainly, Senator Munson.

**Senator Munson:** Thank you, senator, for your passionate speech. I certainly share some of your concerns.

As in 2016, some of us are having difficulty dealing with the sensitive issue. It puts me in a bit of a quandary, because I really believe in the concept of dying with dignity, and what has taken place thus far for those who have died with dignity. But I also believe in living with dignity for those who are disabled, so I am in a bit of a quandary. I've been listening to many learned speeches here today, and we'll hear a lot more. Here is the question I have for you. You did say what you thought the government should do in terms of palliative care, more programs and so on, but we are the upper chamber, and it will get to amendment time, and amendments will go to the other side. The bill will probably be amended; it certainly sounds that way. And it gets there, and the last time it got there the amendment was defeated. We acquiesced, as the upper chamber, to what took place in the other place.

How far do you think this chamber should go in terms of exercising its duty? It is doing its duty right now in terms of listening to everybody who spoke: the witnesses, 80-odd groups and organizations. Who do you think still has the final say, this body or the elected body?

**Senator Plett:** First of all, Senator Munson, let me concur with the statement about needing to find a way to make sure that people live with dignity. That should be our first concern. That, however, is not the question you asked, but I wanted to reiterate that. Palliative care should be an option. My dad got great palliative care.

How far should we go? We should amend where we see flaws. We had 81 witnesses, Senator Munson. I don't think we had one that said this bill was good. That included the minister of disabilities. I'm not sure if Ministers Lametti and Hajdu were

part of the 81, but if they were, well of course they supported the bill. But out of the rest, nobody supported this bill, and it was a range of witnesses.

So we will have amendments, and I think the chamber has a pretty good idea of where I would be wanting to bring forward amendments. I believe we have a duty as well to Canadians. Canadians are telling us this is a flawed bill. I have always believed, Senator Munson, that first and foremost it's our duty, if we see flaws in legislation, to try to amend it.

**The Hon. the Acting Speaker:** Senator Plett, carry on, please.

**Senator Plett:** I lost my train of thought.

We should amend legislation. We should try to improve legislation. I have always believed that. Our first and foremost objective should not be to simply vote against. I would like to. You said we acquiesced last time. I didn't. I think I voted against it right to the end. But, of course, I can stand on my soapbox and say that because I was in the opposition then, and I'm in the opposition now.

Senator Munson, I don't think this bill can be fixed in such a way that I will vote in favour of it when it comes to third reading. I really don't believe that, but I shouldn't judge that. I will vote in favour of certain amendments. But I believe that we have a duty to Canadians. This is not a money bill. This is not a bill where the government will fall. If they bring us a bill that is as deeply flawed as what we have heard from these witnesses — and the committee will have meetings again, they will hear more witnesses. They will come to us with a report. But I heard members on the committee say that we should not move this bill any further. We should kill it now. I'm not sure that I support that, but I do support the amendments.

It is a question that I ask myself every day, Senator. I'm not an elected senator. I'm an appointed senator. How far should we go? On a life-and-death situation, Senator Munson, I believe we should go all the way.

**Senator Munson:** Thank you for that. You were in a real good train of thought just before that minor interruption, wherever that came from — someone's darling somewhere. But you were there. You did answer the question and answered it well.

You talked about life and death. This bill is dealing with just that. There has been a deadline, and that will be delayed. We won't be dealing with this in terms of the committee and voting until the middle of February. We know that. But when we talk about life and death, it's real and it's happening every day. So with this bill, in its process and as it's being taken along — some people would say being dragged — we're doing our duty. Is it right for us, though, with the amendments, once they went to the other side and came back, that Ping-Pong began? I have not seen this in the Senate and I've been here 17 years. Is that doing our duty if we move it back and forth between the House and this chamber?

**Senator Plett:** We sent it back once last time if I recall correctly. Then it came back again, and we gave in at that point. So I think there is certainly precedent that we have sent it back. I'm sure, before your time and mine, there must have been other

times. But, Senator Munson, there will not come a time when I will vote for a bill that takes out the safeguards that they have taken out, which will allow situations that we had with Roger Foley and John Taggart, with people taking their lives rather than offering them dignity to live. I'm sorry, there will not come a time when I give in to that and vote in favour of it. I don't care how often we have to send it back. There are safeguards that have been taken out of this bill. I respect everybody's opinion in this chamber. We heard about safeguards from Senator Pate yesterday, from Senator Miville-Dechéne and others. If those safeguards are not in there, I will never vote for this bill.

• (1620)

**Hon. Denise Batters:** Senator Plett, will you take a question?

**Senator Plett:** Absolutely.

**Senator Batters:** Senator Plett, you had the opportunity and were a very engaged senator as you participated in many meetings of the Senate Legal Committee at the pre-study held three weeks ago. There was a powerful moment when you asked a panel of witnesses from the Indigenous community whether the government should “hit pause” on Bill C-7. My recollection — and you referenced this in your speech — is that three of the four witnesses said “yes, hit pause,” and the other witness, I think, said “maybe.”

This was largely due to the government's glaring lack of consultation with the Indigenous community. I was wondering if you could please tell us a bit more about that issue, particularly given that this is such a gravely important life-and-death issue.

**Senator Plett:** Thank you, Senator Batters. I have to be careful here that I don't do what I did last night, but I don't like speaking directly to somebody behind me without looking at them.

Senator Batters, you are absolutely right. We want to talk about this bill and not the government's general track record, but there has been a lack of consultation with Indigenous communities for sure by this government, and not just on this legislation. Not only was there a lack of consultation with the Inuit and Métis communities, there was no consultation. You are absolutely right; the main focus that these four Indigenous witnesses had was that they were upset and disturbed about the lack of consultation. And I need to tell you, the fourth witness — and I don't want to put words in her mouth, she seemed uncertain — was as adamant about the lack of consultation as the other three. I think it is shameful when a large group of people like all the Inuit and all the Métis people in our country have not been consulted at all.

**Senator Batters:** Senator Plett, one of the many important witnesses who participated in the Legal Committee pre-study was Dr. Ramona Coelho, a primary care physician to many patients with disabilities. She noted that patients who are vulnerable may

interpret a doctor raising the option of assisted suicide not so much as a choice for them but as an instruction. She testified saying this:

... they're hearing it as an instruction to them and not in the same shared decision making that a well-off autonomous person might. The fragility there, the insecurity there and then the suggestion on top can push them to confirm that, yes, my life is not worth living. It's very dangerous.

Senator Plett, I know you questioned a number of witnesses about this particular issue, including Minister Qualtrough, that an assisted suicide request should be patient-initiated, not something to be brought up, even as an option, by the medical practitioner involved. Could you please tell us why you think that is such an important issue?

**Senator Plett:** Thank you. Indeed, one of my largest concerns is about coercion. For Roger Foley, it was four times. He never asked for it, and four times it was suggested to him. I think we can all put ourselves in Roger Foley's shoes. Well, maybe we can't. But if we're handicapped, we cannot help ourselves, we are dependent on others, and a physician we respect is suggesting that maybe we are a bit of a drag on society and maybe society would be better off without us.

We can take this away from the disability community and into the elder community. I've shared stories about my mother; 92 years old. She is taking up a room. If somebody started encouraging her saying, "You know, Mrs. Plett, you're taking up a lot of space here that could be much better used by others," I think the disabled people feel exactly the same way. They need to be encouraged, and they need to be shown and built up into how much value they have: their wisdom and their knowledge. They need encouragement.

Assisted suicide should always be patient-led. It should never be suggested by anybody. Nobody, whether it's a family member or a physician. It should be something that a patient sincerely wants. Thank you for the question.

**Hon. Ratna Omidvar:** Will Senator Plett take a question, please?

**Senator Plett:** Yes, certainly.

**Senator Omidvar:** Thank you, senator. I want to concentrate on your remarks related to people with disabilities. I hear what you have said, and I have read and heard the testimony of Catherine Frazee and other people with disabilities, and I have a lot of sympathy for that position. I believe, as Senator Munson said, we should give them every opportunity to live with dignity. That's an important point.

However, I would like you to respond to the perspective of Nicole Gladu, who has a disability and was one of the two people in Quebec whose cases went before the Quebec Superior Court. The decisions in those cases have brought us to this juncture today. She stated that not all disability cases are the same. Each case must be assessed on its own merits, and a blanket exclusion of people who are not at the natural end of their lives is a violation of their Charter rights. How would you respond to her?

**Senator Plett:** Senator Omidvar, the first comment I would make is that I might be happy that I don't have to respond to her. I say that very sincerely. I don't know what these people are going through, Senator Omidvar. I am inherently opposed to a person taking his or her own life, or somebody helping somebody take his or her own life. That's in my genetics, if you will. That's in my beliefs. That's in my upbringing. I want you to understand that I am coming from there.

But if I take that hat off, then I would say that maybe there cannot be a blanket rule. I am talking about the inherent misgivings and the weaknesses of this bill when people who want to live are being coerced into dying. That's what I'm talking about. I'm not talking about the people who are of sound mind. We aren't there yet. I'm not somebody in favour of mental disorder or mental illness being the sole underlying factor in somebody asking. If somebody is of sound mind, it's a separate issue.

Again, I've had this particular discussion with my very good friend Steven Fletcher, who many people know. He went through so many horrible things, and he told me about how many years he just wished he could die. So when you talk to somebody like that personally, you would make a different decision than if you'd talked to Roger Foley.

This, senator, is why I believe we have to make a blanket decision that we cannot do something, because if we take every case individually I believe every person would have a unique case. I'm sorry, that probably doesn't answer your question, senator, but I really think that's about as good as I'm going to do on that question.

**Senator Omidvar:** Senator Plett, in my experience, limited as it is, people with disabilities who have sound minds are often extremely effective advocates for themselves because they have to negotiate their daily lives in a way that you and I can't imagine because we are not disabled. I think that if they make their own choice based on their lives and their reality, I would say to you, who are we to stand in their way of participating in this new amended law?

• (1630)

**Senator Plett:** Let me answer that with another question. If I'm just tired of living one day, should I be able to go and take a gun and shoot myself? There are many who would maybe say, "Yes, you should be able to do that, Don," but I hope there would be more who would say, "no."

You are simply saying, who are we to stand in the way of somebody asking for assisted suicide, or who are we to stand in the way of them committing suicide? We need to focus on our support system, first and foremost. We need to focus on our support system before we focus on ending our lives. Let's try to find ways of giving people a reason to live rather than giving people a reason to die.

**Hon. Mary Coyle:** Would Senator Plett take a question?

**Senator Plett:** Yes.



**Senator Coyle:** Senator Plett, thank you very much for your speech and your important contribution to our Senate debate on Bill C-7, An Act to amend the Criminal Code (medical assistance in dying). Like the other excellent speakers we have heard to date, you have helped us in our efforts to apply sober second thought to this societally important bill. You have raised many fundamentally critical issues in your remarks. Like you, I'm sure we are all on high alert intellectually, ethically, morally and spiritually as we grapple with this legislation that stretches each of us, and challenges us to find the right balance between the potential benefits to Canadians and the importance of avoiding harms to Canadians, particularly our most vulnerable citizens, with this significant change to our Criminal Code.

Senator Plett, you've spoken forcefully and thoughtfully about the potential harms of Bill C-7. Please know that I do share a number of your concerns, and in particular, I feel it is imperative to listen to the voices of members of the disabled communities, their families and representative organizations. These organizations have asked us to ensure that our society prioritize efforts to improve opportunities for their members to enjoy a dignified life. They've also asked that they be more fulsomely consulted on Bill C-7, and in particular, on the matter of safeguards.

What I want to ask you, though, is about your perspective, similar to what Senator Omidvar was asking, on how to answer those vulnerable Canadians who are asking us to listen to them and respect their wishes to get final relief from their intolerable suffering, and to be allowed to have access to medical assistance in dying so that they might die in dignity? What should we say to people who, like the late Audrey Parker, are dying but do not currently have the right to provide advance consent and therefore choose, unfortunately, to die earlier than they would otherwise have, out of fear of losing the capacity to consent?

What should we say to disabled people across Canada who tell us that their suffering and condition is so severe that they want the same access to medical assistance in dying that Mr. Truchon was granted by the court in Quebec?

How do we balance these questions, these requested benefits and also these calls for rights, and balance those with our concerns about the potential harms that you have mentioned? This is really what we're asking in this debate. I want to know sincerely, Senator Plett — believe me, I do not personally have the answer to these questions — and I want to know what your answers might be to those. Thank you.

**Senator Plett:** Senator Coyle, I think the simple answer to your question is “ditto”; I also don't have the answers to all of that.

My main answer to that is that I would rather sit at somebody's bedside and try to give that person every reason to want to live, and support that person with proper palliative care. But we are basically saying — our government is saying — that rather than putting extra money into palliative care, let's rather find a way of allowing people to hasten their death.

Senator Coyle, when we take situations like Sean Tagert, when we take situations — and I'll speak of a very personal one in my community, in Landmark, a young lady related to me died, and

the last weeks of her life, she could move her eyelids. That was all she could move. But until the very end, when she could still communicate, she had her family there. They assisted her. She got all the care she needed, and she wanted to live. She wanted to have her children beside her until she died naturally.

So we have different situations. How can I answer a question when it hasn't hit me personally? I can give you that example of somebody who wanted to live. And until we exhaust every avenue of trying to improve people's lives, I don't think we should try to find ways of hastening ending people's lives.

**Hon. Salma Ataullahjan:** Senator Plett, will you take a question?

**Senator Plett:** Certainly, senator.

**Senator Ataullahjan:** Senator Plett, I was asked yesterday how many racialized groups have been consulted and how many faith groups have been consulted, and I didn't get an answer. Maybe this is a question I should have put to the government leader in the Senate. I'm wondering if you know, if you have an answer for me.

**Senator Plett:** Well, unfortunately, Senator Ataullahjan, I am not aware of any racialized groups and/or faith groups that have been consulted. We have heard time and again that the government has done extensive consultation. Yet, we heard from witnesses at committee that either the consultation was inadequate or there was none. I do know, as I said earlier, no Métis or Inuit groups were consulted. There was very little consultation done with the Indigenous communities.

With respect to faith groups, we heard from a number of organizations, including the Canadian Council of Imams, the United Church, the Canadian Conference of Catholic Bishops, just to name a few. All of the faith groups were opposed to the new proposals in this bill, but they weren't consulted.

So I am not aware of any racialized groups, and without question, Senator Ataullahjan, the government had — I don't know that I want to flog this horse to death — but they had all kinds of time. They had 16 months. Yes, they had an election, but then they prorogued Parliament, and even after that it took them two months. This bill is numbered C-7. Why isn't it numbered C-2? Why didn't they move it along earlier? It's Bill C-7. They dealt with all kinds of other legislation that we haven't received here, but at the end, they needed to rush this through.

Senator, you, I and everybody in this chamber have been part of approving hundreds of billions of dollars during a pandemic, that the government would not get done properly, and then they would rush it into our chamber and we would have a day to approve it. And if we didn't, they would let every Canadian in the country know that we didn't want to help them.

• (1640)

That's the way they treated this bill. Senator Munson asked, “What do we do?” This is a bill where we can truly, I think, show Canada what the Senate should do when there isn't proper consultation and when the government moves something through

and wants us to pass it in a hurry. I don't think we should be moved. Maybe we should find a way of consulting with these groups, but there hasn't been enough done.

**Senator Ataullahjan:** Senator Plett, thank you for that answer. I asked because, as a Muslim, I bear the responsibility for 1.5 million or maybe 1.6 million Muslims, and they will be questioning me. I guess I don't have an answer for them. If the government did consult one imam for 1.5 million or 1.6 million people, that is not enough.

My next question for you is a question I asked Senator Gold yesterday. The UN Special Rapporteur on the rights of persons with disabilities warned — this was earlier this year — that if assisted dying is made available for persons with health conditions or impairments but who are not terminally ill, a social assumption can be made that it is better to be dead than to live with a disability.

Senator Plett, is there any way that we can ensure that those who choose MAID are not making that choice because of social stigma, isolation or lack of access to personal assistance or disability-related services?

**Senator Plett:** First, when you say, "I don't know what to tell the people I am representing," I think you can tell the Muslim community and the imams that they haven't been singled out here. They're not being picked on. Typically, the government hasn't consulted with anybody, so you're certainly part of the larger group.

Senator Ataullahjan, the second question goes to what I have been saying all along. We need to find a way of making a person who is ill, who is handicapped or who cannot contribute to society as much as he or she feels they should believe that they are contributing to society. The fact that they can't move their arms or legs — they are contributing to society.

As long as we're going to try to find a way of letting them die with dignity as opposed to letting them live with dignity, then that will be the first thing we're going to do, because isn't that the easiest thing? If we want to take the easy way out, senator, then we pass this bill. If we want to do the hard thing and the right thing, we either amend this bill or we reject this bill.

**Hon. Patricia Bovey:** Senator Plett, will you take another question?

**Senator Plett:** Certainly.

**Senator Bovey:** I appreciate what you said. In fact, I want to commend everybody who has spoken on this bill. I have found the level of debate excellent, and I appreciate the honesty and the concerns that are coming forward.

If I may, I am one who has dealt with issues of palliative care in its various stages, and in every step of those stages, I have to say, there are tough decisions.

Senator Plett, I agree with you about living with dignity, and I also agree with dying with dignity. I think in these difficult decisions, in looking at this from 360 degrees and from some of the differing perspectives, we bring forward and raise conflicting issues.

I want to, if I may, ask you about a letter I received from a friend. We've had a subsequent conversation. Her husband died peacefully, with assisted dying, in his own home, with his wife at his side, on October 26. He was a lawyer; very sharp. He'd had a 10-year challenge with bone cancer and throughout that period was able to have a good quality of life. However, earlier this fall, he was diagnosed with pancreatic cancer, and that's when he made the decision to end his life. He was determined to die with dignity as he had lived with dignity.

A question they'd faced — we had a long discussion about this last night — was the 10-day wait period in the current piece of legislation. For him, that was really difficult, because his medical situation had his quality of life decreasing and pain increasing. In the end, he stopped taking morphine so he could make sure he was of sound mind on that day 10 to enact the decision that he had made.

I know some people are saying 10 days is too long. Other people are saying it's not long enough. I know this is changing your discussion a little bit, Senator Plett, but I would really value your thoughts on that situation of an articulate, accomplished Canadian citizen who had thoughtfully and carefully made up his mind.

His wife said to me:

As a surviving spouse of 40 years, the fact that I was able to share this journey with him in our home and know with such certainty that he accomplished his goal to die a dignified death has contributed enormously to my own healing.

I know what those healing situations are like, so I would value your thoughts about the 10-day waiting period in the current legislation and the proposed change in this legislation.

**Senator Plett:** Thank you, Senator Bovey. I want to assure you, senator, that I believe in trying to make sure people can die with dignity. It's the hastening of it that I don't support.

I wasn't beside my mother-in-law's bed. We were there minutes after. However, I sat beside my father-in-law when he took his last breath. I sat beside my own father when he took his last breath. They both died with dignity. They did not ask for any help. They received morphine right until the end, but they died with dignity. I think you don't need to hasten your death to die with dignity.

With regard to the individual you're talking about, it is fortunate he was of sound mind in the end, but many people aren't that clear of mind. When we don't have a reflection period, and someone who is in extreme pain makes a decision and they don't have a reflection period — I shared the story of the lady in the Netherlands who made some significant moves at the end

when they wanted to give her the substance that would then ultimately take her life. If there isn't a proper reflection period, people can change their minds and not do this.

I certainly don't know the case of the individual you're talking about, Senator Bovey, so I don't want to in any way judge the decision he made or, if the reflection period hadn't been there, whether he would have made a different decision. But I think the 10-day or 14-day reflection period is a safeguard that absolutely has to stay there. I would even wish that it was a longer reflection period. People have bad days and bad weeks, and then they sometimes rebound a bit and have some good weeks.

I'm concerned about every safeguard that is removed because those safeguards were placed there for a specific reason. This is why I asked Senator Batters yesterday about the slippery slope scenario. I think every move we make is a slippery slope where we are getting one step further.

My personal preference, Senator Bovey, is we at least keep that in or even extend that.

• (1650)

**Senator Bovey:** Senator Plett, I'm not sure if this last little bit is a question or just putting something on the floor. His widow also said to me:

My husband was also very focused on the quality, not length of life. That quality could be defined by him and him alone.

If he had taken the morphine that he needed for the pain in those last few days, she and he knew he wouldn't be of sound mind on day 10 when he made the final decision, so he did not take the morphine.

Her lines were, and I would like your thoughts on this:

I can say unequivocally that there are so many checks and balances in the process that these last hurdles that still exist and will be addressed by the amendments are unnecessary and cruel.

How do we find the balance, Senator Plett, between giving people the time they need — and you're quite right, people have their down days and their up days — and dealing with what's unnecessary and cruel? How would you recommend we define that balance as we look at this legislation?

**Senator Plett:** I can only answer that, in my opinion, trying to keep a person alive isn't cruel. I think it is helpful and that's what we should do.

**Hon. Pierre J. Dalfond:** Colleagues, I rise today to speak on debate at second reading of Bill C-7, a parliamentary step that is defined as follows in the *House of Commons Procedure and Practice, Second Edition, 2009*:

Central to the second reading stage is a general debate on the principle of a bill. Although the Standing Orders make no specific reference to this practice, it is deeply rooted in

the procedural tradition of the House. Accordingly, debate must focus on the principle of the bill and not on its individual provisions.

In other words, our vote at second reading will either be in support or in opposition to the principle of this bill, which is to expand access to MAID.

This bill stems from a judgment of the Quebec Superior Court rendered on September 11, 2019, that rejected the arguments of both the Attorney General of Canada and the Attorney General of Quebec about the validity of one of the eligibility criteria for MAID called the "reasonably foreseeable natural death" criterion in the Criminal Code and the "end of life" criterion in Quebec's Act Respecting End-of-Life Care.

Those who were here in June 2016 when Bill C-14 was adopted will remember that the majority of senators agreed that this criterion was contrary to section 7 of the Charter of Rights and Freedoms. On section 7, the Supreme Court of Canada said in 2015, in the case of *Carter v. Canada*, which was a unanimous judgment:

... we do not agree that the existential formulation of the right to life *requires* an absolute prohibition on assistance in dying, or that individuals cannot "waive" their right to life. This would create a "duty to live", rather than a "right to life", and would call into question the legality of any consent to the withdrawal or refusal of lifesaving or life-sustaining treatment. The sanctity of life is one of our most fundamental societal values. Section 7 is rooted in a profound respect for the value of human life. But s. 7 also encompasses life, liberty and security of the person during the passage to death. It is for this reason that the sanctity of life "is no longer seen to require that all human life be preserved at all costs". And it is for this reason that the law has come to recognize that, in certain circumstances, an individual's choice about the end of her life is entitled to respect. . . .

However, the government and the House of Commons declined the Senate's amendment, and the Senate finally decided not to insist. As expected, the criterion was quickly challenged. Only 10 days after the passage of Bill C-14, Julia Lamb, a woman in her twenties with spinal muscular atrophy, and the B.C. Civil Liberties Association launched a constitutional challenge before the Supreme Court of British Columbia.

On June 13, 2017, another challenge was launched before the Quebec Superior Court by Jean Truchon and Nicole Gladu.

[*Translation*]

Mr. Truchon was 49 at the time. He suffered from spastic cerebral palsy with tripareisis since birth. This condition left him completely paralyzed with the exception of his left arm, which was functional and which, until 2012, allowed him to perform certain everyday tasks and to move around in a wheelchair. Mr. Truchon received medical assistance in dying last April.

Ms. Gladu is now 74 years old, and was born before the time of widespread vaccinations against poliomyelitis. She survived an acute paralyzing form of this disease, which she developed at

the age of four. She had significant sequelae, including residual paralysis of the left side and severe scoliosis caused by the gradual deformation of her spinal column.

The claim was perfected and then heard in early 2019. The proceedings lasted 31 days over a period of two months. A total of 24 witnesses were heard, including 17 experts. The court also heard from eight intervenors, including the Council of Canadians with Disabilities, the Canadian Association for Community Living, Christian Legal Fellowship, Collectif des médecins contre l'euthanasie and Dying with Dignity Canada. Several of these groups testified again before the Legal and Constitutional Affairs Committee two weeks ago.

On September 11, 2019, after six months of reflection, Justice Baudouin rendered her decision, a little more than two years after the legal proceedings started, which is normal in cases like this one. Justice Baudouin said the following about the imminent death requirement:

The state-imposed limitation that death be reasonably foreseeable before medical assistance in dying may be requested is overbroad. It is so because it prevents some people, competent and fully informed, such as Mr. Truchon and Ms. Gladu, who meet every other protective condition of the law and who express a rational desire to end the suffering caused by their grievous and irremediable condition, from requesting such assistance.

Justice Baudouin continued as follows:

In this sense, the limitation largely exceeds the object to such an extent that it has no real connection to the object of protecting vulnerable persons who might be induced to end their lives in a moment of weakness. It instead forces them to make the cruel choice described by the Supreme Court —

— in the *Carter* decision —

— by imposing that they either suffer intolerably for an undefined period that could last months, even years, or that they take their own lives their own way, all to satisfy a general precautionary principle.

• (1700)

It is interesting to note that the principle of precaution was also recently rejected by the Supreme Court of Canada in *Attorney General of Ontario v. G.*, which senators Gold and Carignan referred to in their excellent speeches.

I will come back to that ruling during study in committee at third reading stage, but for now I will keep to the principle of Bill C-7, namely to expand access to medical assistance in dying.

[*English*]

All of us will remember that at the time of the *Truchon* judgment, we were going through a general election. In fact, Parliament was dissolved on the same day the judgment was released on September 11, 2019. On October 3, the Quebec government announced it would not file an appeal. A week later, on October 10, during the French electoral debate, Prime Minister Trudeau made a similar announcement.

In other words, both governments decided not to avail themselves of the right to appeal the judgment before the Court of Appeal of Quebec. Most likely a ruling by the Court of Appeal of Quebec on this matter is one case for which leave will most likely be granted by the Supreme Court of Canada. Some witnesses and some members of this chamber believe that not appealing was unwise. While I respect their opinion, I do not share it.

Of course, filing an appeal would have given both governments a few more years to avoid making a decision, pending an appellate process up to the Supreme Court of Canada. Instead, both governments decided to face the music, well aware that at the end of the day it falls squarely on lawmakers, not on the court, to define to what extent MAID should be made available and what safeguards should be implemented.

Of course, eligibility criteria and safeguards adopted by Parliament or by a province must be in compliance with the Charter of Rights and Freedoms. In this regard, the institutional roles of both courts and parliaments are different, as the Supreme Court said recently in *Ontario v G.*:

. . . the legislature is sovereign in the sense that it has exclusive authority to enact, amend, and repeal any law as it sees fit, while courts remain guardians of the Constitution and of individuals' rights under it.

Colleagues, we often hear that politicians are hiding behind judges' robes to avoid making difficult decisions, but this time both governments decided to act. They did so in consideration of the teachings — not only of the Quebec Superior Court in *Truchon* and of the Supreme Court of Canada in *Carter*, but of this Senate in 2016.

Why? The answer to that question was repeated many times. It is because both governments believed in the principles of autonomy and equality of individuals, including the right not to be forced to resort to other inhumane options like voluntarily stopping eating and drinking, or the use of a violent means to put an end to their enduring and intolerable suffering.

All Canadians were made aware of the Trudeau government's decision. Canadians had the opportunity to question all candidates about the decision not to appeal *Truchon*, and thus the very decision to expand access to MAID.

Last week, those elected in the last general election spoke loudly and clearly. Bill C-7 was adopted by 213 of them and opposed by 106. It is important to know that this 2 to 1 majority includes members of all the parties in the House of Commons, including 13 Conservative MPs, all Bloc and NDP MPs then present, and all Green MPs and nearly all Liberal MPs. This is quite significant considering the nature of the bill, its complexity and the larger set of difficult issues it raises of a legal, social, personal and ethical nature.

Colleagues, it is against this backdrop that we are now called upon to vote at second reading of Bill C-7.

I know some of you, like many witnesses we heard at the Standing Senate Committee on Legal and Constitutional Affairs, are opposed to MAID in any form whatsoever. I respect your opinion, but Bill C-7 should not be viewed as another opportunity to oppose MAID in principle.

As the Supreme Court has stated, the government has a constitutional duty to provide access to MAID for Canadians who want to put an end to their enduring and intolerable suffering resulting from an egregious and irremediable condition, and who wish to do so peacefully in a safe setting surrounded by their loved ones. It is a matter of respect for the dignity and autonomy of all citizens in a democracy. For these reasons, I will vote “yea” to second reading of Bill C-7, a bill that seeks to bring an end to denying a constitutionally protected right to many Canadians under section 7 of the Charter.

That does not mean that I support every part of the bill. As you know, I have expressed serious concerns about the proposed exclusion of individuals with a mental illness as a sole underlying condition. Others may wish to have more safeguards in connection with specific situations. Thus, I look forward to debating the various measures proposed in Bill C-7 with colleagues at the committee and at third reading. Thank you, *meegwetch*.

[Translation]

**Hon. Diane Bellemare:** Would Senator Dalphond take a question?

**The Hon. the Acting Speaker:** Senator Dalphond, would you accept a question from Senator Bellemare?

**Senator Dalphond:** Yes, if I am given more time to respond to the senator.

**The Hon. the Acting Speaker:** You have 37 seconds.

**Senator Dalphond:** May I have five more minutes?

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

**Some Hon. Senators:** Agreed.

**Senator Bellemare:** Senator Dalphond, I would like to call upon your experience as a former judge at the Superior Court and at the Quebec Court of Appeal and ask you to give us some clarification on what would happen if Bill C-7 were not passed. What would happen in Quebec? Would there be a legislative vacuum? Can you clarify that for us?

**Senator Dalphond:** Thank you, Senator Bellemare. That is an interesting and very important question. As you know, the government requested an extension, and it will make its case before the Quebec Superior Court tomorrow.

The legal situation in Quebec is this: A September 2019 decision by the Quebec Superior Court rendered invalid, unconstitutional and inapplicable the part of the law that requires a person's death to be imminent. However, at the request of the attorneys general, the decision was suspended and the Superior Court granted a six-month deadline, which means that the

declaration of unconstitutionality would not apply for six months. That is a relatively short period of time because the norm is usually 12 months. That being said, the Superior Court extended the deadline twice. Another request was presented to the court, which would bring the extension to a total of 15 to 17 months. That isn't much different from the situation with the *Carter* decision, where the Supreme Court granted 12 months and then extended the deadline when the government held a majority.

Now, what is the situation in Quebec? In Quebec, the law is unconstitutional, but the declaration of constitutional invalidity does not apply. If the Superior Court decides on Thursday or Friday to once again extend the deadline, this declaration of constitutional invalidity will remain unenforced in Quebec until the end of February. Meanwhile, the law will continue to apply in Quebec.

If, on the other hand, the Superior Court decides not to extend the deadline again, the ruling will take effect and the provision that requires death to be imminent will no longer apply in Quebec. That means that Quebec will not be facing a legal vacuum because the law will apply without the requirement of imminent death. Doctors who receive a request for MAID in such circumstances will therefore have to decide whether to take the risk and put themselves in a position where they may be subject to criminal prosecution by the Crown or an individual.

• (1710)

In the other provinces, if the effect of the decision were not suspended, then, as of tomorrow morning, in New Brunswick, Alberta or British Columbia, anyone could request MAID and apply for a constitutional exemption, which the Attorney General of Canada could not oppose because he could not say that the Criminal Code provision applies in Ontario or New Brunswick and that it is constitutional. By not appealing, the Attorney General recognized its unconstitutionality. We are going to end up in the same situation we were in with *Carter*, where there was no new law for a year and the parties applied to higher courts for constitutional exemptions. There were 25 such applications in Alberta and hundreds across Canada because there was no law in force anymore. That is the kind of total anarchy we have to avoid by requesting another extension. I hope the Superior Court will grant it, and I hope it will strive to uphold the rule of law and avoid nationwide anarchy until the Senate has studied Bill C-7 and the government has enacted it. I hope that answers your question, senator.

**Senator Bellemare:** I have a supplementary question. I understand that the situation would be chaotic, but isn't the issue of abortion similar to the issue of medical assistance in dying? The practice is not consistent across Canada, nor is it addressed as a criminal matter.

**The Hon. the Acting Speaker:** Senator, if you'd like to answer the question, you can ask for another five minutes. You have only 25 seconds left.

**Senator Dalphond:** With the chamber's consent, I would like another five minutes to answer Senator Bellemare's question.

**Hon. Senators:** Agreed.

**Senator Dalphond:** Once again, this is a very interesting question that forces me to make a distinction. You will recall that, on the abortion issue, the law was struck down as unconstitutional in *Morgentaler*. The government of the day then introduced a bill that passed in the House of Commons; however, at third reading in the Senate, it received exactly the same number of votes for and against, which meant that the bill did not pass. The upshot is that Canada has had no abortion law since that time.

That is not the same as what is happening in the current situation, where the Criminal Code still applies and there is a framework in place. There is no framework in place for abortion.

[English]

**Senator Omidvar:** Would the honourable senator take a question?

**Senator Dalphond:** With pleasure.

**Senator Omidvar:** Thank you, senator, and thank you for your remarks. I wanted to probe a little around the exclusion of mental health from this amendment to MAID. Many think it is unconstitutional, and it may well be. However, in the short term, Bill C-7 deals with its intent on mental illness in the preamble. The preamble states:

Whereas further consultation and deliberation are required to determine whether it is appropriate and, if so, how to provide medical assistance in dying to persons whose sole underlying medical condition is a mental illness . . . .

I know that preambles are not adjudicated in court, but they do show intent and, as we've heard in this chamber before, courts take that into consideration when pronouncing judgments. So in the short term, at least, until the government deals with the study of Bill C-14 and potentially brings forward a new bill, do you think the exclusion could temporarily hold up in court?

**Senator Dalphond:** Thank you, Senator Omidvar, for this question. Of course, I'm not going to speak as a judge; I'm no longer a judge. But the question is about the meaning of that part of the preamble, and I think it is an illustration of the principle of precaution. This is the principle of precaution versus the constitutional right to have access to something. When you have to balance out the principle of precaution versus the constitutionally protected right to autonomy, I suspect that, from the judgment of the Quebec Superior Court, and from the recent judgment of the Supreme Court in *Ontario v. G*, that the balance will be in favour of the constitutional right and not the precaution.

**Senator Omidvar:** Thank you.

[Translation]

**Hon. Claude Carignan:** Would the senator take a question?

**Senator Dalphond:** Of course, Senator Carignan.

**Senator Carignan:** Senator, I listened to your speech, but I am not certain that I understood you correctly. You mentioned anarchy. I am rather shocked by the use of that term. I presume you misspoke, because all of Justice Baudouin's rulings, all the rulings on the extension of the various suspensions, state that, in any event, even if the extension is not granted, there would not be a legal vacuum. Only the concept of reasonably foreseeable natural death would be removed. The entire legal framework that was adopted is consistent with *Carter*, and there are very specific criteria. We are a long way from anarchy.

**Senator Dalphond:** Senator Carignan is quite right to correct me. "Anarchy" is not the right term. I wanted to say, as the Supreme Court did, that the suspension of the declaration of unconstitutionality seeks to uphold the rule of law and ensure consistent application and compliance in the meantime.

[English]

**Hon. Mary Jane McCallum:** Honourable senators, I rise today to join debate on Bill C-7, which would make amendments to the medical assistance in dying legislation. My remarks come after discussions with groups on both sides of this debate: ones that are in favour of this legislation, as well as those who have voiced concerns with the processes and procedures by which this legislation came to fruition. While I was initially inclined to support the passage of this bill, information about the consultation period, or lack thereof — with Indigenous stakeholders and service providers, especially those from the disability community — has caused me great concern. My role as a senator of Cree descent is to bring those voices to the floor.

Colleagues, issues surrounding consultation are not new, but remain an ongoing issue that every government seems unwilling or unable to accommodate and rectify. Until consultation is done in a fulsome and responsible way, we run the risk of continuing to trample on the rights, not only of Canada's Indigenous population but also our non-Indigenous population. We also have the reality of emotional and psychological harm to the disability community who fear that this bill could result in lost lives. How did we get here, once again?

Honourable senators, one conversation I have had on this important bill was with Dr. Sara Goulet, a health care professional who flies into remote, Northern First Nations communities to provide health care to citizens. Dr. Goulet is also the Clinical Lead, Ongomiizwin Health Services, and Associate Dean of Admissions at the Max Rady College of Medicine, University of Manitoba. Dr. Goulet attended a round-table discussion on medical assistance in dying on February 3, 2020, which was hosted by Justice Minister David Lametti and Parliamentary Secretary Arif Virani. This session was to focus on Indigenous people's perspectives on what would later become Bill C-7.

• (1720)

The meeting on February 3 was attended by roughly 10 participants and was the only discussion that I am aware of that took place with Indigenous peoples or stakeholders through

the legislative process surrounding Bill C-7. This, colleagues, is of great concern to me. One round-table discussion with a handful of participants is not adequate consultation, nor does it even constitute what can responsibly be deemed as fulsome.

As Dr. Goulet herself had indicated to me:

The theme of the meeting and what each invitee spoke about on the call was the need for appropriate consultation [and] that the group on the call could not provide the right advice, nor represent the perspective of all Indigenous peoples in Canada.

We now know it was expressly indicated to those government officials present at the meeting that those participants did not feel that they were able to provide the appropriate advice and information that was being sought from them. The participants also highlighted that they could not speak for any other Indigenous group, organization or peoples. This should have been a clear signal to the government that this round table would not come close to meeting the threshold required to satisfy the minimum expectations of responsible consultation.

Colleagues, another issue that Dr. Goulet had mentioned was that she was the only physician on the call. She had indicated that the participants wanted to do a broad consultation on this subject in a variety of First Nations communities to start to get an idea of the impact the current law is having on them and their citizens. This was clearly not accommodated. The insight that Dr. Goulet impressed upon me is that:

Many Indigenous peoples are not aware of MAID as an option. In particular those living in more remote communities would not have even had the opportunity to hear about the law.

Honourable senators, as I have been advised, there were also huge concerns raised by the participants of this meeting around the limited access for Indigenous people to obtain culturally safe and effective health care in Canada. This experience is compounded by the limited access to food, clean water, safe housing and education that supports cultural practices and resilience. The participants present wondered how health care professionals could be satisfied that all other options for treatment, or relevant services, had been offered to the patient before choosing to end their life.

I will quote Dr. Goulet again:

Bottom line is that not enough is known and not enough consultation has been done to make good decisions around MAID policies as related to their impact on Indigenous peoples in Canada.

This is a very big statement to make, colleagues, and one I hope everyone takes to heart.

Dr. Goulet has also generously indicated her interest to help with, in her words, “an actual consultation process around this topic,” which would ideally include other health care professionals and Indigenous community stakeholders interested in discussing what is a critical, life-determining topic.

Honourable senators, I have also had the opportunity to speak with Mr. Neil Belanger, Executive Director of the British Columbia Aboriginal Network on Disability Society, or BCANDS for short. Mr. Belanger was one of the other participants at the aforementioned round-table discussion held in February of this year, along with Dr. Goulet. In his own words, he stated:

There has been zero consultation with Indigenous peoples on this Bill in any tangible way — one meeting that I am aware of, of which I was at, but was not well attended by Indigenous groups, and the disability component was on no one’s radar except [BCANDS].

Colleagues, considering the sustained and ongoing calls we have heard from disability advocates voicing their concerns about this bill, it is alarming to hear from Mr. Belanger that the issues we are hearing now — and which he had initially flagged to government officials back in February — were not being adequately considered.

Through our deliberations, I find that Mr. Belanger has put it best when he said:

This alone should be enough to stop the proposed changes. If we are true to UNDRIP, self-determination and reconciliation, if this is pushed through without [the Indigenous disability community’s] voices, it gives a clear message about Canada’s commitment to these processes.

. . . We cannot in good faith or conscience make any recommendation that would exclude Indigenous peoples living with disabilities from this process and in doing so expose them to even further risk in a health system where their safety is already shown to be precarious. This Bill needs to go to the Supreme Court and Indigenous peoples living with disabilities and non-Indigenous peoples living with disability have got to be involved in this process.

Honourable senators, why place the extra responsibility on the disability community and Indigenous peoples to support a bill that puts them at greater personal risk, essentially saying, “We ask that you support this bill, despite the fact that it will inevitably result in your continued suffering”? Why place them in a position where they feel the Supreme Court of Canada is their only safety mechanism — an option that they can ill afford?

We have heard during debate that it is unacceptable for as much as one person to continue to live in pain needlessly. I would also argue that it is unacceptable for as much as one person to be coerced into receiving MAID as an option by an unethical and unconcerned health care professional.

Colleagues, Indigenous peoples in Canada already have a form of medical assistance in dying thanks to the systemic racism that exists in our health care system. We need look no further than the alleged professionals who were supposed to be providing care to Brian Sinclair and Joyce Echaquan. The issue of systemic racism is a fundamental and largely unacknowledged issue with this legislation. Is this lack of consideration and its potentially lethal consequences really a risk we want to take?

Colleagues, it is astounding to me that in this chamber of sober second thought we are expected to rush through our study on a bill that has the potential to do immeasurable harm to the disability community and to Indigenous peoples in Canada. This bill, particularly through track 2 and the provision of MAID for those people whose death is not reasonably foreseeable, is simply too precarious for these marginalized and vulnerable groups. This is a serious law that needs serious consideration, not just a rubber stamp. It is for these many reasons that a bill of this critical nature, which has been identified as having serious and fundamental flaws, as articulated by various groups, is one that I am hesitant to support. Thank you.

**Senator Ataullahjan:** Honourable senators, I rise today to speak on Bill C-7, An Act to amend the Criminal Code (medical assistance in dying). Although it originally aimed to act as an exceptional mechanism to prevent suffering in the final stages of the dying process, Bill C-7, in its present form, still requires important amendments, as it discriminates against those with disabilities, excludes Canadians suffering from mental disorders and has become a burdensome process for patients who are not at the end of life.

Several amendments have been presented to the government but, sadly, all were rejected. The Senate Committee on Legal and Constitutional Affairs conducted a pre-study on this bill and produced a report. More than 80 witnesses shared their views with committee members over a five-day period.

The chief deficiencies of this bill were outlined in the committee's report dated December 10, 2020. I would like to highlight some of these Canadian Charter of Rights and Freedoms concerns presented in the report.

A major concern with the Charter has to do with the removal of the legal requirement of a person having a reasonably foreseeable natural death. A patient whose sole ailment is a disability that cannot be mitigated through our health care system may qualify for MAID. According to major national disability organizations, this legislation would discriminate against those with disabilities.

According to a 2017 Canadian government survey, we had 6.2 million disabled Canadians. At that time, that number equated to 22% of our population. Almost a quarter of our population suffers from at least one disability.

• (1730)

Eliminating the reasonably foreseeable natural death requirement removes an essential safeguard protecting our most vulnerable from being compelled to choose MAID.

In February of this year, a UN Special Rapporteur on the rights of persons with disabilities said:

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 . . . .

[ Senator McCallum ]

People should have the right to die with dignity but not the right to die because of the social stigma or lack of access to medical assistance or services.

Another major Charter concern outlined in the Legal Committee is the introduction of a new, different and more burdensome procedure for patients who are not at the end of life. Witnesses emphasized that the removal of safeguards is discriminatory. The opposition has also proposed a few amendments in the past few weeks which address key concerns with Bill C-7, all of which have been rejected by this government.

The first of many amendments recommended by the opposition is in regard to the rights and freedoms of our most vulnerable. Ensuring stringent safeguards are in place is a protective measure that must not be taken lightly. It is unfortunate that the Attorney General wants to remove the 10-day waiting period in the provision of MAID. The removal of the mandatory waiting period ensures there is no coming back from a life-and-death decision. Rushing existential decisions is not a reasonable approach to the vulnerable.

In the first annual report of MAID in 2019, 3.6% of the patients who made a request subsequently withdrew their request. That is 263 out of 7,336 who changed their minds. Leaving a window of opportunity for MAID applicants to change their minds is essential in preventing non-reversible decisions.

The opposition also recommended banning medical professionals from raising the topic of MAID to their patients. Doctors and nurse practitioners should implement strict structural conditions to ensure that vulnerable persons are well protected from death. Of the 6.2 million Canadians with disabilities, 1.6 million cannot afford the required aid, device or prescription medicine. The lack of access to necessary medical services should not be an acceptable eligibility for MAID. A discussion on MAID should only be raised by a patient, at which time a medical professional can present this option as a last resort — another protective measure that was rejected by the government.

Additional safeguards were presented to the government based on the views of all disability groups who opposed this bill as it stands today. Bill C-7 undermines their precarious position by removing the requirement for having two witnesses to sign off on MAID applications. Lessening the eligibility by only requiring one witness essentially compels and speeds up the death of patients rather than prolonging their life. Rejecting this recommendation works toward further expanding the eligibility of MAID by removing essential safeguards.

I had the privilege of participating in the Standing Senate Committee on Legal and Constitutional Affairs on November 27. One of the witnesses on that day was Catherine Frazee, who is a Professor Emerita in the School of Disability Studies at Ryerson University. As a disabled person, she is well versed in the discrimination and inequality projected onto disabled people. Her views against Bill C-7 was heard loud and clear by the committee, especially when she said:



Each time we step out into the public square, our presence is unexpected, our bodies are disrespected, and our ways of being are feared and pitied. We know this inequality in our bones, although it remained all but invisible to the drafters of this bill.

Professor Frazee's witness statement was very moving and powerful. I'm certain I was not the only person who teared up that day. Professor Frazee's statement explained so eloquently that the suffering of the disabled is not caused by their debilitating disease or illness but rather by social neglect. Her witness statement, along with 80 other testimonies from experts in their respective fields presented over a five-day period, left me with more questions than answers.

Indeed, this bill would give Canadians living with a chronic illness or disability a choice and dignity in death that they otherwise do not have in life. The ableist nature of our society can leave those living with disabilities feel like they were burdensome for their families, friends and society.

Spring Hawes, a woman who has been living with a spinal cord injury for 15 years, explains that:

As disabled people, we are conditioned to view ourselves as burdensome. We're taught to apologize for our existence and to be grateful for the tolerance of those around us. We're often shown that our lives are worth less than non-disabled lives. Our lives and our survival depends on our agreeableness.

This is in line with Dr. Ho's concerns with Bill C-7. He says that in his 20 years of service as a physician, he has seen many patients with chronic diseases or illnesses who would have given up, feeling like a burden on their family or society. If MAID had been available at the time, they may have chosen that route prematurely.

Dr. Ho worries that people suffering from depression because of their circumstances or trauma may make a hasty or premature irreversible decision.

In addition, according to Krista Carr, Executive Vice-President of Inclusion Canada:

People with disabilities have historically been devalued and marginalized in Canada . . .

Including disability as a condition warranting assisted suicide equates to declaring some lives not worth living . . .

We've all heard about Roger Foley, a 45-year-old with a neurodegenerative disease that left him hospitalized and unable to move and care for himself who believes in the right to an "assisted life."

Mr. Foley shared that he had been coerced into assisted death by abuse, neglect, lack of care and threats. He said:

For example, at a time when I was advocating for assistance to live and for self-directed home care, the hospital ethicist and nurses were trying to coerce me into an assisted death by threatening to charge me \$1,800 per day or force-

discharge me without the care I needed to live. I felt pressured by these staff raising assisted dying rather than relieving my suffering with dignified and compassionate care.

Hospital staff failed to provide me with the necessities of life . . . . An expert who reviewed the case concluded a failure to provide necessities of life and gross negligence.

The committee also heard from Jeffrey Kirby, Professor of Bioethics at Dalhousie University. Dr. Kirby spoke at length about the importance of social determinants of health and how they are treated. An alarming reality was presented in his statement:

. . . there are inadequate integrated palliative care services across most of Canada, particularly the rural areas. Of course, the funding for mental health services is atrocious in terms of the burden of mental health illness there is in this country. The funding is actually disgusting really, in the levels of 3% or 4% to 10% per province or jurisdiction.

Based on the testimony we heard at committee hearings, the 86 written briefs and the endless emails and phone calls my office received on Bill C-7, a comprehensive review and debate is warranted. With suicide being one of the main public health emergencies of the 21st century, we must ensure that this bill does not promote suicide contagion.

May I remind you that the government has had 16 months to pass this bill, but we are now rushed to reach a consensus on complex legislation with important repercussions on the lives of Canadians who are already struggling to access necessary health services. Chronic illnesses and disabilities should not be a death sentence in Canada.

Therefore, I cannot support this bill ethically or in principle. I hope this bill goes back to committee for reconsideration and subsequently back to the other place. Thank you.

**Hon. Mobina S. B. Jaffer:** Honourable senators, I would like to start by thanking all senators who have already spoken on Bill C-7. Each of you have compassionately contributed to this very difficult debate. I appreciate and commend your courage to share your own perspectives and experiences on MAID. I have learned a lot from you, and I sincerely thank you for your informative speeches.

Honourable senators, I also rise before you today to speak about a matter of life and death. I rise today to speak about medical assistance in dying at second reading. As we all know, senators, this is a time of second reading, when we reflect on the bill before it gets studied further in committee, and then we will have more time to debate this bill at third reading.

• (1740)

MAID is literally a matter of life and death, of intolerable suffering, and freedom from indignity and pain. The implementation of the MAID regime, its safeguards, and most importantly, those it affects, are what Bill C-7 is studying.

MAID affects our most vulnerable, our most sick, but MAID is not a treatment option, nor should it be treated as such. It is intended as a last resort for people who are suffering from untreatable health conditions that are more often than not accompanied by severe suffering. It is for those like British Columbia's Julia Lamb, who is waiting to receive MAID as "a large and looming timeframe to be under when suffering intolerably."

MAID provides a choice for them: a choice to die with dignity, a choice to end their untreatable, intolerable pain. However, it is the person's choice.

It is my opinion that MAID must be strictly patient initiated or person initiated, and not a choice of a health professional or family initiated. MAID is not intended to push people over the edge. It is intended to alleviate suffering and to empower people with choice over their lives in that way. Only one person can decide to consider it, and that is the person who is suffering.

A patient-initiated choice would also help to avoid making patients feel like their lives are not valuable or that they have no hope of bettering the conditions of their illness.

As was highlighted by Dr. Herx and several others, it can be devastating for a patient if their treating physician initiates the conversation of MAID.

Honourable senators, in 2016, Canadians chose to incorporate MAID in our legal system. They have chosen power over their lives, and it is our duty to make sure that, while we comply by making MAID accessible, we should ensure that we are not opening the door for many to try to take the lives of others without a cause.

As we think about how we protect individuals with disabilities, we are brought to other more marginalized groups; racialized, Indigenous and immigrant people highlighted some of the very serious concerns regarding their access to basic physical and mental health services, let alone MAID, in rural, urban or city environments. In all contexts, MAID should be regarded as a last resort.

Prior to a patient being eligible for a MAID review, they should have been afforded all available and adequate physical or mental health services for their illness. It is our responsibility as parliamentarians to ensure that the government is fulfilling the responsibilities of its sworn duty of care to all Canadians of all identities.

[ Senator Jaffer ]

MAID is never meant to be for disabled communities. MAID is meant for a person suffering terrible, irremediable pain. Only then would they be entitled to MAID. I understand the challenges that disabled people are feeling at this point, but there are many safeguards, and we will study them at the committee.

Safeguards are another aspect of MAID that are of crucial importance and impact. MAID distinguishes between those whose death is reasonably foreseeable and those who are bound to continue a life of suffering with no foreseeable end. Like Julia Lamb, a fellow British Columbian says in her written statement about a 90-day waiting period imposed on people whose death is not foreseeable:

... if I choose MAID — the last days of life being not something of my choosing, and the drawn out pain and suffering I may endure because it is not determined as equal to those who are more timely in their manner of dying. A bill that is supposed to be a choice, to end feeling trapped and hopeless in unbearable suffering, instead may trap me within an excruciating 90-day waiting period.

MAID safeguards also impose a final consent for those whose death is not foreseeable, and about that, Ms. Lamb goes on to say:

Because my health is so compromised, there are several reasons why I might lose capacity and be denied my right to assisted death if I cannot waive final consent. After fighting for years for my rights, this is a heartbreaking possibility.

Honourable senators, we have heard so much about Bill C-7 in the last few days, but I feel that we should also hear statements from Canadians who have undergone the experience of MAID. Senator Bovey mentioned a little bit about Ms. Ruth Wittenberg. She writes:

I am writing to you today with a plea to support Bill C-7 before the Senate regarding medically assisted death.

My husband, Paul Jarman, was able to access a medically assisted death earlier this year. He had a 10-year challenge with bone cancer but was able to maintain a quality of life that worked for both of us. He was diagnosed with pancreatic cancer earlier this fall and made the decision to end his life while he was able to maintain his dignity and his control. He passed away peacefully, in his own home, with me at his side.

Senator Bovey mentioned other things she said, so I will not repeat that today.

I want to share with you another letter that Ms. Penny Mills wrote to me. She said that since the case of Sue Rodriguez, two other cases have come to the Supreme Court and won: Gloria Taylor and Kay Carter. She goes on to say, and these are her words:

Sue Rodriguez asked, “If I don’t own my body, who does?” Most of the safeguards for MAID have very little for people with ALS.

With ALS, we lose muscles a bit at a time. I have a rare variant of ALS, and my muscles seem to turn to pudding, whereas other ALS patients become paralyzed.

Our faulty throat muscles cause us to choke on our saliva, lose the ability to speak and swallow. Our legs lose muscles a bit at a time, also our feet, a thumb, a finger, a hand, in no particular order. We need a cane, a walker, a wheelchair, then a power wheelchair. If you live long enough, you may only be able to blink your eyes.

I want to stress that every person’s progression is different. That is why you can’t just put us into a Long Term Care Home and expect a satisfactory situation. It wouldn’t be safe, especially as we’ve learned from Covid19.

• (1750)

She goes on to say:

One suggestion is to “Wait 10 days”. That means people like me, Sue, Gloria and Kay have to suffer being immobile, unable to eat/talk 10 more days.

I’ve known for 6 years I wanted Medical Assistance in Dying. Hardly a snap decision, Senators. I don’t know when, but when I KNOW, I’ll go. As Sue Rodriguez said, “If it’s not my body, who’s body is it?”

What I’m concerned about is we who can’t speak or write for themselves, but are denied MAiD or Advance Directives. That is so cruel. I wonder how many people would prefer death to being warehoused. What is the difference between them and a DNR?

She goes on to say:

People with ALS are in danger in Care Homes & hospitals because, so few medical workers know about ALS.

When I was in hospital with a broken hip some doctors came in to see me; I was such a novelty. ALS is so rare. I guess that’s why the Senator amendments don’t fit us. A nurse nearly broke my knee trying to straighten my leg that was in a spasm. Another one nearly killed me making me drink water while I was in a choking fit.

Honourable senators, she goes on for a while, and she’s saying, “it is my body, give me choice, and let me die when the time is right.”

Honourable senators, one of my final points is on final consent. Dr. Stefanie Green, President of the Canadian Association of MAID Assessors and Providers, who has been providing MAID for more than four years in Canada, brought this to our attention.

A 2019 survey of MAID providers suggested 85% of providers have personally experienced the situation where they walked into a room to facilitate an assisted death only to find the patient no longer able to provide final consent due to an unexpected loss of capacity.

Dr. Green goes on to say:

I can tell you from first-hand experience how horrible that situation is. Loved ones beg for the clinicians to proceed. It is agonizing for all, and I’m unable to appreciate who exactly is being protected by not proceeding with the previously planned MAID death. However, I’m absolutely clear on who is harmed.

Honourable senators, doctors take their duty to provide care very seriously. Over the entire process of the pre-study, not once did we hear a doctor say that they believed anyone should carry out MAID —

**Hon. Lucie Moncion (The Hon. the Acting Speaker):** Senator Jaffer —

**Senator Jaffer:** May I please have five minutes?

**The Hon. the Acting Speaker:** Is leave granted?

**Hon. Senators:** Agreed.

**The Hon. the Acting Speaker:** Go ahead, Senator Jaffer.

**Senator Jaffer:** Thank you, senators.

Doctors take their duty to provide care very seriously. Over the entire process of the pre-study, not once did we hear a doctor say that they believed anyone should carry out MAID without careful and conscientious consideration of its impact.

Dr. Green goes on to say that she knows of not one doctor providing this profound, compassionate health care who has been prosecuted for carrying out MAID. That is a choice of the doctor.

Honourable senators, all of you who know me know that I’m a practising Muslim and I wear my faith on my sleeve. You hear me talking about my Muslim faith many times, but in 2016 I came to a decision that I am a practising Muslim and I am a parliamentarian as well. As a practising Muslim, I will do what is right under my faith. But as a parliamentarian, I have to listen to Canadians carefully, and I have to make the decision on what

Canadians want and I cannot bring my faith into that decision because I have the honour to be a senator. As a senator, I have to listen to Canadians and serve Canadians. Thank you very much, senators.

**The Hon. the Acting Speaker:** Senator Jaffer, will you take a question?

**Senator Jaffer:** Yes, certainly.

**Senator Bovey:** Thank you, Senator Jaffer. I was being anonymous about a letter we obviously both received. I did speak to my good friend Ruth Wittenberg last night. As you all know, I lived in Victoria for many years. My knowledge of this issue goes back to the 1980s, when Dr. Scott Wallace was a member of the British Columbia provincial legislature, and he was my doctor. He was a very good friend of Sue Rodriguez, so these were discussions on a philosophical basis back then.

After I moved back to Winnipeg, I was visiting an art collector who went to Switzerland — I can't remember whether it was 2014 or 2015 — to get medically assisted dying because Canada did not have that in place yet.

Senator Jaffer, my question concerns many of these issues you've discussed, such as the timing, the disabled community and other issues that I'm conflicted on in this bill. I'll be honest, I'm having trouble with aspects of the bill. However, with your legal knowledge and having been in this chamber for the 2016 debate, are the issues we're discussing now new to the debate? I remember going back to the 1980s, 1990s and the early 2000s, when I wasn't a parliamentarian, but just me as a Canadian taking in these issues, are they different now from what they were then?

**Senator Jaffer:** Some of the issues are not different. I believe some of them are the same because you can hear from my voice, they are gut-wrenching issues. I can't sleep at night. Am I making the right decisions? As each and every one of you are struggling, I am struggling too. We have to put our own feelings aside and listen to the pain of the people who are telling us.

So for me, one of the safeguards we had was the 10 days. Now we are hearing from the communities that the 10 days is a death sentence when they have decided. Many have phoned my office saying, "you don't decide when I die, when I make the choice; that's not your choice; let me make that decision." It's the same situation with the 90 days.

And, senators, just in case I forgot to say this, I had permission from both Penny Mills and Ruth Wittenberg to read their letters. But senators, I'm saying that this is probably the most important thing that you and I are going to decide, and all we can do —

**The Hon. the Acting Speaker:** Again, Senator Jaffer, your time has expired. Are you asking for another five minutes?

**Senator Jaffer:** No, I just have a few words.

All we can do is listen to the people. Thank you.

[ Senator Jaffer ]

**The Hon. the Acting Speaker:** You have someone else who would like to ask a question. Would you like to ask for five more minutes?

**Senator Jaffer:** May I have five more minutes, please?

• (1800)

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

**Hon. Senators:** Agreed.

**The Hon. the Acting Speaker:** Honourable senators, given the time, we might have to postpone that until 7 p.m.

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:** Very well. We will be back at seven o'clock, and we will be starting with Senator Wetston's question for Senator Jaffer.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

## CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Petitcherc, 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. Howard Wetston:** Thank you, Senator Jaffer. Obviously, this bill is emotionally draining for many of us, if not all of us, and I'm most appreciative of your heartfelt comments. I'm just going to ask you a very simple question if I may, and I don't mean to be rhetorical in the question that I am asking, but do you believe that Bill C-7 will have the overall effect of pressuring or encouraging or inviting people to pursue death if possible? Or is it giving those same people a choice, at the appropriate time, for them to die with dignity that they may not have at present?

**Hon. Mobina S. B. Jaffer:** Senator Wetston, I struggle with this every day. If I looked you in the eye and told you that I don't believe that some people will be pressured, I would be lying. I think some will be. That's where we come into play, and we have to make sure that there are enough safeguards so that people are not pressured. But it will also give those who have been waiting for such a long time the ability to die with dignity. So we are providing a pathway for people to die with dignity, but we also have to make sure that there are sufficient resources, like palliative care and access to proper medical care, so that people are not forced. That is also our duty. Senator Wetston, that's something I struggle with every day.

**Senator Wetston:** Thank you very much.

**Hon. Jane Cordy:** Senator Jaffer, will you take a question?

**Senator Jaffer:** Yes, I will.

**Senator Cordy:** Thank you very much. I think a number of us were touched by your speech and could certainly identify with it. I am a practising Catholic, and my religion is very important to me. I certainly understand what you are saying. It is a struggle. It's really a challenge. You spoke about your religion being an important part of who you are, but being a politician, we represent Canadians, and 82% of Canadians believe that they should be able to make advance requests; 85% believe that a person's request for MAID should be respected if they have been assessed and approved for assisted dying but lose their capacity to consent prior to the planned date. Those numbers to me were astounding and shocking, but they are the people that we all represent.

You asked the question: What's the difference between "do not resuscitate" and MAID? I'm also wondering. What is the difference when people — and we have all heard of people who refuse to eat or refuse to take water. Basically, they are committing suicide is what they're doing. So what is the difference between those things and medical assistance in dying?

**Senator Jaffer:** Senator Cordy, I was your seatmate in 2016, and both of us struggled. You remember the terrible struggles we had, and we still have them. That's the question people are asking, the one you are putting across. Those were not my words. They were Penny Mills' words: "What's the difference?" That's the challenge, that we accept one, do not resuscitate, and MAID. That's what people who want the choice are asking: What's the difference? And that's something we as parliamentarians have to look in the eye and say, "What are we doing? Are we going to provide MAID —"

**The Hon. the Acting Speaker:** Senator Jaffer, I apologize for interrupting. Your time has expired. Are you asking for another five minutes? There are other questions.

**Senator Jaffer:** May I ask for another five minutes, please?

**An Hon. Senator:** Last call.

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

**Senator Jaffer:** Thank you, senators. That's the challenge, Senator Cordy. You and I both struggled with this before. I believe that if we as parliamentarians are going to provide death with dignity, we also have to face those questions you asked.

**Senator Cordy:** One of the things that we can't forget, and which I sometimes forget and was reminded of when Senator Harder spoke and you spoke, is that we are not revisiting this whole decision again, because medical assistance in dying is legal now. I think even my question to you today basically was talking about Bill C-14. I think that's what many people are confusing. Medical assistance in dying is legal in Canada in 2020. We are just looking at making changes to it. Would that not be correct?

**Senator Jaffer:** I see it as a progression. As we learn more, Canadians are saying, "Yes, you brought in MAID, but then you put all these things in place that cause us a lot of pain and suffering." We are revisiting those issues. That's what we are doing. Plus, Senator Cordy, you remember the struggles we had and that we wanted foreseeable death not to be the only option. That's what is in place now, what we struggled with in 2016, so I believe it is a progression.

**Senator Cordy:** Thank you very much.

**Hon. Diane Bellemare:** Senator Jaffer, will you accept another question?

**Senator Jaffer:** Yes. Absolutely.

**Senator Bellemare:** I will take you to another area. I think I understand that we have a bill in front of us that is quite complex but narrow at the same time, compared to Bill C-14. Also, we have a situation where we have adopted Bill C-14, and some dispositions are now known to be unconstitutional, and Bill C-7 is to balance, to make it constitutional. My question to you is the following: In the future — because I think it is not the first time now that we will struggle with this issue because it is life and death and it is complex. I think I am of the idea that we have to go step by step. But eventually, after a review of the bill, we may have to consider many issues. Do you think that we will be able in Canada to have the same kind of disposition all over the country?

**Senator Jaffer:** Senator, that's such a difficult question, because we are a large country, and what has become very obvious with our pre-study is the terrible situation for Indigenous peoples and the terrible situation in rural areas. That's why I believe what I heard in the most profound speech given by Senator Mégie on palliative care. And I believe that with this, hand in hand, we have to say to the government, "We have to put observations in place that this doesn't go by itself." With this you have to put proper palliative care. We have to make it possible that we have the same sort of service across Canada.

I think that's something that has been raised time and again in the pre-study and before. And I think that this goes hand in hand when we tell the government — if we do — that we accept this; we have to say, "This is only part of it. We hold you liable for the other things that people were saying."

**Senator Bellemare:** Thank you.

**Hon. Julie Miville-Dechéne:** Thank you, Senator Jaffer, for your speech — and we all know that some people will be pushed towards MAID and we have to try to prevent them but — since this is all in provincial realms. Since palliative care and social services are not — we have no power over them. This is my own struggle, not having enough services and opening up MAID. So I want to hear you on that. And I know there's no easy answer.

• (1910)

**The Hon. the Acting Speaker:** Senator Jaffer, your time has expired again. Would you like to ask for another five minutes?

**Some Hon. Senators:** No.

**The Hon. the Acting Speaker:** Leave is not granted. I'm sorry, Senator Jaffer.

[*Translation*]

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

I want to start by acknowledging the hard work of my colleagues on the Standing Senate Committee on Legal and Constitutional Affairs during the week-long pre-study of Bill C-7. The committee members were open, actively listened and came to conclusions as a group.

I want to express my support to those affected by this bill who are suffering from serious and incurable physical or mental illnesses and who struggle every day with challenges that few of us can truly understand.

My thoughts go out to the families of those who are ineligible for MAID under Bill C-14, or who were ineligible, and who had to take drastic action to put an end to their loved one's life and therefore their suffering, even though these individuals had the right to a dignified and humane end of life.

I thought it was a shame that none of the witnesses invited to the committee's pre-study were patients with a personal stake in MAID and that no families were able to participate, share their perspectives and contribute to this debate, which is, after all, about them first and foremost. That was my biggest disappointment and one of the weaknesses of our pre-study, considering that it was the one opportunity for committee members to better understand the day-to-day suffering of these human beings and their loved ones.

The same applies to victims of crime. So often, when people are suffering because life has unfairly done them wrong, we lawmakers pay more attention to the testimony of experts, scientists, legal experts and religious figures without considering what the people who are directly affected feel and can contribute.

[ Senator Jaffer ]

In my view, I think the victims of Bill C-14 are the ones we should have listened to, and should listen to, as we examine Bill C-7 in the coming months, and who should be at the heart of our reflection, rather than the experts. I see those individuals as the real experts on what a law imposes on their quality of life and especially on how they choose to end their lives. Very few of the stakeholders we consulted can truly understand their suffering, and I'm convinced that if we had heard from witnesses affected by MAID, we wouldn't be so divided and torn in this debate.

Medical assistance in dying is a very emotional subject for many of us. It stirs up a lot of emotions and can even make us question our own perceptions of life and death. Basically, it is an opportunity for us to reflect on our human values as we are confronted with the cruel and unacceptable situations some human beings are unjustly condemned to live with.

Honourable colleagues, one of the first things I want to address in this chamber is the attitude that the federal government has taken in its management of medical assistance in dying since 2016. I get the impression that the federal government is just trying to rush Bill C-7 through both chambers without giving us, the legislators, the time we need to do our job properly and analyze the content of this bill within a reasonable time frame.

After all, it was the government that didn't do its homework. We would not be in this situation if Justin Trudeau's team had listened to the Senate when it made significant recommendations regarding Bill C-14 in 2016.

Since the government was bound by the deadline set by the Quebec Superior Court for reviewing the legislation, it was the government's responsibility to allow enough time for the study of its new bill on MAID. It had the time, but chose not to take it, even though we all know that MAID is a sensitive topic and that the study of Bill C-14 was long and difficult. This time, we all know that the government decided to create a sense of artificial urgency because its own representatives are behind on their own homework.

I also remind you that the first iteration of Bill C-7 was introduced in February 2020 and died on the Order Paper with the prorogation of Parliament on August 18, when the Prime Minister was grappling with the WE Charity scandal. He chose to waste six precious weeks of work in the midst of the pandemic instead of taking responsibility and answering questions before the House of Commons Standing Committee on Finance. He also prorogued Parliament in order to avoid shedding light on the murder of Marylène Levesque, who was killed by a violent repeat offender who had already killed before. Let's be clear: The government alone is responsible for the suffering of those who wish to receive medical assistance in dying.

The problem that we are still dealing with today has to do with Bill C-14, which was very flawed when it was passed. On February 6, 2015, in *Carter*, the Supreme Court of Canada struck down some provisions of the Criminal Code that banned certain people from accessing medical assistance in dying. The Supreme Court of Canada found those provisions to be unconstitutional because they were not consistent with section 7 of the Canadian Charter of Human Rights and Freedoms, namely the principle of liberty, which guarantees a person's right to make fundamental personal choices without interference from the state, and the

principle of security, which guarantees the right to control one's bodily integrity without interference from the state. The Supreme Court of Canada did not focus the debate on people whose death is reasonably foreseeable or people suffering from degenerative illnesses.

Following the Supreme Court of Canada's decision, the Special Joint Committee on Physician-Assisted Dying, which was made up of MPs and senators, made some rather clear recommendations in its February 25, 2016, report entitled *Medical Assistance in Dying: A Patient-Centred Approach*. It includes the following recommendations, and I quote:

#### RECOMMENDATION 2

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.

#### RECOMMENDATION 3

That individuals not be excluded from eligibility for medical assistance in dying based on the fact that they have a psychiatric condition.

These recommendations were made five years ago, and Justin Trudeau's government has yet to follow them. I'm afraid that the argument of the Minister of Justice, who is criticizing the opposition by claiming to want to reduce people's suffering, is coming back to haunt him.

In 2016, we already knew that the eligibility criterion defined as "naturally foreseeable death" in Bill C-14 would be found unconstitutional by our courts. The government disregarded the committee's recommendations by sadly choosing to prolong extreme suffering for people with severe disabilities, in obvious violation of section 7 of the Canadian Charter of Rights and Freedoms.

We senators, however, did our homework. Our former colleague, Senator Joyal, proposed an amendment to Bill C-14 that would eliminate the naturally foreseeable death criterion. This amendment was rejected by the other place. I still remember the then justice minister, the Honourable Jody Wilson-Raybould, who at the time said she believed that Bill C-14 was constitutional, as her successor is now claiming about Bill C-7. They both made the same statement, and we will no doubt end up with the same outcome.

However, three years later, two people with severe disabilities, Nicole Gladu and Jean Truchon, had to take their fight to court to make the government do its homework even though Justin Trudeau's team already knew the measure was unconstitutional. As senators, we did our job by warning the government about the constitutional problem, but the government chose to ignore that warning.

• (1920)

Just as I said upon leaving the Senate chamber in June 2016, here we are five years later in the same situation as when the same government decided not to appeal a superior court decision. Instead, it decided to introduce another bill that includes yet another unconstitutional and discriminatory provision: the exclusion of people suffering from serious mental illness. That was the elephant in the room that we weren't afraid to talk about during the Legal and Constitutional Affairs Committee's Bill C-7 pre-study meetings.

Honourable senators, I predict that Bill C-7 will suffer the same sad fate as Bill C-14.

Even more surprising are the arguments for justifying the exclusion of mental illness from the bill. It seems that the government did not have enough time to make a decision on this important aspect of the bill. We do know that there is no consensus within the scientific community. If this is the case, why doesn't the government take more time to study the issue over the next few months? Study of Bill C-14 will begin in a few weeks, which leaves us a few months to decide on the issue and gives the government enough time to introduce a properly drafted bill on MAID that will be constitutional and will not exclude any individual wanting to access this right.

I question the introduction of this bill because we will be simultaneously working on reviewing Bill C-14 and its new version, Bill C-7, to come to the same conclusions. This seems like an inefficient and unnecessary exercise to me, because we already know from our experience with Bill C-14 that Bill C-7 will be challenged before the courts and that the government will have to come back with a new response. It is unfortunate that ever since *Carter* in 2015, five years ago now, we have failed to faithfully respond to the Supreme Court directive on MAID. Why then should the Senate adopt the principle of a bill that will go down the same road as the previous bill, involve lengthy parliamentary work and make us waste valuable time?

It is not hard to imagine that people living with mental health issues will have to fight in court to challenge this exclusion in the legislation on MAID. This could force some people to turn to suicide to end their suffering, since they will not be able to use the legislation to die with dignity.

That was actually one of the arguments raised by the Supreme Court of Canada, which found in *Carter* that if the government were to deny access to medical assistance in dying, it could cause patients to commit suicide, violating the right to life in section 7 of the Canadian Charter of Rights and Freedoms. Sadly, we already know that many people have since chosen to commit suicide.

I'd now like to return to an important point raised by Stéphane Beaulac, professor and legal expert, in his testimony during the pre-study by the Legal and Constitutional Affairs Committee.

Mr. Beaulac presented an institutional argument, namely, respectful dialogue between the legislative power and the judiciary. According to Mr. Beaulac, the ruling by Justice Baudouin of the Quebec Superior Court in *Truchon* should not have led the federal government to respond as hastily as it did

with Bill C-7. I support that argument, because I think the government also could have appealed that ruling. If it had taken the matter to the Supreme Court of Canada, the highest court in the land could have ruled on this issue and the government could have then come back with a more in-depth analysis.

Mr. Beaulac also pointed out that legal vacuums have always existed in Canadian law and these voids are not a significant issue. On the contrary, they make it possible to have a more pertinent legal discussion among the provinces.

I fully concur with him. By applying pressure to pass the bill, the government has raised fears among all professional bodies that are directly or indirectly concerned with medical assistance in dying. During our week of pre-study on this issue, I listened carefully to the witnesses and I felt that most stakeholders were opposed to or had misgivings about this new law. After hearing from many witnesses, we did not arrive at a consensus and we are more divided than ever on the issue.

Apart from the constitutional argument, the bill has other flaws that my colleagues have already spoken about in the week of pre-study and in different speeches.

**The Hon. the Acting Speaker:** Senator Boisvenu, your time is up. Would you like another five minutes?

**Senator Boisvenu:** Three minutes, please.

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

**Hon. Senators:** Agreed.

**Senator Boisvenu:** Thank you.

For example, a number of concerns were raised about the new category of safeguards that apply to people whose natural death is not foreseeable. There is no consensus around the government's 90-day waiting period. The same goes for people who cannot provide final consent because they are unconscious. The government has provided no real answers to these questions.

Two other issues arose during the committee's pre-study. First, there is no clear definition of how a patient and a practitioner should discuss the MAID option. Second, access to palliative care is problematic in some parts of Canada. Government ministers did not seem to be in agreement on these issues and were unable to provide detailed explanations relating to these issues. The Minister of Health said that her government transferred huge sums of money to the provinces for these services, but if not for the pandemic and the billion-dollar dance, we would still be where we were in 2016.

The last point I want to make has to do with people with disabilities. Many concerns were raised about expanding access to medical assistance in dying to these people. What is really striking is that most of the testimony supported the finding that not enough consultations were held with disability advocacy organizations.

In summary, I think that Bill C-7 is flawed, imperfect and unconstitutional. It raises serious concerns and contains a discriminatory clause. As with Bill C-14, it is clear that, when Bill C-7 passes, it will be challenged in court. Unfortunately, once again, many people stand to suffer because of this new bill.

Honourable senators, if this bill is passed as it now stands, the government is going to have to redo its homework in the coming years. In the meantime, we already know that far too many people will continue to suffer and will suffer even more given the consequences of Bill C-7, including people with degenerative mental illnesses. Let's not forget that people who are mentally ill and whose death is naturally foreseeable currently have access to medical assistance in dying.

Honourable senators, since 2016, I have been working with families whose loved ones starved themselves to death because Bill C-14 ignored their pleas.

Honourable senators, I spoke with a mother who resigned herself to accompanying her 34-year-old son to Switzerland, paying more than \$40,000, so he could follow through with his decision to put an end to his suffering with dignity, since Bill C-14 ignored people who are suffering.

Honourable senators, Bill C-7 will leave these people to fend for themselves, sacrificing them to political correctness and partisan stubbornness. The last thing I want is to hear more of the kind of poignant and painful testimony that we have been hearing for the past four years. I would like people who are suffering to be allowed to die with dignity, surrounded by their families, because that right is recognized by the Supreme Court of Canada.

In conclusion, I want to thank all those who shared their often difficult stories. They deserved to be listened to and to be treated with the utmost respect.

Thank you very much.

**Some Hon. Senators:** Hear, hear.

**Hon. Renée Dupuis:** Honourable senators, I rise today to speak to Bill C-7, a bill that affects us all directly as living people who are well aware that our death is inevitable.

Bill C-7 proposes some amendments to the Criminal Code with respect to medical assistance in dying. This bill was passed by the House of Commons on December 10. The Standing Senate Committee on Legal and Constitutional Affairs finished its pre-study of the bill while debate was under way in the House of Commons and tabled its report in the Senate on December 10, having heard from 81 witnesses over a week of hearings. The preamble of the bill presents Bill C-7 as a response to the *Truchon* decision rendered over a year ago, in October 2019.



• (1930)

I would remind the chamber that this ruling nullifies parts of Quebec Act Respecting End-of-Life Care as well as parts of the Criminal Code. The *Truchon* decision did not come out of nowhere. It is part of a profound social reflection on medical assistance in dying that has been formally under way in Quebec since at least 2009. A bipartisan parliamentary committee met in various cities in Quebec to discuss this sensitive issue from 2009 to 2012.

In his testimony before the Senate Committee on Legal and Constitutional Affairs on November 27, 2020, Geoffrey Kelley, the chair of that committee and a former Quebec cabinet minister, emphasized the extensive “public education” efforts undertaken by the committee that he said were instrumental in building a social consensus on respect for individuals who decide to seek MAID.

In 2009, the Quebec bar created a working group at the request of the Collège des médecins du Québec, of which I was a member. After months of joint work, the Quebec bar submitted a brief to that parliamentary committee that states, and I quote:

The introduction of the *Quebec Charter of Human Rights and Freedoms* and the *Canadian Charter of Rights and Freedoms* into our law has had a significant impact on the individual’s right to make decisions about their body.

The Quebec bar also noted the following:

In *Morgentaler*, the Supreme Court of Canada defined the right to the security of the person, in addition to developing the right to freedom and dignity, thereby considerably expanding the individual’s right to self-determination and the right to control their own body and life according to their own values, particularly with regard to decisions that have a great personal impact on them.

The Quebec bar then added this:

The sanctity of life, which has always been the basis for banning euthanasia or assisted suicide, is a concept that has evolved in relation to the expansion of the individual’s right to self-determination.

In the current state of the law, the state’s interest in preserving life becomes less prominent and gives way to the right to self-determination at the end of life, when an adult has the right to express their wishes.

I remind senators that this was written in 2010.

The Quebec legislation that followed in 2014 clearly saw medical assistance in dying as one of the steps in the continuum of care provided to patients in the health care system, which is a provincial jurisdiction. A comprehensive enforcement framework was included in the act itself, including regulations, directives, practice directives and the creation of a commission to oversee end-of-life care. Statistical data and research have enhanced

knowledge about these issues. For example, I will mention just one report published recently, in November 2020, by the Association des psychiatres du Québec on medical assistance in dying for people with mental health issues. The Quebec law therefore applies in parallel with the sections of the Criminal Code concerning medical assistance in dying that we are being called upon to amend with Bill C-7.

The report that the commission on end-of-life care released in April 2019 concludes:

Some of these eligibility criteria and safeguards are perceived by many as being too restrictive and as infringing on the self-determination of people at the end of life. That is why public pressure supports an expansion of the act.

It came as no surprise that in its brief on Bill C-7 submitted to the House of Commons in February, the Quebec bar stated that:

... the inclusion of the 90-day requirement for eligibility for medical assistance in dying is highly problematic, as it creates several layers of eligibility for MAID: the first, whether the applicant’s death is reasonably foreseeable, and the second, whether incapacity stems from the natural progression of the illness.

In this brief, the Quebec bar reiterated an argument it made in the debates on Bill C-14 in 2016, that the other criterion under paragraph 241.2(2)(b), “an advanced state of irreversible decline in capability,” should be abolished because it goes against the *Carter* decision made by the Supreme Court in 2015.

It is important to remember that the two plaintiffs, Jean Truchon and Nicole Gladu, had severe disabilities and felt that their medical conditions caused them intolerable suffering. These two people obtained a ruling that struck down the “reasonably foreseeable natural death” criterion in the Criminal Code as well as the “end-of-life” criterion in the Quebec law because both provisions infringed on their Charter rights to life, liberty and security of the person and to equality, and those infringements could not be justified under section 1 of the Charter.

I should point out that the *Truchon* decision is based directly on the findings of the 2015 Supreme Court of Canada decision in *Carter*. The *Truchon* decision struck down the sections in question in the two statutes, while granting the federal and the Quebec governments a suspension period so they could amend their respective laws, if they deemed it necessary. Furthermore, the decision granted a constitutional exemption to individuals who requested MAID during the suspension period. The decision was not appealed by either the federal government or the provincial government.

I remind senators that the Supreme Court used the following criterion to strike down the sections 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.

In so doing, the Supreme Court left the decision to make a request for medical assistance in dying to the sole discretion of the person who is suffering, without any outside interference. Bill C-7 nullifies the effect of *Truchon* because it maintains the criterion that was struck down in that decision, namely that natural death must be reasonably foreseeable, while creating a distinction, with no medical or legal basis, based on the progression of the disease. What is more, that distinction creates even more barriers for people whose natural death is not foreseeable. Access to medical assistance in dying should not be conditional upon the reasonable foreseeability of natural death or the nature of the illness. The defining issue when it comes to accessing medical assistance in dying should be the ability to consent at the time the request is made, and any safeguards should be focused on that aspect of the issue. Given the increased life expectancy in our society and the availability of a wide variety of drugs and treatments to extend the lives of people who are sick, free and informed consent must involve giving people the opportunity to give advance directives on their end of life.

The federal government has filed three motions requesting the extension of the suspension granted by *Truchon*. The most recent one was filed a few days ago and requests an extension until February 26, 2021, because the government believes that debates on this bill could not be completed before the December 18, 2020, deadline. In fact, the Senate is just beginning its study after the House of Commons passed the bill. Moreover, the Senate announced that it would propose amendments, which will have to be passed by the House of Commons, where appropriate.

I must say that the federal government did not have to file this last motion for an additional extension. It could have decided, as early as October 2019, to let the Quebec Superior Court ruling apply within Quebec while letting other legal proceedings in the other provinces run their course.

• (1940)

When the federal Minister of Justice was questioned on this topic when he appeared before the Standing Senate Committee on Legal and Constitutional Affairs as part of its pre-study of Bill C-7, he said that the government wanted to ensure that the Criminal Code was applied consistently in Canada. However, some of the witnesses who appeared before the committee indicated that the Criminal Code is not currently consistently applied and that doesn't in any way call into question the integrity of the application of the Criminal Code. In other words, if the recent request for an extension is refused, the Quebec Superior Court ruling will continue to apply to Quebec only.

There is no scientific reason to justify the creation of additional obstacles for people whose death is not foreseeable. Many witnesses from the medical community indicated that this

concept is vague and ambiguous and therefore cannot be regulated, while other witnesses insisted that it was impossible to predict the evolution of physical and psychiatric illnesses. Patients have been able to refuse treatment for many years. We have learned to assess the ability to refuse treatment. The difference with medical assistance in dying is that the patient is refusing to give the medical community the power to decide their last medical treatment.

Now we're seeing loved ones who received MAID or who were denied it. These people are parents, uncles, aunts, brothers, sisters, and friends. We can't pretend not to realize that we are talking about our own life and death here. We want to have a say in what we consider to be a meaningful life.

In closing, colleagues, I want to stress that the parliamentary review the federal government made law in 2016, the review that should have started in June, must be launched without delay. That review provision gave Canadians legitimate expectations. The government needs to explain to Parliament why it failed to abide by that section of the 2016 act. Thank you.

**The Hon. the Acting Speaker:** Would Senator Dupuis take a question?

**Senator Dupuis:** Yes, if there is consent.

**Senator Bellemare:** Senator Dupuis, I congratulate you on your speech, which contained many very interesting points. I would like to ask you how you see the issue of medical assistance in dying in relation to the individual.

Listening to you, it's not clear to me whether you consider medical assistance in dying to be a health problem. In your opinion, is the issue of medical assistance in dying simply an individual matter for an individual who has the right to decide on his or her end of life, or is it a right framed within the context of the evolution of his or her state of health?

**Senator Dupuis:** Thank you for the question, Senator Bellemare. I would say in response that I made a point of referring to the social consensus that has emerged in Quebec.

**The Hon. the Acting Speaker:** Senator Dupuis, your time has expired. Would you like five more minutes?

**Senator Dupuis:** If the Senate agrees, yes.

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

**Hon. Senators:** Agreed.

**Senator Dupuis:** I want to talk about what one of the witnesses described as the process of public education and collective social reflection on the issue of medical assistance in dying. Views on this issue have changed significantly in response to scientific advances that prolong the life of sick patients as well as the shift in authority over health. Authority has shifted from the physicians to the patients. This social evolution has taken place over the past 30 years.

Everyone used to believe that if you were ill, you would place yourself in the hands of the medical authority. Once the charters were introduced, the balance shifted. We now believe that it is obvious that, within the wide range of health care services available, medical assistance in dying enters into the context of human life starting from the moment you become old and sick, lose your cognitive abilities or have an accident.

This is a matter related to health care, and that was the intent of Quebec's law. The notion of medical assistance in dying is part of a continuum of care, and the authority to decide at what point life loses its meaning has reverted to the individual who is suffering. That is what the Supreme Court ruled when it recognized these rights.

Yes, this is about individuals, because after all, we are also talking about individual lives.

**Senator Bellemare:** If I'm not mistaken, you're making a distinction from the point at which MAID is connected to intolerable suffering and an illness. We are not talking about assisted suicide, which is completely different, and that's what I wanted you to clarify in response to my question. Medical assistance in dying is connected to suffering from an illness that cannot be alleviated, and not to an individual's choice to end their life.

**Senator Dupuis:** I would add that before this shift happened, the doctor had the authority to administer terminal sedation, but now that authority has reverted to the patient who feels that their life has lost all meaning, that their suffering has become intolerable and that they will not let doctors decide for them when the situation becomes intolerable.

[English]

**Hon. Michael L. MacDonald:** Honourable senators, I will also speak to Bill C-7, An Act to amend the Criminal Code (medical assistance in dying). I want to commend all of you who have participated in this debate. This is a most serious matter, and I appreciate the thoughtful and insightful perspectives I've heard from all sides of this issue. I also want to thank those who have written to me, individual messages about Bill C-7, particularly those Canadians living with severe disabilities. Their counsel on these matters is both valuable and timely.

I'll focus my remarks today on two issues arising from the bill which are in some ways distinct but also somewhat interrelated. The first issue has been discussed already, but it is too important to ignore. The second has not been properly addressed at all, in my opinion.

The first is the impact this bill will have on vulnerable communities in Canada, particularly our disabled communities. As Krista Carr, Executive Vice-President of the Council of Canadians with Disabilities has said:

. . . Bill C-7 would allow people with a disability to have their lives ended when they are suffering but not dying . . . . We're told Canadians want this, yet every national disability organization is opposed.

This is a very troubling thing to hear. It should be seen as the red flag that it most surely is. What is being proposed is to give people with disabilities the right to medical assistance in dying when there is currently no right to adequate support for persons with disabilities in Canada.

• (1950)

Witnesses from the disabled community appearing before Senate and House committees have told us that the very inclusion of disability as a condition warranting assisted suicide is tantamount to declaring that a disabled life is a life not worth living. I fear that, as a society, we are compounding that when we provide inadequate social and health care support to vulnerable communities.

As witnesses have told members of Parliament, we risk pushing these individuals toward a decision where ending their lives is preferable to living. In this regard, Ms. Carr also told the Senate Legal Committee that 75% of persons with disabilities are unemployed, they are three times as likely to be living in poverty, four times as likely to experience violence and many are housed in long-term care facilities or other institutions where community and personal support networks may be weak or almost non-existent. We have simply not thought enough about the implications of this, nor do we have any clear data on how MAID in other jurisdictions impacts vulnerable communities.

For a government that talks as much as this one does about the United Nations, I wonder if the Prime Minister and his cabinet have ever read the United Nations Convention on the Rights of Persons with Disabilities. If they had, they would find that Article 19 states:

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community . . . .

They would also find Article 25 of the convention related to health, which reads:

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

I know that all governments, as well as our health authorities, hospitals and medical practitioners, seek to do their best in all of these areas. I also know that individual families seek to do their best in helping family members who may be disabled. But are we really in a position to say that, collectively as a society, we are living up to our obligations to the disabled community to a level where we can now, in good conscience, offer medical assistance in dying in a manner in which it will not impact persons in vulnerable communities disproportionately? I cannot, in good conscience, confirm that I believe that this will be the case.

This brings me to the second issue that I wish to address. As a society, we are plunging headlong into greatly expanding access to medically assisted death in Canada, yet we know very little about how it is actually being implemented. According to Health Canada, between December 2015 and the end of October 2018, the official tally of medically assisted deaths in Canada was 6,749 people. Amy Hasbrouck, board member and director of the organization *Toujours Vivant*, told our Senate committee that those numbers may now total nearly 20,000 individuals.

In the examination of health care cost, the Parliamentary Budget Officer has estimated that the total of MAID deaths in Canada will likely be around 6,500 in 2021 alone, and that the legislation we have before us will increase that by an additional 1,164 people per year. That will be close to 8,000 people per year, at a minimum. I fear that these are conservative estimates when we look at where other jurisdictions find themselves. In the Netherlands, for instance, a report by *The Guardian* newspaper suggests that well over one quarter of all deaths in that country were medically induced as of 2017 — a figure that includes those who died by suicide, euthanasia or palliative sedation. This is certainly indicative of a slippery slope.

As we incrementally expand the scope of MAID in Canada, we should not delude ourselves into believing that we are not on the same course. The Minister of Justice has, essentially, admitted this much before the House and Senate committees, yet I cannot remember legislation with such a significant set of consequences that had been embarked upon as casually and without adequate scrutiny as Bill C-7. We know very little about how MAID is currently being implemented, who is receiving it and how it is likely to impact vulnerable communities.

For instance, there is very little in the public eye concerning the protocols that govern the actual implementation of medically assisted dying in Canada. One has to search for such protocols. For example, we didn't find the MAID proposals for the Northwest Territories online, but the document itself reads, "for internal use only, not to be publicly distributed." Why should that be the case for a practice that has now been applied to thousands of people in Canada on an annual basis? Perhaps it is because aspects of this practice are unpleasant and disturbing?

An article authored by several medical practitioners in the medical journal *BMJ Open* found the following:

Bill C-14 legislated eligibility criteria under which patients could receive MAID, but provided no guidance on the clinical aspects of providing aid in dying. Critical clinical issues remain unaddressed, such as which pharmaceuticals,

doses and routes of administration should be used to cause death; the roles, scope of practice and training requirements for healthcare professionals . . . .

. . . it is not possible to determine which medications or combinations of medications are most effective and result in the fewest complications and least distress for patients, providers and families.

There is much that we don't yet know, and there is much that medical practitioners are still having discussions about. But one can determine that in Canada several jurisdictions appear to be using multiple drug protocols. An article by several practitioners of the College of Family Physicians states that in Canadian provinces:

The most common IV protocol is 10 mg of midazolam, then 1000 mg of propofol, followed by 200 mg of rocuronium. It is important to ensure that the patient is in full coma before giving the muscle relaxant. . . The IV route takes 5 to 10 minutes to complete . . .

Concerning the use of midazolam specifically, the *Medical Assistance in Dying Protocols and Procedures Handbook Comox Valley* notes that it "works as a sedative with virtually no side effects." However, the same protocol also states that: "It can cause restlessness. If so, give Propofol immediately."

Potential restlessness in response to the use of midazolam is perhaps putting it mildly, as this drug has been at the centre of a number of court cases in the United States concerning the application of the death penalty. In 2014, an offender was executed in Ohio using the three-drug protocol using midazolam. The individual's death in that case took 24 minutes, including 10 to 13 minutes when he was said to have been gasping for air. The British Columbia protocol acknowledges that:

Cardiac arrest is anticipated in 5 minutes but may take as long as 20 minutes . . .

Evidently, that length of time is legally problematic in the United States when it comes to the rights of violent, condemned criminals, but it has barely been discussed in Canada at all, even though it has already been applied to thousands of people.

The allegations of problems with midazolam have meant that several states, including Ohio and Florida, have abandoned it in their execution protocols. In 2015, the United States Supreme Court rendered a decision in the case of *Glossip v Gross*. The case involved an inmate in Oklahoma Richard Glossip, who challenged the state's use of midazolam in his execution protocol in response to an allegedly botched execution in the state using that drug the year before. Although in a narrow five-to-four

ruling, the court found against the defendant, a strong dissent was registered by Justices Sotomayor, Breyer, Kagan, and Ruth Bader Ginsberg, specifically noting serious potential problems with the use of midazolam. The dissenting justices argued:

. . . constitutional insufficiency of midazolam as a sedative in a three-drug lethal injection cocktail . . .

• (2000)

I cannot find any similar discussion in Canada concerning the use of this drug, nor indeed any serious scrutiny by outside bodies of current Canadian MAID protocols. So it appears that we know quite a lot about botched executions in the United States, but we know almost nothing about medically assisted deaths that may have been botched in Canada, even though the overall numbers of MAID deaths that we are talking about in Canada are exponentially higher than those in the United States. That is perhaps not surprising given privacy concerns. Colleagues, I respectfully suggest it should be worrying from a policy-making perspective.

In conclusion, I want to state that I'm not a medical expert. I am certainly not an expert in the use of midazolam, nor am I an expert on medical protocols, but you don't have to be an expert to be extremely concerned about the absence of open discussion about these matters in Canada. There is a lack of transparency in how MAID is being implemented and about whom it is likely to impact most. Despite this, the government is now proposing to expand the scope of MAID even further. The government promised us a five-year review when Bill C-14 passed in the last Parliament, and now the Quebec court makes a legal decision and issues a timeline directed to the federal government.

The federal government could have referred this to the Supreme Court, but instead, they turned around and created what I truly believe to be a poorly constructed response. I simply cannot get past the negative aspects of this approach, potential social downside and the individual marginalization that I believe emanates from Bill C-7.

I said during the debates on Bill C-14 that I don't trust the state with the lives of people. I still maintain that view. If I err in my conclusions regarding Bill C-7, I prefer to err on the side of life and the right of the individual to life.

Issues of life and death require serious scrutiny, and that should occur before we agree to expand the scope of MAID even further. We should do the review in 2021 as needed and as promised, then move forward after a full and comprehensive view of Canada's past five-year experience with MAID. The government could have and should have kept this commitment.

I ask the government to re-evaluate its approach. I cannot in good conscience vote for this bill, at least not in its present form, and I strongly encourage honourable senators to err on the side of the most vulnerable in this instance. Thank you.

**Some Hon. Senators:** Hear, hear.

**Hon. Leo Housakos (The Hon. the Acting Speaker):** Would Senator MacDonald entertain a question from Senator Lankin?

**Senator MacDonald:** Of course.

**The Hon. the Acting Speaker:** Senator MacDonald, would you be asking for an extra five minutes to entertain the question?

**Senator MacDonald:** If the Senate wants to give it to me, certainly.

**The Hon. the Acting Speaker:** Honourable senators, are we acquiescing to five more minutes?

**Hon. Senators:** Agreed.

**Hon. Frances Lankin:** Thank you, Senator MacDonald. You have raised an area and an issue that we have not heard a lot about and that we have not studied. I am one who tends to agree that the review should have taken place before now. I am also one who argued on Bill C-14 that the reviews with respect to advance directives, mature minors and sole mental illness should have moved ahead, not just with the academy's research study but with expert panels, bringing forward recommendations with information. I am also aware that these things evolve.

You have now raised the issue of the drug protocols that have been in place. I've been following the midazolam story in death penalty executions in the U.S. I am horrified by what you have told us. I would like to understand more of that, and I surely hope that is a very serious part of our Bill C-14 review, the medical assistance in dying review, because it is larger than just Bill C-14.

I listened to your speech, and did I hear that you could not find protocols in — I'm sorry, it may have been the Northwest Territories, I'm not sure, and you were reading to us from B.C. I missed if you had references to other provinces or whether they too were not available to the public. I'm just wondering if you could review that for us and if, in fact, you've had any opportunity to speak with health researchers. I understand you might not have, but if anyone has begun to look at these protocols and if they've been refined over time, or if this is a serious gap, not just in parliamentary review, but in medical science review.

I would appreciate your thoughts on that. Thank you again for raising these important issues.

**Senator MacDonald:** Thank you, senator. Like a lot of people, I wasn't even going to speak to this issue initially. I have to confess that the correspondence I received, particularly from disabled people, opened my eyes to take a second look at this. They are so vulnerable. I started looking into it more, and I said, no, I want to speak to this.

It was really only after I decided to speak to it that I realized how little evidence there is out there that we can tap into in regard to the protocols in this country. There is almost nothing out there in public that I can track down or that I have tracked down in a short period of time.

We have always been very respectful and trustful of the medical profession in this country. It is part of our culture. We think the doctors will take care of it; they know what they are doing. But we really don't have a set protocol. I don't think we do.

Again, if they are having so many problems with a protocol in the United States, with a relatively small group of people who are having this drug put into their system — we know that the usage of it in this country with medically assisted suicide or death is much greater exponentially — I wonder how much we're missing, how much we're not being told. These are things worth exploring.

Again, I think we should err on the side of caution on this stuff, and it is why I put it in my speech. I don't think we have talked about it enough. It is the one thing I identified that I thought had to be discussed more thoroughly and more publicly. Those are my thoughts on that.

**Hon. Brent Cotter:** Honourable senators, let me begin by making one or two preliminary observations. I'm new to the Senate still, still the most junior senator, and there have been times when I have wondered why I came. I would say in the last little while, and in the debates and consideration of this question, I now feel I know why I am here and why I am honoured to be here with you. This has been a heartfelt, rich conversation, deeply held by many of us, including myself.

My sense is that we are wrestling with people's suffering and vulnerability, and trying to find the best way through. The big questions — and this is in part legal — are what are the boundaries that we as a society should place on the autonomy of others who wish to die, and is it the case that that autonomy can or cannot be genuinely exercised by some in our society? We've discussed that already. I'll speak a little bit to that in my formal remarks.

There are three topics I would like to address, in part legal and in part, I hope, humane. The first is what I think is the unfortunate decision of the Government of Canada not to have stated a reference to the Supreme Court of Canada with respect to many of the complicated legal issues associated with medical assistance in dying, some of which are on the table for us in Bill C-7.

The second topic is my concern regarding the constitutionality of having excluded mental illness as the sole underlying medical condition for access to MAID.

The third topic is the implications, more the social implications, of making medical assistance in dying available to people who suffer grievously, but whose death is not reasonably foreseeable.

Senator Gold acknowledged in his remarks a few days ago that Bill C-7 will generate a series of legal and constitutional issues and challenges for years to come. Some will be generated by this bill, from different communities of interest who have been excluded from access, or for some who, from their perspective, are made more vulnerable by the legislation. In some cases, it

will be people whose sole underlying medical condition is mental illness. Some will think the safeguards are too strict, and others will think they are not strict enough.

• (2010)

We will be flooded with issues in our courts.

Going outside the boundaries of Bill C-7, other questions will arise, some of which have just recently been spoken to, including the issue of advance directives; others are beyond my ken to understand. Senator Gold suggested that the advantage of Bill C-7 is that it will clarify things for people and make much-needed services available in a timely way. In part, he is right, but for the many people who will be excluded from access to dying with dignity, their only option will be to pursue constitutional challenges. In doing so, they will be required, at their own enormous financial and emotional expense, to have to litigate this matter — for years, if these cases go to the Supreme Court of Canada.

As someone who has spent at least part of his career in and around constitutional references, the presentations to the courts that are being crafted and their arguments in the court, I say to you that all of these questions, in a timely and effective way, could have been presented to the Supreme Court of Canada in ways that would produce timely and definitive guidance and in ways that would minimize the burden on individuals who are surely entitled to know where they stand on matters of such enormous import.

If anything, the choice not to pursue a reference will leave more people in tragic circumstances and more people waiting for a resolution of their rights. This, I think, was a choice that was an unfortunate one, but I would say this: Even if the bill passes, as I expect it will — perhaps with amendments — the reference option is still available.

My second point concerns the exclusion of mental illness as the sole underlying medical condition from access to MAID. Senator Gold, speaking on behalf of the Government of Canada, argued that while there is debate about the subject matter, the Government of Canada's view is that this provision — excluding mental illness — is constitutional. I want to take issue with that view.

I will not attempt to recite Senator Carignan's incisive legal analysis of the court decisions on this topic, but I will come at it from a slightly different point of view. There is, in fact, a meaningful judicial finding that mental disorder as the sole underlying medical condition qualifies under the MAID regime as articulated in the *Carter* case. Senator Gold didn't refer to this case, leaving it to a category of so-called Constitution exemption cases, as if they should be disregarded.

This is an inaccurate characterization. The case is *Canada (Attorney General) v E.F.* It was decided specifically in relation to the criteria decided by *Carter*. E.F. was a woman suffering exclusively from a psychiatric disorder and experiencing

excruciating pain and suffering, unexplainable on any physiological basis. That was not disputed by anyone. She had suffered for years, but her death was not reasonably foreseeable. This was at a time after *Carter* had been decided by the Supreme Court, and therefore the governing framework, but it was before Bill C-14. It was during a period when the *Carter* principles were applicable.

Here is what happened. Upholding the trial judge's decision, a unanimous Alberta Court of Appeal, composed of three of their most experienced judges — and if you are interested, those judges were appointed by various federal governments — were unanimous in their explicit application of *Carter* to E.F.'s circumstances and granted her wish to die with dignity under the MAID regime.

All of the Government of Canada's arguments were rejected by the Court of Appeal, and the Government of Canada did not appeal.

What happened next? Bill C-14 was introduced to put in place limitations in terms of access to MAID that require the requester's death to be reasonably foreseeable — you know about that; it came through here before I came here. This didn't specifically exclude people like E.F. from MAID, but it did effectively do so because mental illness, in its practical effects, might produce terrible suffering but, to be fair, it is a relatively rare case where mental illness is the sole underlying medical condition that brings a person close to death.

Then, as a result of *Truchon*, the requirement that death be reasonably foreseeable was constitutionally rejected. This made it possible for people like E.F., suffering grievously from a mental disorder but whose death was not reasonably foreseeable, to once again be entitled to MAID.

Now, with Bill C-7, the Government of Canada is making a decision to remove access for those people whose sole underlying condition is mental illness, an entitlement that was established by the Alberta Court of Appeal and implicitly upheld in *Truchon*, as we heard from Senator Carignan.

So let's be clear: The bill explicitly takes away a right established in the courts. Indeed, the Government of Canada has adopted one outcome from the Superior Court of Quebec — *Truchon* — and in the same breath, with this legislation, has ignored and chosen to overrule the unanimous decision of an appellate court in Alberta that provided that constitutional right to people.

On this point, I've spent time thinking about the constitutionality of a provision and a senator's responsibilities. My conclusion is that if a senator reaches the view that a provision of some import in legislation is unconstitutional, that senator owes a duty to the Constitution not to support it. I need more information and advice on this question, but I'm leaning toward the view the exclusion of mental illness in Bill C-7 is unconstitutional, which leads me toward supporting an intelligent amendment that brings mental illness into the legislation and into the MAID regime.

My third point refers to death not being reasonably foreseeable, but less the law and more the humanity of it. What comes to mind for me is the Simon & Garfunkel song "Bridge Over Troubled Water." Some of us are the right age to know Paul Simon's music. You will recall the line, "When you're down and out/When you're on the street" et cetera — I don't remember it all, but you get the point. Simon & Garfunkel sing about building a bridge over troubled water.

What we need to be doing here is building not the bridge that we're talking about but another bridge — a bridge to dying with dignity; a bridge to try to give people a chance to live healthier, more fulfilling lives, even when they are vulnerable, disabled and hurting.

I want to thank Paul Simon for that, but I also want to thank Senator Seidman for pointing me to the work of the parliamentary committee on MAID, which inspired me to stand up and speak this evening. I get nervous, because I know there are all kinds of traditions, and if I cross the line, Senator Housakos or Senator Plett will gently help me and correct me. But I thought I would stand up anyway and take the chance.

On balance, the provisions related to a person's death not being reasonably foreseeable are probably constitutional, but what I really want to talk about is autonomy — autonomy to make the choice and autonomy to be able to make good, honourable choices.

This is deeply personal to me, and I want to start there. When I was a kid, 7 years old, my family moved from Kamsack, Saskatchewan, to Moose Jaw, Saskatchewan. Senator Batters knows Moose Jaw and was pleased to hear I am from there. My father gave up a successful dentistry practice in Kamsack and his position as mayor of the town. His name was Wilfrid, which will give you a hint as to what sort of political orientation he had, for those of you remember or grew up with Wilfrid Laurier.

He took up a salaried position — I will need extra time, honourable senators.

**Hon. Senators:** Agreed.

**Senator Cotter:** He took up a salaried position with the Government of Saskatchewan as a dentist in Moose Jaw in what was then known as the Saskatchewan Provincial Training School. He was solely responsible for nearly 1,000 people at the training school, an institution for people with mental disabilities, some of themselves severe and profound.

My father loved his patients. He served as Santa Claus, about this time every year, for those residents. He had the physique for it, it turned out. Every Christmas morning for 10 years, I got up and went off to be an altar boy at Christmas mass, and then I came home to open Christmas presents with my brother and sister, and celebrate Christmas morning.

For every one of those Christmas mornings, my father disappeared for two or three hours. For the longest time, I didn't know where he had gone. It turned out that he was going back to the training school, as it was then called, to be Santa Claus and serve breakfast to those thousand residents. Initially, I was hurt that he would abandon his family for those precious hours on Christmas morning, but I eventually came to understand and deeply admire his commitment to people who were much less well off financially, and in human and living terms, than we were. That understanding and care sticks with a person all of their lives.

• (2020)

Let me fast forward a couple of decades. I have a daughter Kelly whom I love dearly. She has intellectual disabilities. She's a marvellous young woman. I hope you will get a chance to meet her when people can travel more freely. She lives in an assisted living community on Vancouver Island and is well supported there, and by her mother and me. We are fortunate to be comfortably off and committed to her happiness. We are confident that she will be able to have a rich, fulfilling life and able to make her own life decisions. But what I do know from these associations and her gift to me, really, is that there are many people for whom that autonomy is constrained. Some will argue that it is even absent.

I'm now coming to the point where I've heard many with respect to Bill C-7. I think Bill C-7 intends to and does provide autonomy of choice for citizens, and a set of circumstances related to their suffering. I support that autonomy, including its availability for people with disabilities and who are living in vulnerable circumstances. We have heard many heartbreaking stories.

Where this bill fails me, or at least the government's commitment fails, is in terms of building that second bridge. I will be uncharitable to a couple of senators here, but I won't say their names. I might get in trouble if I do. Senator Plett will jump up and defend them if I do.

The bill fails in the sense that it doesn't build that second bridge of ensuring that the autonomy can be exercised in significantly more balanced, fairer and potentially less coercive circumstances. So I support the autonomy of availability, but I am desperately keen to see circumstances exist where that autonomy is exercised more freely. That's where Senator Seidman's inspiration helped me greatly.

This brings me to the reason why I decided to stand up and speak. I heard some senators' remarks on this point, to the effect that these questions of living support, of mediating disability and vulnerability, are matters of provincial jurisdiction. I heard that from senators who inspired me to come and apply for the job in the Senate. I admire their views, but this point troubles me greatly. The point is: Ottawa proposes, the provinces dispose. It is a classic federal answer to Canada's problems.

Ottawa does have the authority. Some of the provinces don't like it. They don't like the spending power. This is the power Ottawa has to spend money in areas of provincial jurisdiction.

[ Senator Cotter ]

We heard a few witnesses in the last couple of weeks testify before us — Canada research chairs in education, professors at universities — and their positions and their salaries are paid directly by Ottawa in areas of provincial jurisdiction. So the answer of “provincial jurisdiction,” as if that is the complete answer, is unacceptable in my view.

Ottawa can — wisely and in partnership with provinces, and in a way that respects their jurisdiction — achieve meaningful investments in this area to build that second bridge. Hiding behind the division of powers, rather than stepping up to the plate and investing so that our most vulnerable can live more fulfilling lives and make truly autonomous choices, and maybe the most important choice some will ever make — the choice to die — it is unbelievably important and concerning that we would dismiss it on a division-of-powers basis.

There are many mechanisms that Ottawa has available to achieve this in an engaged way with provinces and territories. Indeed, in my experience — and I spent 12 years struggling with this equation when I was a provincial deputy minister — Ottawa always finds a way if it is important enough. What could possibly be more important than to help the most vulnerable live as fulfilling a life as we possibly can, and help them to have the best possible circumstances if they choose to make such a heartbreaking choice that they wish to die? I respect that choice, but I think it needs to be addressed in a more fully framed life — whatever we can do.

I would go further and say that in this chamber each of us as a senator speaks — many of you eloquently — for a province or territory, but in this case I think we have to speak to our province or territory. When resources come available, as surely they must from the Government of Canada to address the most vulnerable citizens — both generally and in relation to these hard questions — we must insist to our province or territory that investments made for these very meaningful purposes, and for these very people, go to the people they are intended to help.

This leads me to my final point. The moral compass of a country is not determined by how many millionaires it can produce but how it treats its most vulnerable. On this score, generally yes, but in particular with respect to our most vulnerable citizens' decisions regarding their lives and sometimes their dignified deaths, we must do better. Thank you.

**Some Hon. Senators:** Hear, hear.

**The Hon. the Acting Speaker:** Senator Cotter, would you entertain questions from Senator Batters and Senator McCallum?

**Senator Cotter:** As long as it is not about the podium and her wanting it back.

**The Hon. the Acting Speaker:** You have to request an extra five minutes.



**Senator Cotter:** Might I have another five minutes?

**The Hon. the Acting Speaker:** Honourable senators, are we agreed?

**Hon. Senators:** Agreed.

**Hon. Denise Batters:** Thank you very much, Senator Cotter. I want to ask a brief question about the Alberta *E.F.* case that you referenced.

When we were dealing with Bill C-14 in 2016, there was the *E.F.* case, which was an assisted suicide that had been carried out prior to Bill C-14 passing. I asked a question about it at Legal Committee because it was an extremely rare situation. The patient had a solely psychological and non-terminal illness, and it was an extremely rare psychiatric disorder.

Senator Cotter, did you know that in that particular case there were three doctors that approved this particular assisted suicide but only one of those doctors actually ever even saw that patient — the general practitioner, the GP? The psychiatrist who approved the assisted suicide only reviewed the file. The assisting doctor who was willing to do the assisted suicide never met the patient and did a consultation by FaceTime. This was pre-COVID, when FaceTime was a lot rarer. Did you know those particular facts?

**Senator Cotter:** Senator, let me offer a small viewpoint. I'm nowhere near being an expert on the medical side of the equation.

The question primarily relates to the framework, the safeguards and the boundaries that we put on the decision to make medical assistance in dying available. Respectfully, those are difficult and open questions. I'm not able to say, for example, how many doctors a person should see. I defer to many others who make that choice. But if the determination is that *E.F.* was entitled to medically assisted death, and I agree that it was an unusual circumstance, the point is that people who meet those criteria — mental illness as a sole underlying condition, suffering grievously and their death not being reasonably foreseeable — that category of person was authorized to be entitled to medical assistance in dying by the Alberta Court of Appeal.

I welcome your insights into what the guardrails should be, but if the guardrails are there and are met, it seems to me the right is established in law. Thanks.

**Hon. Mary Jane McCallum:** Would the honourable senator take a question?

**Senator Cotter:** I would be honoured to take a question.

**Senator McCallum:** Thank you, Senator Cotter.

I want to thank you for your powerful speech and to let you know that we are blessed to have you with us in the Red Chamber.

• (2030)

Senator Cotter, we have heard, a number of times already throughout this debate, reference to the fact that consideration should remain firmly on the principle of this bill. This is something I'm uncomfortable with, as I feel it is negligent to the fact that while the principle of the bill can be viewed plainly as text on paper, the reality is that Bill C-7 will lead to dire and critical human consequences and outcomes. Indigenous peoples of Canada are especially susceptible to the negative consequences that this bill could herald.

As has been indicated, this debate is on Bill C-7 and not Bill C-14, which I understand. However, if it were not for Bill C-14, Bill C-7 would not be in existence. I find it difficult to view consideration of Bill C-14 as beyond the scope and principle of this bill, as one gave birth to the other. There is an intricate link between the two.

In your expert and legal opinion, should senators not put equal consideration into the human part of the bill as opposed to simply focusing on the principle? If so, how would you envision marrying and balancing these two views? This siloed and, frankly, cold approach to considering the principle seems borderline inhumane. It is also an approach that has proven inadequate and ineffective when approaching relevant matters such as social determinants of health.

I would welcome and appreciate your insights into this matter. Thank you.

**Senator Cotter:** Thank you, senator. I'm not entirely sure of the question, but let me offer the answer I would like to give.

One of the arguments that was advanced in the last couple of days is that this bill is only an amendment to the Criminal Code, so let's keep ourselves blinkered and focused on that. I accept that as a legitimate legal exercise. However, it is within the power of the Government of Canada to do more in one fell swoop than amend one piece of legislation; it could commit to spend money at the same time.

My argument is that we should be making meaningful investments that were celebrated by the joint parliamentary committee — as far as I could tell, made up of parliamentarians from this chamber and the other place, some of whom were members of the governing party. They called for meaningful investments in palliative care and living circumstances, and those should run in parallel with this bill, not left separately, with our fingers crossed that something might happen. Thank you.

**Hon. Donna Dasko:** Would the senator take another question?

**Senator Cotter:** I would be pleased to, if I have the time.

**The Hon. the Acting Speaker:** Maybe you could ask the chamber for five more minutes.

**Senator Cotter:** Could I have five more minutes to field a fascinating question from Senator Dasko?

**Hon. Senators:** Agreed.

**The Hon. the Acting Speaker:** The chamber is benevolent tonight.

**Senator Dasko:** The chamber is very nice tonight. Thank you.

Senator, you began your speech with comments about the boundaries of autonomy that we place on other people. You went on to say that the two pieces of legislation — Bill C-14 and now Bill C-7 — took away rights with respect to MAID that had been given to Canadians by the courts.

In your view, what limitations are there in this area? What has the court given to Canadians? And what limitations do you feel there should be with respect to MAID?

I listened closely, and this relates in some ways to the excellent comments from Senator Dupuis, who talked about the fact that we value autonomy and that this is a growing social value in our society that has been reinforced by the courts and so on.

One could argue that there should be no limitations. If we have autonomy, we should be able to access MAID at any time, in any condition, to control our lives. We should be able to say, “I need this now. Perhaps I shouldn’t even have to have a medical condition to receive MAID.” We could assert that arguments about autonomy could take us in that direction as well.

I look forward to your comments about that. Thank you.

**Senator Cotter:** All I can do is try my best. I think Senator Dupuis is correct in her observation that we have moved to a society that values, more than it used to, individual rights and the autonomy of individuals. That has been a big factor in the shift in medical assistance in dying.

This is a challenge for us. It is articulated in a constitutionally entrenched Charter of Rights and Freedoms that Canadians in vast numbers support.

If I can digress for a moment. I was once at a conference in Saskatoon, and Allan Blakeney — one of the premiers involved in the architecture of the patriation of the Constitution and the Charter of Rights — and I were discussing a question about the degree to which the courts have circumscribed the authority of Parliament and legislatures to make choices about their societies. It was observed that then Prime Minister Harper was frustrated about that, had made observations. I said to former Premier Blakeney, “What are your thoughts about that?” I think it is fair to say that Prime Minister Harper was interested in the courts not constraining governments in terms of the kinds of things he had in mind, and Mr. Blakeney not wanting the courts to constrain the things he had in mind, which were much more socially proactive. With respect to what Prime Minister Harper had to say, Mr. Blakeney said, “I agree 100%.”

I was a bit surprised until I thought it through, and I think I understand it a bit better. But we have moved in that direction. Section 7 of the Charter was thought by its founders and drafters

to be merely a procedural check, and it has grown into a meaningful, substantive right. I think section 7 is the one most engaged in this question and the most difficult one to navigate by the government. I don’t want to get into details, but if you think about something that violates a fundamental principle of justice, which is what section 7 says, it’s hard to think of any language that will justify it, notwithstanding a few academics who have recently been trying to do so.

My point is that autonomy has gotten to be big. In some ways, it makes these questions so much harder to wrestle to the ground. In terms of the second part of the bill, no reasonable likelihood of death, there are almost two competing autonomies, if I can put it that way: the autonomy to be protected from vulnerability in one’s life and the autonomy to make an autonomous choice to die because you’re suffering, even though one’s death might be some distance into the future.

What are the boundaries? We have tried to create guardrails in Bill C-14 and in this legislation. I don’t know whether they’re the right ones. In my view, these are more policy choices that would withstand constitutional scrutiny, a government trying to make the right procedural choice, if I can call it that, in relation to access to medical assistance in dying. I’m less anxious about that. In the private dialogues I’ve had with Senator Gold, my sense is that one might choose different guidelines, but those are not going to be constitutionally problematic.

However, those are actually the smaller questions. The big question of autonomy — namely, when can we tell somebody they can’t make the choice to take their own life or have someone assist them — is a hard question.

In the 1970s, we decriminalized suicide. I don’t think we said suicide is good, but we said that people can make that choice if they like and we’re not going to hold them criminally accountable — particularly in the most tragic case when you try to take your life and don’t succeed and are charged with attempted suicide. That’s an awful interference with a person’s choice.

On the whole, I think we are moving in that direction. There are so many different features at play here. To what extent can morality speak to this question? That is difficult. To the extent that is a voice, what we’d like to think of as secular governments have listened, and I think it has been honoured in the dialogue.

Ought it play a part in these questions? I have real reservations about that, but I know others think that should be a factor. A societal measure of its goodness takes into account moral and sometimes religious values.

• (2040)

It's really not an answer, Senator Dasko. Probably each of us when we get to this question is wrestling with it in small or large ways ourselves. We tend to believe in the private nature of choice, but at what level of choice do we become, at a certain point as a society, particularly uncomfortable?

I'm not uncomfortable with where we are here. I think it's the right, honourable and constitutional choice, but I know others would make different choices. Thank you.

**Hon. Yonah Martin (Deputy Leader of the Opposition):** Senator Cotter, thank you for your speech — very eloquently delivered and very difficult to follow.

I am the final speaker of the evening, and I think there is enough time for me to complete my statement, so I will proceed.

It's a very important debate and, as others have said, I want to acknowledge the effort and the passion and the commitment to the very thoughtful speeches already by our sponsor, our critic, our leaders, everyone in this chamber, and Senator Cotter most recently.

This is an extremely important one, so I wish to add my voice to this complex, sensitive and difficult debate that weighs heavily on all of us. As parliamentarians, we know that the final words imprinted on this piece of legislation, Bill C-7, will literally determine who has the right to bring their life to an end, when, by whom and how it will be done. I know that we did previously pass Bill C-14. I wish I could turn back time in some respects, but instead, I will do a flashback to 2016 just to remind ourselves as to where we were then and what has happened since.

The previous MAID bill, Bill C-14, was one of the most difficult pieces of legislation for me personally and for our chamber to deal with, as it was enacting an assisted dying bill for the very first time in our nation's history, one that many other countries had not yet explored. We had robust debate at each stage, much longer than now, and our chamber was extremely divided throughout the process.

As I recall, it still felt as though we didn't have enough time to make a monumental decision for our country. As a chamber we sought opinions, research and knowledge from experts, patients, families, Indigenous leaders, nurses and caregivers. At the end of the day, we came to a final vote on Bill C-14 as the Supreme Court imposed a deadline to pass federal legislation to allow medical assisted dying in Canada.

From the onset, I was extremely opposed to the bill and had every intention of voting against it, to the very end, but there was a ruling in the Alberta Court of Appeal, which was mentioned by Senator Batters, at that time that was opening up the doors

alarmingly wide for MAID. I was advised then that passing federal legislation with safeguards we had managed to include through amendments and the inclusion of the foreseeable death provision was better than not having a federal regime in place.

I recall being advised that provinces have the responsibility of administering MAID and that they would be able to tighten the federal regime's framework by adding further safeguards where needed. However, in my province of British Columbia, the opposite happened with the election of a different government. Rather than a strengthening and tightening of the MAID regime, there have been several concerning developments.

In fact, last July, Alan Nichols from Chilliwack, B.C., who struggled with depression with no signs of imminent foreseeable death, was given approval for MAID by health professionals despite pleas from his family who believed he did not fit the government criteria for MAID eligibility based on Bill C-14. Knowing I had voted for Bill C-14 with the hope of addressing outstanding issues like palliative care and greater safeguards, I find myself on heightened alert as we debate Bill C-7.

Honourable senators, what I wish to raise today is the concern I feel and share with many constituents across Canada who have contacted my office, as I'm sure they have yours. Should Bill C-7 pass unamended, it will bring unintended consequences on vulnerable individuals in our country during their time of deepest need and care. During the pre-study of Bill C-7 at the Standing Senate Committee on Legal and Constitutional Affairs, I had the opportunity to participate on several of those days as an ex officio member. The committee sat for five days straight and heard from a wide range of witnesses who shared their personal stories, expertise and recommendations to improve Bill C-7.

The information and differing opinions were overwhelming and made it absolutely clear to me that there are significant issues with this bill and gaps that need to be closed, and that we cannot rush this legislation. Colleagues, many have stated this and we know that there is no reversal of death. The end of life means the end, full stop.

Unlike Bill C-14, Bill C-7 expands the eligibility for medically assisted dying to those not facing near death but are living with a disability. However, it does not include those living with mental health issues. This opens up a consequential debate on whether this legislation implies that some lives are not worth living and covers up a deeper societal issue by providing an end-of-life solution to a greater social problem of neglect rather than fixing the gaps in our health care system across Canada.

In the words of Assistant Professor Jonas-Sébastien Beaudry, who so clearly articulated in *Policy Options* magazine, it's not a matter of legal or ethical issue on whether people cannot judge for themselves when they feel their lives are not worth living. The issue is rather a political and social one because:

Bill C-7 opens a normative space in which various social actors, including medical experts and the state itself, can discuss the topic of "lives not worth living."

Another concern I have with the current monitoring and reporting system is that it is not properly constructed and relies on self-reporting by MAID providers, leaving families with no way to penetrate doctor-patient privilege if they suspect wrongdoing. Our colleagues in the House of Commons raised the need for robust and standardized federal monitoring and data collection on MAID, and to receive reliable national datasets to understand who is accessing MAID and why.

Dr. Leonie Herx added there's no oversight system separate from what is being done at Health Canada, where cases of MAID administration and compliance issues can be reviewed at a provincial level along with more thorough reporting from provinces. Currently only Quebec and Ontario have such an oversight system in place.

I was quite impressed with what some of the Quebec witnesses were able to tell us about how the regime is being monitored and administered in that province. I wish that one of the things we could do concurrently with what we are doing is to just begin the consultation and the sharing of best practices so that we can have what Quebecers have in terms of more consensus and sharing of information so that we can have availability of the best practices across Canada and more assurances for safeguarding the lives of the most vulnerable people.

Not only are we lacking clear and specific data, but witnesses expressed their concern that there is no proper standard in the delivery of MAID nor enough training for physicians and MAID providers. Dr. Mona Gupta, in response to a question, stated that:

The clinical community has been crying out for more training in MAID, end-of-life care and a variety of domains . . .

While I heard that the 10-day reflection period between the day the patient signed the written request and the day MAID is provided has not served the purpose of its original intent and only prolonged pain for patients set to receive MAID, I believe this safeguard is important to ensure certainty about the decision to receive MAID.

According to Health Canada's report on MAID in 2019, 263 people withdrew their request for MAID because they had changed their minds. Of those people who changed their minds about MAID, one in five withdrew their request immediately before MAID was to be carried out. The current law allows for the reflection period to be reduced if death or loss of capacity to provide informed consent is imminent. As such, the removal of the 10-day period is dangerous in cases of patients who sign a request in the morning and can receive MAID the same day without reflection.

[ Senator Martin ]

• (2050)

In fact, what unnerves me gravely is the wording of the greater certainty clause with regard to advance consent for MAID, which reads:

. . . involuntary words, sounds or gestures made in response to contact do not constitute a demonstration of refusal or resistance . . .

— and can receive MAID.

Currently, if any patient resists at any time, practitioners would not be allowed to provide MAID. How can we, as legislators, be asked to accept such a provision of what constitutes a real sign of involuntary resistance?

As an example, my mother is in long-term care with advanced dementia, doesn't recognize me or any member of the family, and was sound asleep when I was supposed to have a scheduled FaceTime call. The health professional on the other end took the camera into the room just to show me that she was sound asleep. And we were talking quite quietly and my mother stirred and just looked over as if recognizing my voice.

When I think about my own mother and envisioning a time if we were to ignore an involuntary movement or sound and continue a process, I would not want to be the family member put in such a position. So this is one of the provisions that really unnerved me because of my current situation with my own mother.

Dr. Trudo Lemmens, Professor and Scholl Chair in Health Law and Policy, Faculty of Law, University of Toronto, has done extensive work on the study of international and Canadian MAID practices and law. In his testimony to the Legal Committee, he said that this clause:

. . . violates the Convention on the Rights of Persons with Disabilities, which says loss of capacity doesn't mean you lose your rights, including your potential right to express, in one way or another, your resistance to something, or your change of mind.

Dr. Harvey Max Chochinov, Distinguished Professor, University of Manitoba, shared data with the committee that the desire for death is fluctuant. One study done in Belgium by a psychiatrist looked at 100 patients requesting euthanasia on the grounds of mental conditions alone. Of those 100 patients, 38 patients eventually withdrew their requests, 11 of them after they had been approved. In Oregon, 20% to 40% of the people who request lethal medication, in fact, never take that medication. Dr. Chochinov argued that, according to data, the idea of someone who makes up their mind today and holds fast to it is simply not true.

When Minister Patty Hajdu came to testify at the Senate committee, I had the opportunity to ask her about stop mechanisms in place once MAID is triggered. She didn't answer with any specific explanation and assurances of stop mechanisms, but what I have heard from witnesses and health

professionals is that until the day of final consent, there are no mandatory checks about whether the patient has changed his or her mind.

According to an article written by Dr. Leonie Herx, Dr. Margaret Cottle and Dr. John Scott in the *World Medical Journal*, there is no direct oversight or mechanism to stop the administration of MAID in real time, even if red flags are raised. They state that “monitoring requirements include only basic demographic information and are reviewed in retrospect.” This means that there’s no mechanism that halts the MAID process, where someone can pause and review whether an individual has first received adequate care before continuing with MAID. Only through retrospective review of the reports after a person has already passed will we see that a certain percentage of people did not have access to palliative care, for example. Without adequate collection of information, how can MAID be delivered accurately and within compliance of all the regulations?

Professor Jaro Kotalik identified in his article in the *Canadian Journal of Bioethics* that it took two years and four months after the delivery of MAID had begun for federal monitoring regulations by the federal ministry of health to take effect. One of the most concerning facts he presented is that by the end of December 2019, over 13,000 Canadians died with medical assistance. For almost 10,000 of those MAID cases, we have no publicly accessible evidence that the eligibility criteria and safeguards prescribed by law were respected. Our provinces, territories and health institutions must work together to share information so that more information on who was receiving MAID, as well as any known vulnerabilities in socio-economic status, is collected and properly analyzed.

And what about palliative care? We’ve talked a lot about that in this chamber. Many honourable senators have spoken about the need for better and more accessible palliative care across the country. When I stood to make the difficult vote on Bill C-14, we were told by the government that palliative care would be reviewed. However, due to COVID, this review has not yet happened, but we are being asked to vote on a bill that expands eligibility criteria to MAID.

As many witnesses and honourable senators have stated, palliative care must be part of the spectrum of care and must be offered and made available before initiating conversations about

MAID, not as an option along with MAID. I believe that MAID must be at the end of life, after all other services and support have been properly offered and made available.

Finally, Bill C-7 in its current form does not adequately protect conscience rights against forcing a physician to refer a patient for assisted suicide when it is against their conscience to do so. We have heard that Bill C-14 outlines conscience rights. However, the MAID regime is still relatively new, and forcing an individual to refer a person for MAID has not been tested in the Supreme Court of Canada.

Dr. Leonie Herx stated that the expectation of physician participation of MAID in Canada far exceeds that of any other permissive jurisdiction in the world. I have heard from doctors that they wish to see Bill C-7 strengthened and clarify the conscience clause in Bill C-14. Dr. Ewan Goligher, Assistant Professor of Medicine, University of Toronto, stated that even a referral makes a physician morally culpable.

In 2018, Dr. Diane Kelso highlighted that the Ontario Ministry of Health established a care coordination service where patients and caregivers can request directly to be connected to a doctor or nurse practitioner who provides MAID. However, the provincial college still required physicians to provide a direct referral. This is also the same in Nova Scotia, where physicians and nurse practitioners are required to make an effective referral for MAID.

At committee, several witnesses recommended to us further clarification in the Criminal Code would provide better clarity on whether or not referrals would be participating in the act of providing MAID. This is a very difficult aspect of our debate and one that I neither fully understand, nor comprehend. But listening to some of the medical professionals plead to the committee really did leave an impression with me.

Honourable senators, I will do my very best to conclude. I have several pages remaining. Thank you, colleagues. I will then, if I may, Your Honour, adjourn for the balance of my time.

(On motion of Senator Martin, debate adjourned.)

(At 9 p.m., pursuant to the order adopted by the Senate earlier this day, the Senate adjourned until 2 p.m., tomorrow.)

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## CONTENTS

Wednesday, December 16, 2020

	PAGE		PAGE
<b>SENATORS' STATEMENTS</b>		<b>QUESTION PERIOD</b>	
<b>Missing and Murdered Indigenous Women and Girls</b>		<b>Natural Resources</b>	
Hon. Pat Duncan . . . . .	734	Carbon Tax	
<b>Overseas Korean Politicians Council</b>		Hon. Denise Batters . . . . .	741
Hon. Yonah Martin . . . . .	734	Hon. Marc Gold . . . . .	741
<b>Kwanzaa</b>		<b>Health</b>	
Hon. Wanda Elaine Thomas Bernard . . . . .	735	Suicide Prevention	
<b>The Borland Family</b>		Hon. Yonah Martin . . . . .	741
Hon. Mary Jane McCallum . . . . .	735	Hon. Marc Gold . . . . .	742
<b>Expression of Thanks for Front-Line Workers</b>		<b>Finance</b>	
Hon. Brian Francis . . . . .	736	Bank of Canada's Mandate	
<b>Public Libraries Across Canada</b>		Hon. Diane Bellemare . . . . .	742
Hon. Tony Dean . . . . .	736	Hon. Marc Gold . . . . .	742
<hr/>		<b>Business of the Senate</b>	
<b>ROUTINE PROCEEDINGS</b>		Status of Answers to Written Questions	
<b>Ethics and Conflict of Interest for Senators</b>		Hon. Percy E. Downe . . . . .	742
Report Pursuant to Rule 12-26(2) Tabled		Hon. Marc Gold . . . . .	742
Hon. Judith G. Seidman . . . . .	737	<b>Fisheries and Oceans</b>	
<b>Chemical Weapons Convention Implementation Act (Bill S-2)</b>		Heritage Lighthouse Protection	
Bill to Amend—Second Report of Foreign Affairs and International Trade Committee Presented		Hon. Patricia Bovey . . . . .	743
Hon. Peter M. Boehm . . . . .	737	Hon. Marc Gold . . . . .	743
<b>The Senate</b>		<b>National Defence</b>	
Motion to Extend Today's Sitting Adopted		Canada-China Relations	
Hon. Raymonde Gagné . . . . .	737	Hon. Pierre-Hugues Boisvenu . . . . .	744
<b>The Senate</b>		Hon. Marc Gold . . . . .	744
Notice of Motion to Amend the <i>Rules of the Senate</i>		<b>Status of Women</b>	
Hon. Scott Tannas . . . . .	738	National Child Care Program	
<b>Ethics and Conflict of Interest for Senators</b>		Hon. Kim Pate . . . . .	744
Committee Authorized to Meet during Sitzings of the Senate and Hold Hybrid or Entirely Virtual Meetings		Hon. Marc Gold . . . . .	744
Hon. Judith G. Seidman . . . . .	740	<b>Finance</b>	
Committee Authorized to Refer Papers and Evidence from the First Session of the Forty-third Parliament and by the Intersessional Authority		Disability Benefits	
Hon. Judith G. Seidman . . . . .	740	Hon. Kim Pate . . . . .	745
<b>Energy, the Environment and Natural Resources</b>		Hon. Marc Gold . . . . .	745
Motion to Authorize Committee to Meet during Sitzings and Adjournment of the Senate and Hold Hybrid or Entirely Virtual Meetings—Leave Denied		<b>Innovation, Science and Economic Development</b>	
Hon. Paul J. Massicotte . . . . .	740	Scientific Research	
<hr/>		Hon. Douglas Black . . . . .	745
		Hon. Marc Gold . . . . .	745
		<hr/>	

## CONTENTS

Wednesday, December 16, 2020

	PAGE		PAGE
<b>ORDERS OF THE DAY</b>			
<b>Criminal Code (Bill C-7)</b>			
Bill to Amend—Second Reading—Debate		Bill to Amend—Second Reading—Debate Continued	
Hon. Donald Neil Plett . . . . .	745	Hon. Howard Wetston . . . . .	766
Hon. Jim Munson . . . . .	752	Hon. Mobina S. B. Jaffer . . . . .	767
Hon. Denise Batters . . . . .	753	Hon. Jane Cordy . . . . .	767
Hon. Ratna Omidvar . . . . .	754	Hon. Diane Bellemare . . . . .	767
Hon. Mary Coyle . . . . .	754	Hon. Julie Miville-Dechêne . . . . .	768
Hon. Salma Ataullahjan . . . . .	755	Hon. Pierre-Hugues Boisvenu . . . . .	768
Hon. Patricia Bovey . . . . .	756	Hon. Renée Dupuis . . . . .	770
Hon. Pierre J. Dalphond . . . . .	757	Hon. Michael L. MacDonald . . . . .	773
Hon. Diane Bellemare . . . . .	759	Hon. Frances Lankin . . . . .	775
Hon. Claude Carignan . . . . .	760	Hon. Brent Cotter . . . . .	776
Hon. Mary Jane McCallum . . . . .	760	Hon. Denise Batters . . . . .	779
Hon. Mobina S. B. Jaffer . . . . .	763	Hon. Mary Jane McCallum . . . . .	779
Hon. Lucie Moncion . . . . .	765	Hon. Donna Dasko . . . . .	779
		Hon. Yonah Martin . . . . .	781