SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

2nd SESSION • 43rd PARLIAMENT • VOLUME 152 • NUMBER 27

OFFICIAL REPORT
(HANSARD)

Thursday, February 11, 2021

The Honourable PIERRETTE RINGUETTE,
Speaker pro tempore

CONTENTS

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

Debates Services: Josée Boisvert, National Press Building, Room 831, Tel. 613-219-3775
Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 343-550-5002

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

THE SENATE

Thursday, February 11, 2021

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

Prayers.

SENATORS' STATEMENTS

THE LATE HONOURABLE JOHN (JACK) WALSH

Hon. David Richards: Honourable senators, Justice Jack Walsh died last week. He was 68 years old.

Jack Walsh was born and grew up on the Miramichi and worked for a year at the mill after graduating from high school in order to earn enough money to attend St. Thomas University. There he earned his Bachelor of Arts. He received his Bachelor of Law from the University of New Brunswick and went into private practice before becoming a Crown prosecutor in 1987.

In 1989, Justice Walsh became involved in the case that would shape his life and the life of many jurists across this country. He was one of the first prosecutors to introduce DNA evidence into a murder trial — the trial of serial murderer Allan Legere.

Justice Walsh became well known as one of Canada's leading experts on DNA evidence and was seconded to the federal Department of Justice in Ottawa to assist in the development of this country's federal DNA legislation and to provide expert consultation to both police and prosecutors.

Justice Walsh was later appointed Queen's Counsel and practised at both the trial and appellate levels throughout his career, including before the Supreme Court of Canada. He was appointed a judge of the Provincial Court of New Brunswick in 2008 and a justice of the Court of Queen's Bench of New Brunswick in 2009. On the bench he exhibited a trait that cannot be forced or fabricated: true empathy for those who appeared before him.

Justice Jack Walsh is the author of chapters and articles in legal and scientific publications dealing with legal proceedings in DNA evidence and has presented papers both nationally and internationally in the areas of criminal law, the criminal justice system and forensic DNA evidence. He was a faculty member of the National Criminal Law Program at the Federation of Law Societies of Canada and presented for many years at National Judicial Institute programs. He presided over the first trial of Dennis Oland and was the recipient of the Canadian Bar Association's Distinguished Service Award.

Both St. Thomas alumni and both from the Miramichi, we went to dinner together a few years ago. A great dinner companion, that night he had invited and was surrounded by people he had known since grade school and was resplendent with stories of our past. Those who sat with him had been his friends for 50 years, and perhaps that was his greatest and most admirable accomplishment. It is a true sign of human dignity and a quality of noble character to keep the friends of one's youth.

I extend my condolences and the condolences of the Senate of Canada to his wife Brenda, his daughters Becky and Katie, and his granddaughter Andie. Thank you very much.

INTERNATIONAL DAY OF WOMEN AND GIRLS IN SCIENCE

Hon. Judith G. Seidman: Honourable senators, in 1983, David Chambers, a social scientist, published results from his 11-year study. Between 1966 and 1977, a total of 4,807 elementary-school children — predominantly from Quebec but also from other cities in Canada and the United States — were given a simple task: draw a picture of a scientist.

While many of the images included a white coat, eyeglasses and lab equipment, one feature stood out the most: Each scientist was almost exclusively portrayed as a man. Out of approximately 5,000 drawings, only 28 women scientists were drawn all by girls.

Fifty years later, a team of researchers from Northwestern University examined how children's gender-science stereotypes have changed over time. They analyzed 78 "Draw-a-Scientist Test" studies and found that, as the decades passed, children became more likely to draw women scientists — a clear reflection of our ever-evolving society.

Today, we celebrate International Day of Women and Girls in Science, established to recognize and promote the critical role women and girls play in the fields of STEM.

We honour women like Harriet Brooks, Canada's first female nuclear physicist; Roberta Bondar, Canada's first female astronaut; and Carrie Derick, the first female professor at a Canadian university who paved the way for future generations of women.

However, despite the advancements made in recent years, serious gender disparities in STEM fields of occupation and education continue to persist globally. Research shows that women remain less likely than men to choose career paths in STEM.

As we celebrate the many achievements of women scientists, we should continue to engage young women and girls in STEM. Our encouragement and mentoring efforts can break barriers and enhance their sense of belonging.

If, by chance, this statement reaches the ears of a young woman or girl, remember this: Be bold in your pursuits. Your curiosity and drive for innovation can find answers to some of the most puzzling questions of our time. And you, too, can be the face of a child's future drawing of a scientist. Thank you.

BLACK HISTORY MONTH

Hon. Wanda Elaine Thomas Bernard: Honourable senators, it is an honour to stand before you today to recognize Black History Month. The national theme for this year is “The Future is Now.”

When I think of the future, I think of our youth — a generation with whom I’m continually impressed in terms of how they mobilize for change. They are at the forefront of innovation and they make the change they want to see. We saw this innovation throughout 2020 as many young people organized and participated in protests, demanding the change they want to see. Through these demonstrations, I saw strength and resilience.

Today, I bring to your attention a Black-led organization that is leading crucial work for change. Developing Young Leaders of Tomorrow, Today — referred to by the acronym DYLOTT — was developed by a Black social worker Candies Kotchapaw in the Greater Toronto Area. This organization works with young Black people in community engagement, grassroots leadership, self-actualization, systemic advocacy and intersectionality.

DYLOTT runs a program called the Black Diplomats Academy, which creates a space where young Black people ages 18 to 35 are guided by Black leaders. They learn about career spaces and those that are economically sustainable, along with the correct training, education and mentorship to help youth create sustainable development goals. A Black leading network leads to sustained systemic change through collaboration happening on a systems level, in policy and in the community. This model that focuses on Black mentorship and leadership will make sure that Black youth are equipped to take control of their future now.

• (1410)

Honourable colleagues, today I celebrate young Black excellence and thank Candies Kotchapaw for being the example of grassroots success in Black communities. DYLOTT is leading the way with Black leadership and creating intergenerational knowledge and mentorship. The voices of Black youth matter and their experiences matter.

Honourable senators, I believe in the power of Black youth, and each one has a potential to fulfil and lead the change they want to see in the world. Thank you.

Hon. Nancy J. Hartling: Honourable colleagues, February is Black History Month and a time to celebrate the many achievements of Black Canadians who, past and present, continue to contribute to our rich culturally diverse country. And so, it brings me great pleasure to pay tribute to Vincent Churchill “Manny” McIntyre.

Manny McIntyre was born October 4, 1918, in Gagetown, New Brunswick. He grew up in the Fredericton area and from an early age excelled at sports. He played both hockey and baseball at a semi-professional level and he even played professional baseball with the New York Cubans at the Negro American League for a short time.

In 1942, during the Second World War, Manny enlisted in the Canadian Army and played on both baseball and hockey army teams. He was later honourably discharged due to a mining injury which was not identified when he first enlisted.

On May 30, 1946, he was the first Black Canadian in the modern era of baseball to sign a professional contract as a shortstop with the Sherbrooke Canadiens. He was just a few weeks behind the legendary Jackie Robinson, who broke the colour barrier in U.S. pro baseball earlier that year.

Manny had a remarkable hockey career, which began at home in 1937, playing senior hockey with the Fredericton Merchants in New Brunswick and the Truro Bearcats in Nova Scotia. Moving to Timmins, Ontario, where he worked in a goldmine, he met brothers Herb and Ossie Carnegie, who were also Black hockey players. The three of them formed a well-known forward line in semi-professional hockey and gave themselves the nickname “the Black Aces” to highlight their African roots. Manny and Ossie even played one season in Europe, joining the Racing Club de Paris team in France in 1947. Again, they were the only Black players on the team.

Needless to say, Manny suffered racism, discrimination and isolation during his athletic career, especially when travelling to the United States with the Sherbrooke Canadiens. There came a point in his career that these factors and a nagging injury resulted in his retirement and his return home, where he felt more respected.

Manny McIntyre’s athletic achievements have been recognized through his induction into the Sports Hall of Fame in the cities of Oromocto, Fredericton and Timmins. He was inducted into the New Brunswick Sports Hall of Fame and the Canada’s Sports Hall of Fame. He has been nominated for induction into The Canadian Baseball Hall of Fame and will be inducted into the Maritime Sport Hall of Fame in September 2021.

Thank you to my dear friend and fellow social worker John Lutz for bringing Manny McIntyre’s story to my attention, and for your dedication in having your childhood idol recognized. Thank you.

Hon. Mobina S. B. Jaffer: Honourable senators, I also want to speak about Black History Month and showcase the work of young leaders in my own backyard.

Over the summer, I had the absolute honour of virtually attending a forum featuring young leaders of African descent in British Columbia.

First, we heard from Fatima Diriye, who spoke about the impact of COVID-19 on young people of African descent. Fatima talked about the impacts she has faced as a Black small-business owner. In spite of the challenges she is facing during this pandemic, Fatima reminds us that “flowers don’t grow without rain.”

Samantha Musoki shared a moving presentation on the importance of communities building new opportunities for youth of African descent. Samantha highlighted her first-hand experiences of working with youth, as well as her own upbringing. Samantha urged all professionals and those in positions of power to ask themselves: “What can you do as a person to improve your community?”

Mariam Arafati spoke about the effects COVID-19 has had on young mothers who had been forced to stay at home either due to the lack of affordable options for child care, unemployment and loss of employment, or all of the above. She wants to know: “What can the B.C. and federal governments do for mothers to ease the stress and burden of COVID-19?” And what mental health supports are available to them?

Godas Muhoza is a performing musician and artist. She gave us a glimpse inside the impact COVID-19 has had on musicians and their financial well-being. Amid all these obstacles and uncertainty, she sees her community coming together against racism and she sees music as one of the things that is going to unify it.

Finally, we heard from Lilian Mayombo, a remarkable young woman and an incredibly talented poet. Lilian generously performed two original poems for the forum. I was moved by every word Lilian spoke. I want to leave you all with just one line from the second poem Lilian shared with us: “Together with our leaders, nothing is impossible.”

Honourable senators, after hearing these young peoples’ powerful presentations, I am confident that they are the ones who will continue the fight for a brighter future for Canada. Thank you.

HAZEL MCCALLION, C.M.

CONGRATULATIONS ON ONE-HUNDREDTH BIRTHDAY

Hon. Victor Oh: Honourable senators, I rise today to mark a special and rare occasion this coming weekend. This is not the first time I rise in the chamber to speak about a dear friend, nor will it be the last. She has been lauded for decades in print, TV and radio. She has received the Order of Canada and is set to receive the Order of Ontario this year. Her dedication to public service has spanned over 50 years. To say this woman is remarkable is an understatement. Colleagues, on Sunday, February 14, my dear friend, Hazel McCallion, turns 100.

Back in 1978, I arrived in Mississauga as a new Canadian and had the pleasure of meeting the mayor of Mississauga. We became fast friends and she soon became my mentor. Throughout my career, she has encouraged and guided me. Truthfully, I would not be where I am today without Hazel.

One of my fondest memories is the trip Hazel and I took to Asia a few years back. During our travels we visited Mount Wutai, which is 3,000 metres above sea level. To make it to the summit, we climbed 200 steps and I struggled to keep up with her. Hazel was 92 at the time.

She is fearless, strong-willed and will never miss an opportunity for a challenge. I believe this is why she is a force to this day. Words cannot express my gratitude for her friendship and guidance over the years.

• (1420)

On this remarkable milestone, I would like to honour her and offer my very best wishes on her one-hundredth birthday for an abundance of health and happiness for many years to come. Thank you.

ROUTINE PROCEEDINGS

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRD REPORT OF COMMITTEE PRESENTED

Hon. Sabi Marwah, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, February 11, 2021

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRD REPORT

Your committee, which was authorized by the *Rules of the Senate* to consider financial and administrative matters, recommends that the following funds be released for fiscal year 2020-21.

Legal and Constitutional Affairs (Legislation)

General Expenses	$	6,000
TOTAL	**$**	**6,000**

Respectfully submitted,

SABI MARWAH
Chair

The Hon. the Speaker pro tempore: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Marwah, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

ADJOURNMENT

MOTION ADOPTED

Hon. Marc Gold (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:
>
> 1. today's sitting continue until the earlier of midnight or the end of Government Business, as if that were the ordinary time of adjournment; and
> 2. when the Senate adjourns today it do stand adjourned until Tuesday, February 16, 2021, at 2 p.m.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

QUESTION PERIOD

PUBLIC SERVICES AND PROCUREMENT

COVID-19 VACCINE PROCUREMENT

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, my question is for the government leader in the Senate.

Canada's performance on COVID-19 vaccine delivery in comparison to other countries has dropped sharply and continues to fall. Yesterday, about 30,000 Canadians were vaccinated, while 1.56 million Americans received their first dose.

On February 3, the federal government removed the delivery schedule for the Moderna vaccine shipments from Health Canada's website, but I read there will be a shipment of 168,000 doses the week of February 22, as announced by General Fortin. This is less than was expected.

Has the Prime Minister spoken with the CEO of Moderna this week to understand whether or not we will be getting what we need and that the shipment will not be reduced going forward, just to have that communication to ensure Canadians can receive what we need in this country? This is a very urgent matter, so would you confirm the Prime Minister's communication with the company?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. I'll be brief in my answer. The government's position remains that it is on track to deliver — and that companies are on track to deliver — the number of doses as promised.

I cannot confirm that the Prime Minister has spoken to the CEO, but I want this chamber to appreciate that, though we focus on the Prime Minister, it is the Minister of Procurement who, day in and day out, has the primary responsibility — which she is discharging in an exemplary fashion — to be in touch with all stakeholders, suppliers and counterparts in other jurisdictions to ensure that Canada and Canadians will be well protected.

There are times, to be sure, when the Prime Minister intervenes with his counterparts, but it's important for the chamber and for Canadians to know that the Minister of Procurement, Minister Anand, is working 24 hours a day, 7 days a week, and doing an exemplary job in helping us secure what we need.

Senator Martin: I'm not questioning whether the minister is making her best efforts. I do continue to see online and on social media that Canada's ranking continues to fall.

The Prime Minister is the leader of our country. There must be incredible demand, and it is important for the leader to be the voice and to intervene on behalf of Canadians. Will the Prime Minister do so going forward on all of these matters?

Senator Gold: Thank you for your question. The Prime Minister is indeed the first minister in the government and believes significantly in empowering his ministers and has confidence in his ministers, including Minister Anand. The Prime Minister will intervene when he believes it's necessary but, in this particular case, I don't have any information as to what his plans are vis-à-vis Moderna.

I can reassure this chamber that the government is in regular contact with its suppliers and doing everything it can to secure a supply for Canadians.

HEALTH

MEDICAL ISOTOPES

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

According to Statistics Canada, in November passenger air travel in Canada was down 87% year over year. The ongoing sharp reduction in domestic air travel has impacted the movement of time-sensitive radiochemical materials used to treat certain types of cancers across our country. These medical isotopes were often transported as cargo on passenger jets. Due to the uncertainty around the return of air travel to normal volumes, it seems likely that the shipping of medical isotopes may be an issue for some time to come.

Leader, this was an issue in the media about a month ago, but I have not seen anything about it since then. Do you know, leader, whether Health Canada is monitoring the movement of shipments of medical isotopes across Canada? Has your government spoken to the provinces and territories about any issues with delay or availability of isotopes that they might be experiencing in their respective jurisdictions?

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator, for your question and for bringing to our attention on an ongoing basis the important issues about the supply of medications and other health-related products beyond those which we are properly focusing on in terms of COVID.

• (1430)

I don't have the specific answers to your questions, and I will inquire and make efforts to get them, but I do want to assure this chamber that the federal government is in regular contact with its provincial counterparts over a broad range of issues concerning health. The headlines often talk about financing for health, an important issue but by no means the only one. I will make those inquiries. Senator, thank you for your question.

Senator Seidman: Thank you, leader. Might you inquire and let us know whether the Minister of Health, Minister of Transport and Minister of National Defence have discussed this matter? Does the federal government have a plan in place in the event of further constraints on the medical isotope supply chain?

Senator Gold: I certainly will add those to my inquiries.

[*Translation*]

PUBLIC SAFETY

FIREARMS CONTROL

Hon. Julie Miville-Dechêne: My question is for the Leader of the Government in the Senate. According to leaked information, the government is going to introduce its long-awaited bill to buy back a whole range of assault-style weapons. However, contrary to what the government promised, the buyback will not be mandatory.

How does the government intend to protect Canadians against gun violence if people still have particularly deadly prohibited weapons in their homes during the pandemic, which further increases the risk of violence?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. This raises an issue that is extremely important in Montreal, where we recently experienced a tragedy, specifically the death of Meriem Boundaoui. We extend our deepest condolences to her family and friends at this difficult time.

Every life lost to gun violence is one life too many. Incidents such as this and so many others strengthen this government's commitment to continue working to protect our families from such tragedies and unimaginable circumstances.

Every municipality, every province has its challenges. I was informed that the government committed to keep its promises of working with the provinces and municipalities to give them the authority to adopt additional measures to either limit or completely prohibit the use and storage of these firearms in their jurisdictions.

The government's plan will also include additional resources to ensure that there are harsher penalties and sanctions and to give our border agencies and police additional powers to prevent the trafficking of firearms from other countries in Canada.

Senator Miville-Dechêne: I have a supplementary question. Yesterday, Montreal Mayor Valérie Plante reacted to the absolutely tragic death of Meriem Boundaoui by once again calling on Prime Minister Trudeau to introduce federal legislation restricting access to handguns. As you know, other major cities, such as Toronto and Vancouver, are on the same page.

Why off-load this tough issue onto cities at a time when armed violence is on the rise in metropolitan areas? Why is the government choosing not to introduce handgun legislation?

Senator Gold: Firearms legislation is important, but it is also complex, as we saw here during debates on Bill C-71. The government is working with the provinces and municipalities on a bill to put forward an appropriate solution that reflects varying circumstances among and even within big cities and takes into account the fact that our cities vary greatly in size and that opinions clearly differ across the country. The government remains committed to better protecting Canadians from the dangers of firearms and is working hard on this issue.

[*English*]

JUSTICE
INDIGENOUS SERVICES

INDIGENOUS HEALTH

Hon. Dan Christmas: Honourable senators, my question is for Senator Gold in his capacity as Government Representative in the Senate.

We have heard concerns from a number of Indigenous communities that while Bill C-7 protects individual freedoms in the Charter, it may threaten the protection of collective rights of Indigenous communities as set out in the Constitution Act, section 35, and the bill related to the United Nations Declaration on the Rights of Indigenous Peoples — currently under study in the other place — as well as those hopefully included in the government's proposed distinctions-based health legislation currently under co-development.

Our cultural and traditional healing practices also require such protection.

Can you assure us here today that Bill C-7 and its provisions will not derogate from any of these existing protections and that its measures are culturally in accordance with our many Indigenous practices and traditions?

Hon. Marc Gold (Government Representative in the Senate): Senator Christmas, thank you for your question. It's the position of this government that Bill C-7 is not inconsistent with, and does not derogate from, the variety of traditional healing practices in Indigenous communities. I'll come back to that point later. But, like all laws, Bill C-7 is subject to the Constitution, and conforms to it. That includes the protections included in section 35 of the Constitution Act.

In addition, the government, as you know, has introduced the UNDRIP bill. It's in the other place. I look forward to its arrival in the Senate so that it can be studied, debated and passed. That should provide additional support for the ongoing development of Indigenous-led health services.

In that regard, the government is engaged in consultations with Indigenous communities with respect to the proposed distinction-based health act, and that is another avenue where I believe the legitimate and important concerns of Indigenous communities around health care, generally, and medical assistance in dying, specifically, can be pursued.

Senator Christmas: We have heard of certain sad and heartbreaking instances where Indigenous peoples have been harmed or have suffered fatal consequences at the hands of physicians who harbour racist attitudes. We have all read the stories. How do we deal with such cases?

In the face of this, Mr. Government Representative, my question is this: Will the proposed distinctions-based health act currently under co-development provide any protections for vulnerable Indigenous people contending with a health care system in which the prospect of racist treatment at the hands of some physicians looms before them as a real and potentially fatal threat?

Senator Gold: Senator Christmas, thank you again for your question.

As you know, the government has set aside over $15 million over the next two years to create health legislation that is tailored to the needs of First Nations, Inuit and Métis peoples, and I've been advised that the pre-engagement consultation is expected to unfold late this spring, at which point formal consultations will take place.

I can tell you further that the government is committed to tackling the problems of racism and systemic racism in the health care sector in my province. Sadly, and tragically, it is only one of far too many stories. The death of Joyce Echaquan last fall and the circumstances of her death in a Quebec hospital was a brutal and stark reminder of how serious this problem is. The government remains committed to working with First Nations, Inuit and Métis as we together consult and develop health care legislation going forward.

• (1440)

HEALTH
IMMIGRATION, REFUGEES AND CITIZENSHIP

TEMPORARY FOREIGN WORKERS

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

Senator Gold, as you know, temporary foreign workers play an integral role in maintaining Canada's food supply chain. Last year, these workers risked their health as they travelled to fill shortages in our workforce. Their employers also faced increasingly difficult and arduous processes to bring their workers to Canada, in addition to adding supporting resources to keep them safe. In a time when almost nothing was certain, our agricultural sector has worked tirelessly to keep Canadian families fed, and I think it's now the time that we repay the favour.

Senator Gold, I have also encountered significant delays when seeking information on the Agri-Food immigration pilot program. A briefing was first requested in July of last year by myself and two of my honourable colleagues. We waited until December to receive this briefing and have since waited another two months to receive follow-up information to unanswered questions. While I acknowledge the many challenges that we are presently facing, I am extremely frustrated with the lack of consideration shown by the departments involved. It's no wonder that there have been so few permanent residency applications through this initiative. How can potential applicants learn about the program when senators can't even get answers to their questions?

With the hopes of receiving a more fulsome response, Senator Gold, I did provide you with this question in advance. So now I ask: What is the federal government doing to proactively prepare for the arrival of temporary foreign workers, to help support and safeguard them and our country's agricultural employers as we continue to navigate the ongoing pandemic, and can you share with us what the government plans to do to increase interest and encourage applications to the Agri-Food immigration pilot program? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Senator, thank you for your question and thank you for the advance notice. It gave me the opportunity to at least better acquaint myself with some of the details. I hope this answer goes some way towards addressing your question and your concerns.

The government has announced additional measures in investments to reduce the incidence of outbreaks and the impact of outbreaks on our farms, and to help mitigate the impacts of the COVID-19 pandemic on the workers working in and on the food supply in Canada. These include strengthening inspections, enhancing penalties for non-compliance, increasing outreach to temporary foreign workers, to which I'll return in a moment, and increasing funding to help farmers put into place mitigation efforts.

Part of this government response is an $84-million investment to help producers through the Mandatory Isolation Support for Temporary Foreign Workers Program. This program will provide a maximum non-repayable contribution amount of $1,500 for each temporary foreign worker.

Now, as for the Agri-Food immigration pilot program, the Government of Canada website provides very detailed information on eligibility and how to apply for permanent residency. This includes information on the requirements of language, the requirements of education and, of course, on the industries that are seeking applicants, for example, whether in harvesting, livestock work or general farm labour. I'm advised that this pilot program will create over 2,000 jobs.

These are some of the measures the government has put into place. This is the portal through which information can be gleaned by those who are interested, and the government hopes that this addresses the important health and safety needs of the agricultural workers upon which our food supply chain depends so importantly.

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

Senator R. Black: I do. I just know that as of December, there were only 187 — and that number could be up or down by a little — applications for the Agri-Food immigration pilot project, which came into being last May. So the 2,200 or 2,700 that you speak of, in seven or eight or nine months, there is still a lot of work to be done, Senator Gold. I would ask that you find out what is being done to further encourage applicants. Thank you.

Senator Gold: I will, thank you.

[*Translation*]

JUSTICE

CANADA EMERGENCY RESPONSE BENEFIT

Hon. Jean-Guy Dagenais: Honourable senators, my question is for the Leader of the Government in the Senate. I have repeatedly spoken out about the fact that the Trudeau government doesn't give members of this chamber enough time to study certain bills relating to financial assistance provided during the pandemic. I would remind you that I'm not in the habit of putting my stamp of approval on anything without reflection, but especially not on the Prime Minister's bills.

Your Prime Minister announced on Tuesday that anyone who illegally received CERB in March 2020 would be exempt from repayment. Why did he make that decision? Quite simply because the bill on this subject was poorly written, but more importantly, because your government refused to let the Senate make any amendments under the pretext that the situation was so urgent.

Leader, since I don't think you can use the excuse that it's a secret this time, can you please tell us how much this mistake on Justin Trudeau's part is going to cost taxpayers? While we're at it, can you undertake to bring to your Prime Minister's attention the fact that he needs to show greater respect for the members of this chamber, give us more time to study these bills, and also acknowledge that senators have the right to propose amendments to improve them?

Hon. Marc Gold (Government Representative in the Senate): Esteemed colleague, thank you for the question. With all due respect, I reject several premises of your question. Firstly, regarding the assistance programs for Canadians that we brought in over the months during this pandemic, every parliamentarian — not just senators, but also members of Parliament from all parties — had a say and decided that the urgency of the situation warranted the extraordinary measures taken to pass these bills. The bills we passed here and for which you claim there was not enough time for study, were supported by all the other democratically elected political parties at the other place. That is why I do not accept the premise that there is a lack of respect for the Senate. On the contrary, it is a show of confidence that our parliamentarians are prepared to do whatever it takes to protect Canadians and ensure that they have money to put bread on the table to feed their family.

As for your premise about amendments, this government stands out from all other previous governments, no matter their political stripe — and this is not partisan — in that it accepted almost 25% of the Senate's amendments in the last Parliament. Without going into detail, this government has shown an openness to Senate amendments that is unprecedented in the Senate's history.

Finally, I also can't accept the presumption that the government made a mistake by implementing programs, as everyone agrees, very quickly in view of the pandemic, and that when the government realized that it had somewhat missed the mark, it had to make adjustments. The government did so, once again, with the support of not just senators, but also the other political parties in the House of Commons. Thank you for the question, but I felt the need to share my point of view with you.

• (1450)

Senator Dagenais: Leader, you often tell me that you can't accept the premises of my questions, but I'm not expecting you to. When I asked the Minister of Finance a question, she would often respond that the situation was urgent and that we had to pass the bills.

The fact of the matter is that a number of Canadians fraudulently received the CERB, and the government is not doing anything about it. It can't calculate how much money Canadians will lose because of the CERB. I understand that the situation is urgent. However, it has been nine or 10 months now, almost a year, so I think the level of urgency has subsided and your government should agree to allow amendments to the bill. We are once again in a time crunch, and the proof is that unfortunately, some Canadians will fraudulently claim the CERB at taxpayers' expense. I think that is unacceptable.

Senator Gold: Fraudulent CERB claims are totally unacceptable, but errors are a different story. We recently realized that public servants had misinterpreted the law and given bad advice. The Canadians who received money based on this advice did not do so fraudulently. It was an honest mistake. The government had the good sense, kindness and compassion not to force them to repay the money they had received in good faith.

As for the matter of amendments, the government is always prepared to consider amendments from the Senate, and that will not change.

[*English*]

FOREIGN AFFAIRS

HUMAN RIGHTS IN MYANMAR

Hon. Jane Cordy: Senator Gold, following the national election in Myanmar, the world watched on February 1 as the military in that country swiftly took power in a coup. As you know, the situation in Myanmar has been steadily deteriorating over the last five years. The international community has watched as human rights atrocities have occurred in the country, and now we see a return to military rule.

I know that our government has condemned the actions of the Myanmar military. Yesterday, President Biden issued an executive order that will take immediate sanctions against the military leaders who directed the coup. Today, European Parliament lawmakers called for the bloc's governments to sanction Myanmar's military leadership following last week's military coup.

Does our government plan to follow the lead of the United States and adopt sanctions of our own? I'm also wondering what concrete action Canada will take in support of the people of Myanmar.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. Yes, you correctly pointed out that Canada unequivocally condemns the overthrow of Myanmar's government by the military and is very concerned by the arrest of several civilian officials, as well as a number of political activists and civil society leaders across the country. Canada rejects any actions that undermine the civil and political rights of the people in Myanmar and threatens Myanmar's democratic transition. I've been advised that the government has called upon Myanmar's military authorities to immediately release all individuals who have been detained and restore the civilian government and halt all obstructions to the democratic process.

With regard to you question about sanctions, Canada is in regular contact with its partners. As I said on a number of occasions in other contexts, Canada believes its influence and its voice can only be strengthened when it works with like-minded allies and partners and is actively considering all options should the Myanmar military fail to reverse their course.

Senator Cordy: Thank you for that, Senator Gold. I was a member of the Human Rights Committee when we released a report on the Rohingya refugee crisis in February 2019. The title of that report was *An Ocean of Misery*. That gives you a sense of the kinds of things that we heard and that we learned during our study.

We heard testimony from Ambassador Bob Rae, who was at that time the special envoy of the Prime Minister to Myanmar. He detailed the atrocities that the Rohingya refugees experienced at the hand of the Myanmar military. His testimony was very powerful for us. It was very emotional.

While Myanmar is under military rule, the safety of the Rohingya living in the country will never be guaranteed. The safe return of the refugees is essentially impossible during this situation.

Will the government commit to renewing and continuing financial assistance to the human rights crisis in Myanmar supporting —

[*Translation*]

The Hon. the Speaker pro tempore: Honourable senators, I regret to inform you that the time for Question Period has expired.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: second reading of Bill C-2 and third reading of Bill C-7, followed by all remaining items in the order that they appear on the Order Paper.

[*English*]

JUDGES ACT
CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

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

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

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

(On motion of Senator Dalphond, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

BUSINESS OF THE SENATE

The Hon. the Speaker pro tempore: Honourable senators, before we resume debate on Bill C-7, let me remind you that we are dealing with the bill by theme. Yesterday we dealt with the theme of safeguards and advance requests. I understand that that debate will continue briefly before we continue with the next theme.

When we are debating a theme, speeches and amendments are to only deal with that theme. A senator can speak only once to the third reading motion during debate on each theme, but can also speak once to any amendment or subamendment moved.

A speech on the main motion for third reading is limited to 10 minutes, but if the senator provided an amendment before 5 p.m. yesterday and intends to move it, the speaking time is extended to 15 minutes. If a senator will be moving an amendment, I would ask that he or she confirm that at the start of speaking. The speaking time for amendments and subamendments is 6 minutes.

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

Once debate on a theme concludes debate on the next theme can begin. It is not possible to revert to an earlier theme.

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

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

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

Hon. Renée Dupuis: Honourable senators, I rise today to speak to the amendments proposed in Bill C-7: first, to include access to medical assistance in dying for persons whose death is not reasonably foreseeable; second, to amend the access conditions for persons whose death is foreseeable; third, to address the issue of advance directives.

• (1500)

The first paragraph of the preamble of Bill C-7 states:

> Whereas the Government of Canada has committed to responding to the Superior Court of Québec decision in *Truchon v. Attorney General of Canada*;

That ruling was made on September 11, 2019.

The second paragraph of the preamble goes on to state:

> Whereas Parliament considers that it is appropriate to no longer limit eligibility for medical assistance in dying to persons whose natural death is reasonably foreseeable and to provide additional safeguards for those persons whose natural death is not reasonably foreseeable;

First, Bill C-7 proposes to repeal current paragraph 241.2(2)(d) of the Criminal Code, which requires natural death to be reasonably foreseeable in order to have access to assistance in dying.

This part of the bill responds to *Truchon*.

Next, Bill C-7 introduces two types of mandatory processes to have access to assistance in dying. First, the bill amends the existing process for situations where death is reasonably foreseeable in order to make it less burdensome. Second, the bill introduces a second process for cases where natural death is not reasonably foreseeable by adding what some would call safeguards and others would call additional obstacles.

In doing so, the government is choosing to create a two-track approach to accessing medical assistance in dying, which really isn’t necessary. Furthermore, in the second track, in those cases where death is not foreseeable, Bill C-7 creates greater obstacles than in the first track.

In fact, the two processes introduce a distinction between these two categories of people, presuming that all people are vulnerable, which is not the case. This distinction between categories of people is arbitrary, its scope too broad and its consequences disproportionate for people whose death is not foreseeable, which violates the equality rights protected under section 15 of the Canadian Charter of Rights and Freedoms and the right to life, liberty and security set out in section 7 of the Charter.

The Minister of Justice told the Legal and Constitutional Affairs Committee that these are enhanced safeguards for when death is not reasonably foreseeable, when, according to him, the risks are greater. In response to a question about what he meant by “greater risks” in such situations, he said he was referring to concerns expressed about medical assistance in dying. As he explained it, the government wants to strike a balance between protecting autonomy in making this kind of decision and the concerns it heard during consultations. The safeguards must be designed to protect the patient. They must not be obstacles to honouring the patient's wishes. Most importantly, they cannot be established arbitrarily because some people oppose medical assistance in dying.

Witnesses who appeared before the Legal and Constitutional Affairs Committee during its study of Bill C-7 also emphasized the fact that the concept of reasonably foreseeable death is confusing and ambiguous and cannot be evaluated, because it places a burden on the medical assessors. Dr. Naud, who appeared before the committee, said the concept:

> . . . represents no medical concept or definition and appears in no medical textbook, and yet physicians are responsible for applying it.

The procedure for people whose death is not reasonably foreseeable includes a series of criteria referred to as safeguards. According to several witnesses who appeared before the Legal and Constitutional Affairs Committee, these obstacles are arbitrary and unfounded.

Some of the obstacles the bill proposes to add to section 241.2 of the current Criminal Code, in proposed subsection 3.1, are particularly problematic. For example, first, there is the requirement to obtain a second written opinion from another physician or nurse practitioner confirming compliance with all other criteria. Second, there is the requirement to consult a medical practitioner who has expertise in the condition causing the patient's suffering if the physician or nurse who will provide MAID does not have expertise in the matter; this requirement, introduced by an amendment adopted in the House of Commons, doesn't properly address the issue. Third, there is the requirement that there be a discussion, and also an agreement, added here in proposed paragraph 3.1(h); this is especially problematic. It requires that the physician or nurse practitioner ensure that a three-way discussion take place with the physician or nurse practitioner, the second medical practitioner consulted who provided a written opinion, and the person who made the request for MAID. This discussion must focus on the reasonable and available means to relieve the patient's suffering. Not only must that discussion take place — which is understandable — but another condition has been added, namely that the physician or nurse ensure that the two medical practitioners agree with the person requesting MAID that the person has given serious consideration to those means.

These two additional conditions seem not only arbitrary, but their scope is excessive and they disproportionately affect those whose death is not foreseeable.

Nonetheless, the fact that assistance in dying is conditional on an agreement between two other doctors confirming that the person has "seriously considered" other options is much too restrictive.

First, it is too vague to be seriously enforced. What criteria will the doctors use to determine whether the person seeking MAID has seriously considered other options? Who should define such criteria? The person requesting assistance in dying is thereby at the mercy of an agreement between two doctors. Should the doctors not see eye to eye on the issue, the person has no recourse and will be denied assistance in dying.

Second, this requirement contradicts the very principle that the bill seeks to enshrine: access to assistance in dying for consenting adults who are capable of providing free and informed consent. This additional condition is a very clear step backward when it comes to respecting people's autonomy in making fundamental personal choices about their bodily integrity and medical care, which was reiterated by the courts. This additional excessive condition is contrary to the right to life, liberty and security of the person protected by section 7 of the Charter.

A doctor who testified in committee told us that medical paternalism has evolved. We would like to believe it.

Fourth, the 90-day minimum required between the day the first assessment begins and the day medical assistance is provided seems to be unnecessary and meaningless, according to some of the witnesses we heard in committee. It also seems to be arbitrary, to say the least, given the unsatisfactory explanations provided to the members of the Legal Affairs Committee. As a witness told the committee, this is a penalty for suffering.

Lastly, the Legal Affairs Committee presented its report on Bill C-7 on February 8, in which it came to the following conclusion about waiving final consent:

> Witnesses also had divergent opinions on the requirement that a person give final consent immediately before MAID is provided and the possibility of a waiver of final consent in advance of a loss of capacity.

The ability to waive final consent should apply to all requests for medical assistance in dying, whether death is foreseeable or not. This artificial distinction between the various stages of an illness is arbitrary, as we have discussed. A number of witnesses from the legal community reminded us of this fact.

Experience has shown that it is the ability to express one's will that is central to the request for MAID. That is why having the possibility to draft advance directives is truly central to respecting our autonomy to make decisions and our will concerning our integrity, regardless of whether death is foreseeable or not and regardless of the diagnosis of our condition.

The Hon. the Speaker pro tempore: Do any other honourable senators wish to intervene in debate on the theme of safeguards and advance requests?

If not, debate on this theme is considered concluded, and the Senate can proceed with debate on the next theme, which is vulnerable and minority groups, healthcare (including palliative care) and access to medical assistance in dying.

• (1510)

[*English*]

Hon. Mobina S. B. Jaffer: Honourable senators, I will be moving an amendment.

I cannot express how privileged I feel today to rise to encourage you all to support my amendment calling for race-based data of all people who request and receive MAID to be systematically collected by the Government of Canada.

This amendment truly is the culmination of decades of work, and it is underpinned by principles of true justice and racial equity. Senators, I am aware that while my amendment focuses on race, I certainly do acknowledge that there are many other gaps in data collection. While data collection may be inadequate for other groups, data collection is completely absent when it comes to race, and that is why it is my primary focus.

Honourable senators, we have spent the past year talking about systemic racism and injustices racialized people face. While studying Bill C-7, I identified an instance where race was not taken into consideration, and I felt it was our responsibility to take action, as this is a very important piece of legislation.

At committee, Senator Harder said the following:

> I have a further question, going back to data collection. It is not uncommon in bills such as this to have a hook in the bill with respect to regulatory amendments or regulatory procedures that would allow data to be collected that is relevant for the consideration of the issue that the bill addresses.
>
> Are you saying that you don't have the capacity to collect the data that we assumed with Bill C-14 would be collected and therefore instructive in future consideration of this issue? If not, would the government consider an amendment that would cause such data to be collected through a regulatory framework?

Senators, this is why Senator Harder's intervention gave me the impetus to introduce a regulatory amendment, as I have done. My amendment will ensure the data of racialized people is collected: a group that comprises one quarter of our population.

With regard to paragraph 241.31(3)(a)(i), section B, the information collection of those who request and receive MAID will be extended to include a person's race.

Paragraph 241.31(3)(b) of the amendment will ensure that the bill includes the analysis and interpretation of this information including for the purposes of identifying race-based inequities and how race intersects with other forms of systemic inequality in medical assistance in dying.

Ultimately, if adopted by the other place, this amendment would put in place a systemic approach to combating racism and the ways race-based inequality intersects with other systematic inequalities.

Honourable senators, with regard to why we must also consider the way race intersects with and breeds systemic inequality, I believe Dr. Laverne Jacobs, 1 of over 80 witnesses at our pre-study report, said it best when she explained:

> Racial stigma forms part of anti-Black racism. . . .
>
> As a result of social structures that have been built on biased understandings of social existence, inequality becomes not just a set of individual circumstances but also a much larger web of systemic discrimination.

We know that the current government is not blind to the issues posed by this huge information gap. I was extremely appreciative that Minister Lametti, and the officials both from Justice and Health, were very forthright in their admission that absolutely no race-based data had been collected. As you are aware, senators, the gender-based analysis plus is carried out to ensure that all legislation and policy adequately acknowledge and account for the lived experiences of women, men and people with gender identities, as well as for other factors such as age, sexual orientation, disability, race, education, language, geography, culture and income.

The fact is, since 2016 the government has publicly committed to collecting this data among its gender-based analysis plus study criteria. When we were given a copy of the gender-based analysis plus to show the impact of Bill C-7 on racialized communities, this was not considered. I had asked the minister if racialized communities considered. He originally thought they were, but when we received the report, he was forthright. He said, "No, they were not considered."

This amendment solely aims to ensure this commitment is being fulfilled and the rights of racialized people, almost a quarter of the population, are also being fulfilled.

The government has long had access to existing federal framework plans outlining just how seamlessly this method of analysis could be statistically gathered on a national level. The Canadian Institute for Health Information (CIHI) stated in July 2020:

> The lack of race-based data in the health sector in Canada makes it difficult to measure health inequalities and to identify inequities that may stem from racism and discrimination.

CIHI has proposed a pan-Canadian standard for collecting race-based data. What is more, back in 2019, the government published its own document entitled *Building a Foundation for Change: Canada's Anti-Racism Strategy 2019–2022*. In the document heading concerning Building Awareness and Changing Attitudes, it specifically lists data and evidence as one of the most effective and important ways to do so.

Honourable senators, our path forward has long been clear, and today we have an unprecedented opportunity to clearly tell the government that the time for change is now: not tomorrow and not next year.

As I mentioned earlier, one in four people has been left out of the data collection. While we can all agree that this is unacceptable, we do not all know what it feels like to be "the one" in that statistic.

There have been many times in my life when I have been in a room and I looked different, sounded different and was even dressed differently from others. While I am very proud to be who I am, I must tell you that it can be very lonely.

Throughout my life, I've endured countless instances of racism. I truly cannot count the number of times when, upon arriving at the Senate Chamber, I was told that this is the senators' entrance only.

• (1520)

I am very grateful to represent the province of British Columbia in the Senate of Canada, and I will be perpetually grateful to Prime Minister Chrétien for giving me this opportunity. I have always been committed to advocating for the one in four, and that is why I am introducing this amendment. We must not accept the status quo; we must push for change.

My father used to tell me until the day he died, "Do not let anybody ever tell you that you are not equal to them. All human beings are created equal." This is why we all deserve the same degree of consideration.

Last year, here in the Senate, Senators Plett, Lankin, Moodie and Bernard, among other senators, led our chamber in taking the next steps forward and standing firmly against racism in this place and across our country as a whole.

Honourable senators, I humbly ask that you please join me as we take the next step to ensure that disaggregated data — specifically race-based data — is systematically collected on a national level in order to enable us to move forward as a country together.

MOTION IN AMENDMENT ADOPTED

Hon. Mobina S. B. Jaffer: Therefore, honourable senators, in amendment, I move:

> That Bill C-7, as amended, be not now read a third time, but that it be further amended in clause 3, on page 8, by replacing lines 28 to 38 with the following:
>
> "**(2) The portion of paragraph 241.31(3)(a) before subparagraph (ii) of the Act is replaced by the following:**
>
> **(a)** respecting the provision and collection of information relating to requests for and the provision of medical assistance in dying, including
>
> **(i)** the information to be provided, at various stages, by medical practitioners, nurse practitioners, persons referred to in subsection (1.1) who have the responsibility to carry out preliminary assessments, pharmacists and pharmacy technicians, or by a class of any of them, including
>
> **(A)** the elements considered in the course of the assessments — preliminary or otherwise — of whether a person meets the criteria set out in subsection 241.2(1), and
>
> **(B)** information respecting the race of a person who requests or receives medical assistance in dying, if the person consents to providing this information,
>
> **(2.1) Paragraph 241.31(3)(b) of the Act is replaced by the following:**
>
> **(b)** respecting the use, analysis and interpretation of that information, including for the purposes of identifying race-based inequities and how race intersects with other forms of systemic inequality in medical assistance in dying;
>
> **(b.1)** respecting the protection, publication, and disclosure of that information;".

Honourable senators, I remember when affirmative action was first introduced in Canada. People had many questions and concerns. They worried that this policy would not include everybody — just women. Some even called it reverse discrimination. At that time, Canadians stood up and said, "No, it is not reverse discrimination; it is equity." So, too, is my amendment.

Today, I ask you to consider supporting this amendment for the future of our country, for harmony in our country, and for my grandson Ayaan, who is watching these proceedings and has encouraged me to put forward this amendment.

Thank you, senators.

The Hon. the Speaker pro tempore: Honourable senators, it was moved by the Honourable Senator Jaffer, seconded by the Honourable Senator Pate:

> That Bill C-7, as amended, be not now read a third time, but that it be further amended in clause 3, on page 8, by replacing lines 28 to 38 with the following:
>
> "**(2) The portion of paragraph 241.31(3)(a) before subparagraph (ii) of the Act is replaced by the following:**
>
> **(a)** respecting the provision and collection of information relating to requests for and the provision of medical assistance in dying, including
>
> **(i)** the information to be provided, at various stages, by medical practitioners, nurse practitioners, persons referred to in subsection (1.1) who have the responsibility to carry out preliminary assessments, pharmacists and pharmacy technicians, or by a class of any of them, including

(A) the elements considered in the course of the assessments — preliminary or otherwise — of whether a person meets the criteria set out in subsection 241.2(1), and

(B) information respecting the race of a person who requests or receives medical assistance in dying, if the person consents to providing this information,

(2.1) Paragraph 241.31(3)(b) of the Act is replaced by the following:

(b) respecting the use, analysis and interpretation of that information, including for the purposes of identifying race-based inequities and how race intersects with other forms of systemic inequality in medical assistance in dying;

(b.1) respecting the protection, publication, and disclosure of that information;".

Hon. Salma Ataullahjan: Honourable senators, I rise today to speak on Bill C-7 and to express my support for the amendment presented by Senator Jaffer, proposing that Health Canada collect information respecting the race of a person who requests or receives medical assistance in dying if the person consents to providing this information.

The gender-based analysis plus that aims to assess the potential impacts of law reform on diverse groups of women, men and people with other gender identities has identified a number of health issues that affect men and women differently. For example, women have higher rates of mood disorders and generalized anxiety disorders than men, while men have higher rates of substance-use disorders.

The number of issues highlighted in this analysis with a binary approach to gender shows the importance of intersectionality in creating legislation that is representative of the cultural diversity that shapes our country.

• (1530)

Nearly a quarter of the Canadian population is racialized. Honourable senators, that means that nearly 8 million Canadians are racialized. Yet, as I was researching for this speech, I realized how very little race-based health data is available.

As the Canadian Institute for Health Information recently stated:

> The lack of race-based data in the health sector in Canada makes it difficult to measure health inequalities and to identify inequities that may stem from racism and discrimination.

In other words, we do not as yet have access to race-based data in regard to Canadians requesting or receiving medical assistance in dying. Simply put, nearly 8 million Canadians are not being considered as important or relevant in this legislation. As Senator Jaffer expressed earlier this week:

> . . . We are going in blind on this bill to fight a battle for the lives of millions of people all over Canada.

Access to such rich data would allow us to better identify race-based inequities in medical assistance in dying, in particular, to account for how race intersects with other forms of systemic inequality.

Honourable senators, how can we make an informed decision or prevent harm to racialized people without knowing if the problem actually exists? A GBA+ analysis is meant to identify potential impacts of policies, programs and services on diverse groups of women, men and gender diverse people. The plus takes into account the fact that identities go beyond our gender and sex. Hence, a GBA+ is meant to include race, ethnicity, age and mental or physical disability. However, the report does not go beyond mental health issues and suicide rates among Indigenous people.

According to disability activist Sarah Jama, the voices of Canadians with disabilities living in poverty, many of whom are racialized, have been obscured from the conversation. According to the 2016 census, nearly 21% of racialized Canadians are low-income, compared to just over 12% of non-racialized Canadians.

I urge all senators to support this amendment to ensure that Health Canada collects information respecting the race of a person who requests or receives medical assistance in dying. Canadian multiculturalism is not only an ideology, it is a reality that must be integrated into Bill C-7. If the government intends to uphold its promise to end systemic racism, it must begin by gathering sufficient data.

I support Senator Jaffer's amendment because without race-based analysis, nearly a quarter of Canadians will not be represented in Bill C-7. Thank you.

Hon. Ratna Omidvar: Honourable senators, I rise today to speak in favour of Senator Jaffer's amendment to collect race-based data for MAID for Bill C-7.

This amendment brings me back to the days last June when we all rose in this chamber and took a stand against racism. I remind us of our precedent-setting emergency debate, our Committee of the Whole, and an ongoing inquiry. In other words, we put racism on notice in the Senate.

In the debates, Senator Moodie said, ". . . Racism is a threat to Canada and the stability of our society." Senator Mégie reminded us that it is our duty to give a ". . . voice to those people who are demanding justice, and it is our duty as senators to take action."

I agree with that sentiment, but now we need to go beyond words and aspirations, and reach for concrete, legislative action.

Action, we know, must be grounded in evidence. We know what gets measured, gets noted, gets done, gets acted on. We need data, and we need to look at it through a multidimensional lens by disaggregating it so that we can arrive at a fulsome picture of the truth and not just a half-truth.

Many senators articulated that point in June. Now Senator Jaffer's motion is doing exactly what we called for— collecting race-based data. At committee, the government freely admitted that when they did a GBA+ analysis, they failed to conduct a full race-based analysis on the impacts of Bill C-7 on various communities. Why? I don't know, but I can hazard a guess.

I have issues with the notion that race — a defining feature of Canada's demography, with close to a quarter of our population today coming from a racial minority background, predicted to grow to more than 36% of our population in the next 15 years — merits a mere plus, an afterthought at best, behind the three letters GBA. No wonder, then, that the plus gets forgotten and becomes a footnote.

This is why this amendment focuses on race only, to make sure that race is not forgotten. When we continue to be forgotten, ignored, overlooked, it is no longer sufficient simply to tilt at the sails. We need to steer instead to a different destination. Senator Jaffer says, "No more." I agree with her.

I want to be clear about what we know and don't know. We know there is racism in Canada. We know that it exists in our health care system. We know that people from different backgrounds interact with the health care system and have completely different experiences based on their race.

But we know a little bit more as well. We know that the social determinants of health, such as poverty, housing and homelessness, are important contributing factors that make people sick. And we know that racialized people find themselves disproportionately living in poverty, lacking adequate housing, and therefore have worse health outcomes. Because they have worse health outcomes, they need to interact with the health care system, which we know is racist. Their need to interact is greater. So as you can see, this is a truly wicked problem.

But there is a lot we don't know. We don't know if vulnerable people will request MAID. We don't know if they will get it. We don't know if the race of an individual will throw up individual or systemic barriers. We don't know if MAID will be applied equally and fairly across all demographics.

Canada is, admittedly, one of the more inclusive countries in the world, but we seem to have an aversion to collecting race-based data. Consider this: Both the U.K. and the U.S. were able to report fairly early in the pandemic on its disproportionate impact on Black people. In contrast, here in Canada, we had no clue because we did not have the data; not at the national level. I can give you the data from my city, but I'm not sure the data exists at a national level.

What will this data get us? It will be critical in creating and developing proper evidence-based policy decisions and interventions for MAID. It will guide government responses to providing resources in a strategic and effective way. It will identify gaps and barriers to MAID. It will lead to the development of culturally sensitive services and programs. It will ensure that all groups are getting equal and fair access. It will get us equity.

Clearly, we know that the government will have to work with provincial and territorial governments in coordinating this data. But that is what governments do. We should not let implementation difficulties get in the way of doing what we think is right.

I will quote Senator Moodie from our emergency debate on racism where she said:

> I want history to look back and see that in this moment we did everything we could to ensure meaningful and sustainable change, that we collaborated, we set aside our agendas and we listened to Canadians.

Senator Jaffer's amendment is not merely aspirational. It is practical, pragmatic, doable, necessary and timely. All we need now to do is to exercise our collective senatorial, political will. I urge you to do this by voting for this amendment. Thank you.

Hon. Wanda Elaine Thomas Bernard: Honourable senators, I rise today to speak in support of Senator Jaffer's crucial amendment to Bill C-7, to include the collection of data disaggregated by race.

• (1540)

I want to thank you, Senator Jaffer, for deliberately advocating for race-based analysis in your committee work and for bringing this amendment forward. We have here an opportunity to set the precedent of collecting data disaggregated by race to interrupt the pattern we find ourselves in now, frozen in a state of non-action when it comes to addressing systemic racism head-on.

During the reintroduction of this bill, which would expand access to MAID, Minister Qualtrough reaffirmed that:

> Medical assistance in dying is a human rights issue. The proposed legislation recognizes the equality rights of personal autonomy as well as the inherent and equal value of every life.

Clearly, every life matters. We must ensure that this legislation protects those most vulnerable in Canada. Systemic anti-Black racism has created such health disparities for Black Canadians that we must consider the vulnerability of diverse Black communities in any and all health legislation. Senator Jaffer's amendment would ensure that we have the information to understand the long-term impact of MAID legislation on Black lives, on Indigenous lives, and on the lives of other racialized Canadians. I am deeply concerned that, without careful consideration, we are at risk of passing legislation that will allow Black lives and racialized lives to remain invisible in conversations about health, about disability, about aging and about poverty.

Minister Lametti said that this is ". . . a deeply personal issue that touches real people and real families." For Black Canadians, this is also a community issue.

In committee, Senator Jaffer established that a race analysis was not completed on this topic. The reason given by Minister Lametti was that a Gender-based Analysis Plus was done, but that race-based data was not available. The next day, the Senior Executive Advisor to the Deputy Minister clarified that:

> . . . as far as the federal monitoring regime is concerned, we are not collecting race-based data or other information with respect to ethnicity.
>
> As was implied by Minister Lametti yesterday, we need to do better in that area and we will. We heard your comments yesterday and took them to heart and to mind very seriously.

In the recent Speech from the Throne, amongst many plans to address systemic inequalities, the government promised to build ". . . a whole-of-federal-government approach around better collection of disaggregated data . . . ." Unfortunately, we are hearing that a race-based analysis was not conducted for Bill C-7 because we do not have this data. Gender-based Analysis Plus is not simply a gender analysis. The "plus" is typically forgotten. So we must emphasize the "plus" in order to fully analyze information and properly inform our decisions which impact vulnerable Canadians affected by intersecting marginalization.

As my previous colleagues have said, it's a quarter of our population in this country.

A race-based analysis is not only about statistics. What about community consultation? What about projections or expected outcomes given by expert witnesses? Last spring, before we even had numbers about COVID-19, even though there was no race-based disaggregated data available, we were able to predict the potential disparities due to current health and employment disparities already present in Black communities across this country.

A primary theme throughout discussions on MAID is that it offers freedom of choice. As we have heard Senator Pate mention several times during debates, some of the most marginalized Canadians who do not have access to adequate care do not have a choice. A choice between living without adequate care and MAID is no choice at all. I think of the many people in African Nova Scotian communities for example, who are living at the intersection of race and disability, often with concurrent illnesses, not having access to —

The Hon. the Acting Speaker: Your time has expired.

Hon. Kim Pate: Thank you, Your Honour. I join my voice with those of my esteemed colleagues.

The narrow scope of Bill C-7, focused on the suicide provisions of the Criminal Code, means that any proposed amendment will fall short of the systemic changes needed to ensure that no one experiences intolerable suffering or considers death as a result of inadequate and unequal access to health, social, housing and income supports.

I applaud Senator Jaffer for these efforts to ensure that the government must at least provide some answers about who makes use of Bill C-7 and under what circumstances.

As Justice Smith and the Supreme Court of Canada pointed out in the *Carter* case:

> . . . the risks associated with physician-assisted death can be limited through a carefully designed and monitored system of safeguards.

At Legal Committee, we heard from people with disabilities, as well as those who are poor or racialized, about doctors and other medical staff offering the option of do-not-resuscitate orders and medical assistance in dying before they offer them treatment.

Black and Indigenous witnesses told us about anti-Indigenous and anti-Black racism in the health care system that results in people's suffering being dismissed or ignored or, worse yet, taunted and mocked. We also heard about people being unable to access adequate medical care and needlessly suffering and dying in the same system that has helped to perpetuate forced sterilization and, indeed, genocide.

This amendment will help us to understand some of the effects of this bill. Unfortunately, it will only highlight, not remedy, the injustices revealed.

Of course I support the collection of data disaggregated by race. We also need data regarding the social determinants of health of those seeking non-end-of-life medical assistance in dying, including whether they are persons with disabilities and whether they are institutionalized.

Similarly, we need to know more about the nature and availability of alternatives for relieving suffering that were or, even more significantly, were not offered.

We have heard from the government that most of those who have accessed end-of-life medical assistance in dying have been well-off and that most, some 80% or so, have at least some access to palliative care, although none of this speaks to the circumstances in which care was received or the nature or quality of the home care, nor the social and economic supports crucial to creating equitable access to such supports.

We need clear data about who is offered and who receives health, social, economic and housing supports. Where these alternatives to medical assistance in dying were unavailable, we also need to know why, whether due to cost, wait times or location.

In the absence of federal government action to ensure adequate and equitable access to these supports, Canadians most certainly deserve to know how Bill C-7 will operate. *Meegwetch*. Thank you.

Hon. Rosemary Moodie: Thank you, Your Honour. I stand today to strongly support Senator Jaffer's amendment to Bill C-7. I want to begin by thanking Senator Jaffer for her strong advocacy on issues facing racialized Canadians. Notably, she has championed the issue of race-based data throughout this debate and on this bill and has helped move this conversation forward.

I welcome this amendment because it is a sensible response to the request of Black Canadians. You will recall that in June of last year, the Parliamentary Black Caucus published a statement in which the collection and appropriate use of disaggregated data was the first request made to the government. This statement was endorsed by a number of parliamentarians, and many of you, colleagues, endorsed and supported this document on the floor of the Senate.

• (1550)

I also participated in the Parliamentary Black Caucus' budget consultation last December. During these meetings, we heard from dozens of individuals and organizations representing Black Canadians that data collection is a central and key concern.

I want to take a moment and be very clear about why data collection is important. We know that racialized Canadians suffer severe adverse outcomes due to systemic racism. We know this based on evidence that is available, but also due to the litany of anecdotal evidence available. We do not know how severe these negative outcomes really are, nor do we know how race intersects with many other factors.

We need reliable and sound data to allow governments and parliamentarians to understand the issues and design policies that are well informed. Without this information, government policies will always be insufficient and poorly targeted. We are essentially operating blind. I also believe that data is power and can be used to guide and to generate pressure.

As Dr. Kathy Hogarth from Waterloo University stated in an interview with Global News last spring:

> Without data, it's all speculation, and as long as it remains in speculation, we can dismiss it. What we need is a very rigorous way of collecting our data that looks at inequalities. I guarantee you there are inequalities; we are not all impacted in the same way.

Colleagues, I think we would have appreciated having more data during this debate on Bill C-7. In fact, I know this because many of you have raised this yourselves throughout these debates. I think we would have appreciated being better informed about the way racialized Canadians have been impacted since Bill C-14 came into force.

Further, it is very likely that we will have to debate or study some aspects of medical assistance in dying once more in the coming years. This amendment would help us avoid what many of us have lamented by providing us with further data so our debates and proposals can be measured and effective.

Lastly, this amendment respects the rights of individuals to share their data, and would allow all of those who would like to keep their data to themselves to do so.

In too many aspects of our policy making we are data blind. We need to continue to unlock access to reliable and sound data in every system. This is a huge issue, and though we need major changes, I welcome small but meaningful steps forward such as this one.

This is what many communities have been asking for, especially the Black community. This is how to make good policy — by having good data. This is progress. I hope you will join in voting for this important amendment. Thank you.

Hon. Mary Jane McCallum: Honourable senators, I rise to speak in support of Senator Jaffer's amendment to Bill C-7. Much like Senator Jaffer, I have serious concerns and misgivings about how such a critical life-and-death piece of government-driven legislation could be lacking in such a fundamental way with regard to the analysis undertaken at the outset of the drafting process, as well as its shortcomings in protecting vulnerable and minority groups.

In a letter sent to the Standing Senate Committee on Legal and Constitutional Affairs on January 18, Minister Lametti gave a very brief overview of the Gender-based Analysis Plus that was undertaken with regard to Bill C-7. This GBA+ would be considered completely underwhelming and insufficient on a lesser piece of legislation, yet for a bill of this sensitive and important a nature, the analysis done was completely unacceptable in providing insight into how this bill would and could impact racialized and other minorities.

On the government's own Status of Women Canada website, GBA+ is described, in part, as such:

> The "plus" in GBA+ is not just about differences between biological (sexes) and socio-cultural (genders). We all have multiple characteristics that intersect and contribute to who we are. GBA+ considers many other identity factors such as race, ethnicity, religion, age, and mental or physical disability and how the interaction between these factors influences the way we might experience government policies and initiatives.

Colleagues, GBA+ is a tool that is supposed to have been in use in Canada since our country ratified the United Nations Beijing Declaration on the rights of women as well as its accompanying platform for action in 1995. Despite this, and the fact that we are now 25 years removed from signing that declaration, Canada still does not have a uniform GBA+ that is held up to every piece of legislation. Instead, it is evident that it is used piecemeal and ad hoc, never fully ensuring the issues of equality and protection are fully considered and guaranteed as they should be.

Colleagues, it is also worth mentioning the mandate letter for all of the ministers, which includes the following statement:

> We remain committed to evidence-based decision-making that takes into consideration the impacts of policies on all Canadians and fully defends the Canadian Charter of Rights and Freedoms. You will apply Gender-based Analysis Plus (GBA+) in the decisions that you make and consider public policies through an intersectional lens in order to address systemic inequities including: systemic racism; unconscious bias; gender-based discrimination; barriers for persons with disabilities; discrimination against LGBTQ2 communities; and inequities faced by all vulnerable populations. Whenever possible, you will work to improve the quality and availability of disaggregated data to ensure that policy decisions benefit all communities.

Honourable senators, all ministers are to apply GBA+ as well as work to improve the quality and availability of data, but it is clear that the government has fallen short of this mark when it comes to Bill C-7. I am thankful to Senator Jaffer that she has put forward this amendment so as to prompt the government to do the fulsome job that they are tasked to do.

In all the mandate letters to the ministers, the following directive is given:

> There remains no more important relationship to me and to Canada than the one with Indigenous Peoples. With respect and dignity, we remain committed to moving forward along the shared path of reconciliation. You, and indeed all ministers, must continue to play a role in helping to advance self-determination, close socio-economic gaps and eliminate systemic barriers facing First Nations, Inuit, and Métis Peoples. As Minister, I expect you to work in full partnership with Indigenous Peoples and communities to advance meaningful reconciliation.

Colleagues, although these are nice sentiments, at the end of the day words are wind. Without concrete action behind these words, First Nations people in Canada and the disability community will continue to be left behind and made vulnerable. The government has not done due diligence in consultation with First Nations and the disability community. One round table is not adequate. The government has not adequately applied a GBA+ to this critical bill. Therefore, the government has fallen short in their duty to work in full partnership with Indigenous peoples and to eliminate the systemic barriers they face.

Although I have serious concerns with Bill C-7 and the lack of fulsome consultation, I applaud Senator Jaffer in bringing forward this important issue. I urge all senators to lend your support in passing this amendment. Thank you.

Hon. Marilou McPhedran: Thank you, Your Honour. I very much appreciate this opportunity to speak. I will be brief because I'm so impressed by the speeches that have gone before me and commend every one of my sister senators who have spoken thus far. Women's leadership on this issue is wonderful to see.

• (1600)

In addition to thanking Senator Jaffer for her initiative and indicating my support for it, I want to underscore that there is choice here; that if we were forcing anyone to identify their racial characteristics as part of the data gathering we are seeing with this amendment potentially being brought into force, then we would have a serious human rights problem. But, in fact, it is completely built upon the option of disclosing.

While I might wish that it would be inclusive of all people with disabilities, nevertheless, it seems to me that the racialization of poverty and disability means that as a crucial, practical, strategic starting point, this is the amendment we need. It leads to action. It leads to making a difference in terms of the allocation of resources that historically have always been fewer for people living with disabilities and, arguably, where inadequate conditions have been exacerbated by race.

Thank you, Senator Jaffer. I'm honoured to lend my support to this amendment. *Meegwetch.*

Hon. Donna Dasko: Honourable senators, as a professional researcher, I know that good decision making in every sector relies on timely, accurate and appropriate data. Since my appointment to the Senate in 2018, I've often called for better data collection in government, particularly in areas related to health, the COVID pandemic and gender issues. Last spring, during our examination in the chamber of systemic racism, I joined the call with my colleagues for more extensive disaggregated race data and analysis.

Today I wish to speak to Senator Jaffer's amendment to Bill C-7, with respect to data collection. I strongly support this amendment, which sets out in legislation a requirement that medical practitioners, nurse practitioners and pharmacists collect information respecting the race of a person who requests or receives medical assistance in dying, if the person consents to providing this information, for the stated purpose of identifying race-based inequities in medical assistance in dying, to account for how race intersects with other forms of systemic inequality.

I strongly support the collection of race-based data in this amendment as it pertains to MAID, but I do have some concerns that I would like to express here.

I wish that this amendment had included a requirement to collect other demographic data as well, including information that is necessary for our understanding of race-based and other inequities. In fact, we cannot examine intersectionality — that is, how race intersects with other forms of inequality, as called for in the amendment — unless we measure these other forms of inequality.

I note that this amendment does not require the collection of gender information, but we do need to know whether MAID is gendered in its application. We also very much need to know about the age, disability status and socio-economic status of those who apply for and receive MAID. We need to know the Indigenous status of those who apply for and receive MAID, and we must collect and use this data in partnership and consultation with Indigenous leaders. Normally, race data is collected differently and separately from Indigenous status data, according to federal protocols. That is another issue I'd like to put on the table.

Senators, many grave and important issues have been raised in our debate about Bill C-7. We have to understand whether disadvantaged and vulnerable Canadians and those with disabilities are more likely to access MAID. As the critics of this legislation have so eloquently argued over these many weeks, we owe it to Canadians to understand this, and we can only address those concerns if we have fulsome data.

We have learned from documentation that age, gender and postal code data are currently collected as required by Health Canada regulation. However, the fact that these measures are collected now with respect to MAID does not guarantee that they will be collected in the future, after the regulatory review of Bill C-7, which will start after this legislation is adopted. These existing measures can be changed or dropped any day, by any government, for any reason.

Plus, as I said earlier, we need to measure more than age, gender and postal code. We need to collect race-based data, which will be guaranteed by this amendment, but we also need to collect socio-economic status and disability data, and more. So we need to guarantee that we are collecting more data.

I regret that there was not enough time or opportunity to develop an amendment or subamendment to address these issues and to create a more fulsome data collection regime.

Senators, these are my concerns. I very much want to thank Senator Jaffer for taking the time to discuss these concerns with me over recent days, with great sensitivity. I know that she shares my concerns and interests. I want to thank her as well for taking this important step to enshrine the collection of race-based data in this legislation, and for her dedication to improving the collection and analysis of race-based data wherever we can.

I will support this amendment today. We need race data to be guaranteed, and I look to the promised parliamentary review of medical assistance in dying to continue my push for broad-based data collection around MAID. I hope the review will take this into account, along with all of the other vital topics the review will examine.

Senators, thank you very much for your interest.

Hon. Dennis Glen Patterson: Honourable senators, in speaking to this amendment, I wish to draw your attention to a serious deficiency in the process of developing this bill and its predecessor. I've spoken about this before in the chamber on behalf of the Inuit of Nunavut, who comprise 85% of our population.

To be clear, Canada has a solemn obligation under the constitutionally entrenched and protected Nunavut Land Claims Agreement, which requires, in Article 35, as a specific obligation of the Government of Canada:

> a. providing Inuit with an opportunity to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, in the Nunavut Settlement Area; and
>
> b. endeavouring to reflect Inuit goals and objectives where it puts in place such social and cultural policies, programs and services in the Nunavut Settlement Area.

This required consultation on the part of Canada absolutely and clearly did not take place in Nunavut, according to Nunavut Tunngavik and its Nunavut Social Development Council, the body with which this consultation should have taken place.

This is not the first time Canada has ignored its solemn obligation to consult on new social programs and services and their delivery under the modern treaty of the Nunavut Agreement. Had the Crown respected its duty, cross-cultural and language issues around the challenge we are now experiencing — communicating in the first language of the vast majority of Nunavut residents, and the need to understand and respect their traditional values and practices of Inuit — would have been evident and might have been addressed.

In this connection, I should also mention Call to Action 22 in the Truth and Reconciliation Commission's report:

> We call upon those who can effect change within the Canadian health-care system to recognize the value of Aboriginal healing practices and use them in the treatment of Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients. This Call to Action, though adopted by the Government of Canada, has also apparently not happened and is not reflected or even addressed in this bill.

• (1610)

Since the Inuktitut language is the carrier of these cultural values and practices, it is critical that Inuit be consulted in the development and review of programs like this, which I expect would likely identify what has emerged as the need for a glossary in Inuktut to be developed through the employment of experienced interpreter translators, as has been done in other fields like justice and other areas of health care.

So I see this amendment, which reflects the neglected situation of minorities, including the Inuit of Nunavut whom I represent in this chamber, as helping to shine a light on the importance of conducting respectful consultations and gathering data and considering the very different situations of Aboriginal people in a cross-cultural environment and in a sometimes insensitive health care system. These consultations have been promised in the modern treaty of the Nunavut Land Claims Agreement and have consistently not taken place. This should happen in conjunction with the promised review of the original MAID legislation, which has yet to take place.

I'm not a sister senator. I guess I don't fall in that category, but I do want to speak in support of this amendment and thank Senator Jaffer for bringing it forth.

Qujannamiik.

Hon. Denise Batters: Honourable senators, I just have a few words to say on this. Thank you very much to Senator Jaffer for bringing this amendment. I will be supporting this amendment because I agree that this information is needed here.

However, I wanted to pose this question: In the last few years, why does the Senate keep passing these kinds of amendments to collect data and do studies about how many times vulnerable people are potentially discriminated against or hurt by state actions or new government legislation? This happened on the random alcohol testing amendment issue, the carding issue a few years ago and now on this.

As many senators who participated in the dozens of hours of our Legal Committee's meetings on Bill C-7 know, our committee recently heard from many witnesses from the Indigenous community and others who experienced race-based inequities who voiced major disapproval of Bill C-7.

So, honourable senators, instead of just collecting data about these things once they're already in place, why instead don't senators vote against discriminatory and hurtful government legislation for vulnerable Canadians, like Bill C-7, as those witnesses from vulnerable populations we heard from pleaded with us to do? After all this data, that would be collected in this particular case to detail how many of these vulnerable people have died by MAID, why don't we instead focus on helping and supporting these vulnerable Canadians and try to save their lives instead of only counting their deaths?

Hon. Colin Deacon: Honourable senators, I rise on debate to speak on Senator Jaffer's amendment. Honourable colleagues, I entirely support this amendment, but, like Senator Dasko, I hope that its implementation, if adopted, will expand disaggregated data collection well beyond race to include not just vulnerable Canadians but those living in rural and remote communities, including, as Senator Patterson pointed out, Indigenous Canadians, Inuit and others, who so often have limited and difficult access to health care that's far away from their homes.

As Senator Moodie pointed out, too often we are data blind in our decision making. We have to be unrelenting in our efforts to change this reality for our collective social and economic benefit. Let's make sure our new standard practice, starting today with this amendment, is to ensure that every piece of legislation has better data collection.

The vast majority of Canadians support Bill C-7, but some — particularly vulnerable Canadians — remain fearful of its effects. Disaggregated data collection is essential to accurately and precisely evaluate the implementation of Bill C-7 over time and in every corner of our country. Data is essential to monitoring the appropriate implementation of this legislation and to guiding effective reviews in the future based on facts, not fears. Thank you very much, colleagues.

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

[*Translation*]

Hon. Marc Gold (Government Representative in the Senate): Can an abstention be noted, since I'm unable to vote for the motion?

[*English*]

The Hon. the Speaker pro tempore: Senator Gold, we will say that it was carried, on division. The blues will include your comments.

Senator Gold: Thank you.

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

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

Hon. Marilou McPhedran: Honourable senators, I wish to acknowledge that the Parliament of Canada is situated on the unsurrendered territory of Indigenous peoples.

Honourable colleagues, I rise to move an amendment and ask that you give me your attention as I speak to the discriminatory nature of this hasty, ill-considered bill. With great respect for those who have presented the thoughtful and concerned amendments already debated here, and to my honourable colleague sponsoring this bill, I suggest that we find ourselves giving our best efforts to a bill that really should not be before us today. But it is, because the government refused to conduct the legally mandated review of the current law first and used a lower court's deadline to propel us here today.

Prior to the decision not to appeal, more than 70 disability rights organizations, including British Columbia Aboriginal Network on Disability Society, Council of Canadians with Disabilities, Canadian Association for Community Living, the DisAbled Women's Network of Canada, Inclusion Winnipeg, Community Care Manitoba, ARCH Disability Law Centre and People First of Canada, representing the concerns of hundreds of thousands of Canadians living with disabilities, including many who live in racialized poverty, urged the Minister of Justice to appeal and make cogent arguments for an appeal that were ignored.

Indeed, previous to this bill, the Minister of Justice was advised that Canada's current medical assistance in dying regime that is supposed to be undergoing review troubled the UN's former special rapporteur on the rights of persons with disabilities who, after her study visit to Canada, reported that she was ". . . extremely concerned about the implementation of the legislation on medical assistance in dying from a disability perspective."

And this, honourable colleagues, was before the end-of-life criterion was struck down by one lower court and used as a device for bringing this bill rapidly forward. And now — right now — specifically regarding this bill, more independent UN experts are aligning with Canadian disability rights experts.

We were greatly assisted in last evening's debate by our medical colleagues. Let us also be reminded that expertise comes in many forms, not just from one professional discipline. The UN and Canadian disability rights experts speak to us in one voice, clearly alerting Canada that this bill is highly likely to produce dangerous and discriminatory situations that will happen to people living with disabilities, far from the notice of this chamber and far from our being able to do anything about their situations in real time.

• (1620)

Now, the coalition has grown to over 90 disability rights organization, and I speak here today to convey my own concerns and give voice in this chamber to this coalition, which includes numerous experts from numerous disciplines, to be heard by all.

Just days ago, three independent UN experts — the Special Rapporteur on the rights of persons with disabilities, the Independent Expert on the enjoyment of all human rights by older persons and the Special Rapporteur on extreme poverty and human rights — all moved by serious reservations about this bill, made public their formal letter to the Canadian government, identifying the human rights violations likely to occur if Bill C-7's expanded access to people with disabilities who are not dying is passed into law.

Governments in Canada have largely failed, as Senator Pate and others have observed already, to invest adequately in implementing laws and programs to achieve a lived reality of substantive equality and inclusion in Canada. With this bill, we've entered a zone of making a law that contradicts promises that are constitutional and international guarantees of equality. This is why the three UN special rapporteurs have joined the Canadian disability rights defenders in calling out Canada and inviting us to listen.

Disability rights defenders note that by not appealing the lower court decision on such a crucial life and death matter, the government has modelled this bill on one lower court decision, thereby entrenching stereotypes that will exacerbate stigma for many Canadians with disabilities, contributing to the adversity and oppression experienced by many members of this vulnerable group — to use the Senate terminology — without creating the just, safe environments that are in keeping with promises in our Charter and adherence to international human rights laws.

Without the equalizing effect of the end-of-life criterion — which guarantees that the common thread among all persons who access an assisted death in Canada is that they are all verifiably dying — persons with disabilities will be able to gain access, ultimately, because they have a disability.

A worse stereotype could not be institutionalized in law; that disability-related suffering, often caused by inadequate health and social supports, and entrenched inequality, justifies the termination of a person's life.

Colleagues, do we really want to be part of sending the message that having a disability is a fate worse than death? Please consider that without this amendment, this bill will further violate Article 10 of the UN Convention on the Rights of Persons with Disabilities, which states:

> States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Canadians with disabilities are already bombarded daily with reminders that they are unwelcome and undervalued. Do we want to compound the very real and present danger of harm in many of their lives, already exacerbated by social exclusion and poverty, by entrenching in law the message that they will receive our full support if they choose to die prematurely because our society has made many of their lives unbearable?

Doesn't this message fit too neatly into the stereotype that a life featuring disability is a bad life? Is a lesser life? Some of us in this chamber are persons living with disabilities. Some of us have known poverty and racial discrimination, but none of us is living in entrenched poverty and social exclusion today.

By offering medical assistance in dying to persons with disabilities on the basis of disability, I submit that Canada would be violating international law.

Here is the crux of this amendment. There is currently no right for any Canadian who is not nearing death to access medical assistance in dying, MAID. Access to MAID is created and regulated by law, but not as a constitutional right. If we are determined to remove the requirement for reasonably foreseeable death, why are we not doing it for every Canadian, but instead creating a special right for Canadians with disabilities to die. Is this not just one more example of "separate but equal"; a principle that the courts and human rights tribunals have completely rejected?

Disabled Canadians have not found separate housing in institutions to be a benefit. They have not found separate entries through back doors or freight elevators to public buildings to be dignified. They have not found separate employment in unpaid sheltered workshops, or separate education in segregated schools, or separate transportation to be adequate, where inclusion and equality are goals. What could possibly be the rationale for a separate right to assisted death exclusively for people with a disabling condition? Ableism, maybe? It is no small thing, no mere formality to reframe death as a benefit for the living rather than a harm, but only for some, not for all who might desire it.

The independent UN experts and the Canadian disability rights experts are not drawing from some separate theory of human rights floating out there. They are drawing from the same universal principles of human rights that Canada as a nation and our Constitution are built on. Those human rights principles clearly expressed in the Universal Declaration of Human Rights, upon which our Charter is based, do not entertain and have not ever entertained the possibility that death could be a benefit for persons who are not otherwise dying.

To categorize death as an accommodation for living persons based on their personal characteristics transgresses every norm of human rights known to law. Colleagues, this bill dresses up discrimination and calls it a right, but that does not make it so. This bill is discrimination on the grounds of disability writ large.

Canada is already not taking "all necessary measures to ensure the effective enjoyment of life by persons with disabilities on an equal basis with others," in the words of the convention. For example, we saw how the government extended financial support much less, and much more slowly, for people with disabilities during this pandemic.

In committee and in this chamber, senators have heard case after case of Canadians, including numerous examples from racialized Canadians, whose medical and support needs are not being met. Poverty and the insufficiency of life supports are causing them to consider, if not seek out, death, sometimes encouraged by health care providers.

You know I came to this chamber as a human rights lawyer and educator. You may not know I've been engaged in working with and in UN agencies. Please hear me when I tell you that such a strong, clear, joint communication to a specific government on a specific bill from three independent UN special rapporteurs is indeed a rare occasion of considerable note.

Colleagues, who are we to ignore the words of these experts who said:

> In sum, we are deeply concerned that the eligible criteria set out in Bill C-7 . . . may be of a discriminatory nature or have a discriminatory impact, as by singling out the suffering associated with disability as being of a different quality and kind than any other suffering, they potentially subject persons with disabilities to discrimination on account of such disability.

Is it not deeply ironic that this bill states the following in the preamble?

> . . . whereas Canada is a State Party to the United Nations Convention on the Rights of Persons with Disabilities and recognizes its obligations under it, including in respect of the right to life;
>
> Whereas Parliament affirms the inherent and equal value of every person's life and the importance of taking a human rights-based approach to disability inclusion . . .

Canada ratified the convention in 2010. I was in the great hall of the UN General Assembly for the ceremony on that day, and this treaty has been a major catalyst in the global movement towards recognizing persons with disabilities as full and equal members of society. Canada's commitment to the convention has helped this country move toward the unconditional recognition, in words, that all persons with disabilities are rights holders, whose inherent human dignity is fully worthy of respect and investment in their capacity to live their rights.

• (1630)

Under the present law, medical assistance in dying is permitted as an exemption to the Criminal Code because a planned death is understood to be a benefit rather than a harm to a person who is dying and desires to control the manner and time of their death — a principle that I strongly support.

By extending this formulation to persons who are not dying, Bill C-7 advances the discriminatory proposition, and therefore that death is preferable to life and therefore a benefit rather than a harm, not only when persons are dying but also when non-dying persons have an illness, disease or disability. And so I place before you an amendment to remove the clause that repeals the reasonable foreseeability of natural death provision, in keeping with our international law and our Constitution, including the following motion which I submit respectfully.

MOTION IN AMENDMENT

Hon. Marilou McPhedran: Therefore, honourable senators, in amendment, I move:

> That Bill C-7, as amended, be not now read a third time, but that it be further amended,
>
> (a) in the preamble, on page 1, by deleting lines 1 to 9;
>
> (b) in clause 1,
>
> (i) on page 2, by deleting lines 39 and 40,
>
> (ii) on page 3, by deleting lines 1 and 2 of the English version,
>
> (iii) on page 4, by deleting lines 1 to 45,
>
> (iv) on page 5, by deleting lines 1 to 29,

(v) on page 7,

(A) by replacing lines 18 and 19 with the following:

"provided an opinion under paragraph (3)(e) in respect of the person.",

(B) by replacing line 26 with the following:

"referred to in paragraph (3)(e) are indepen-";

(c) in clause 2, on page 7, by replacing lines 36 and 37 with the following:

"requirements set out in paragraphs 241.2(3)(b) to (h) and".

Thank you, *meegwetch*.

POINT OF ORDER—SPEAKER'S RULING RESERVED

Hon. Marc Gold (Government Representative in the Senate): Your Honour, before I explain the admissibility reservations I have on this amendment, I do want to acknowledge the advocacy and determined work of my colleague, Senator McPhedran. Indeed, I appreciate the intentions and the concerns involved with her amendment.

However, I must respectfully submit that this amendment is out of order because it violates the Rules and practices governing the receivability of amendments and as such should not be considered by the Senate.

The argument in this case is straightforward. In a nutshell, Senator McPhedran's amendment cannot proceed because it does not respect the objective and principle of the bill and is destructive of its goals. More specifically, the amendment fundamentally undermines the fundamental policy objective and intent of the bill, to respond to the Superior Court of Quebec's decision in *Truchon v. Attorney General of Canada* and, consistent with that decision, to no longer limit eligibility for medical assistance in dying to persons whose natural death is reasonably foreseeable.

Now, on the receivability of amendments after second reading, *Senate Procedure in Practice* explains the following:

> . . . It is a fundamental principle that "[a] committee is bound by the decision of the House, given on second reading, in favour of the principle of the bill, and should not, therefore, amend the bill in a manner destructive of this principle."

A December 9, 2009 ruling by Speaker Kinsella concerning the admissibility of amendments to Bill C-51, a budget implementation bill, clearly had defined the admissibility criteria for amendments to a bill.

> As honourable senators know, an amendment moved in committee must respect the principle and scope of the bill . . . It may generally be helpful to view the principle as the intention underlying a bill.

On April 13, 2017, while ruling on a point of order by our esteemed colleague Senator Lankin, regarding the admissibility of certain amendments to Bill C-6, an act to amend the Citizenship Act, Speaker Furey summarized the Rules of admissibility that were again at issue here, saying:

> It is a basic tenet of parliamentary practice that an amendment must respect the principle and scope of a bill . . .
>
> Amendments . . . cannot introduce elements or factors . . . destructive of its original goals. In addition, amendments must respect the objectives of the bill. In considering these issues, it may be necessary to identify the fundamental policy and goals behind a bill. Factors such as the long title of the bill, its content and the debate at second reading may be taken into account.

The fundamental policy and goals of the bill are well-known to this chamber and quite straightforward. The bill was brought forward to respond to the decision in *Truchon* by expanding MAID to cases where death is not reasonably foreseeable while providing for additional safeguards in those cases.

In his second-reading speech in the other place, the Minister of Justice identified the main objectives of the bill as follows:

> . . . this bill proposes a legislative response to the Quebec Superior Court's ruling in Truchon and Gladu, in which the court ruled that it is unconstitutional to limit MAID to persons whose death is reasonably foreseeable. . . .
>
> The bill before members today, four years after the enactment of Canada's first medical assistance in dying provisions in 2016, proposes a significant change to Canada's MAID regime in broadening eligibility to persons whose natural death is not reasonably foreseeable.

And in this place, the Minister of Justice explained Bill C-7's intent at the Standing Senate Committee on Legal and Constitutional Affairs, as follows:

> I would briefly like to describe the main aspects of Bill C-7, which would make major changes to the medical assistance in dying, or MAID, regime.
>
> First, in direct response to the Truchon decision, Bill C-7 would repeal the eligibility criterion requiring that a person's natural death be reasonably foreseeable.
>
> Access to our medical assistance in dying regime would thus no longer be limited to individuals suffering at the end of their lives. This change would allow Canadians who are suffering and who meet eligibility criteria to choose a peaceful death where they feel their situation has become intolerable. This change is consistent with the autonomy of Canadians.

These objectives are also laid out clearly and unambiguously in the first six lines of the preamble to Bill C-7, which, I may note, Senator McPhedran's amendment would delete. The preamble reads:

> Whereas the Government of Canada has committed to responding to the Superior Court of Québec decision in Truchon v. Attorney General of Canada;
>
> Whereas Parliament considers that it is appropriate to no longer limit eligibility for medical assistance in dying to persons whose natural death is reasonably foreseeable and to provide additional safeguards for those persons whose natural death is not reasonably foreseeable;

I submit to you that Senator McPhedran's amendment does not respect the principle expressed by the preamble, and is so manifestly destructive of the objectives of Bill C-7 that it fails to meet the threshold of admissibility of the Senate's Rules and practices.

The amendment first proposes to delete lines 1 to 6 of the preamble, which I have just read on the record, and which outline the core principle, intent and objectives of the legislation. Those deletions make it clear that the amendment is explicitly designed to undermine those stated principles and goals.

Now, for the amendment to remove lines 1 to 6 from the preamble may seem like a dead giveaway, an admission of sorts that the amendment seeks to undermine those goals. However, when one takes a closer look at the subsequent parts of the amendment, specifically those that alter the substantive clauses of Bill C-7, it becomes clear that it would have been inconsistent and illogical from a drafting perspective for the amendment to maintain the preamble intact. That is because, with the amendments proposed, rather than expanding eligibility for medical assistance in dying beyond the end-of-life context, the bill would go back to limiting eligibility for medical assistance in dying to persons whose death is reasonably foreseeable.

Now I do understand that this amendment is being proposed with the protection of vulnerable Canadians in mind. However, in the province of Quebec, the amendments would destroy Bill C-7's goal of providing additional safeguards for those persons whose natural death is not reasonably foreseeable. This is because those whose deaths are not reasonably foreseeable would be eligible for MAID, but without the safeguards proposed in this legislation.

• (1640)

Your Honour, Bill C-7's core objective is to respond to the *Truchon* decision and, consequently, to expand eligibility in light of the Superior Court's findings with respect to the reasonably foreseeable death criteria.

Senator McPhedran's amendment is a rejection of the findings in *Truchon* and a rejection of the proposed expansion. Frankly, it is no exaggeration to say that the amendment proposes the opposite of Bill C-7.

Your Honour, before I conclude, I would like to briefly point out some key distinctions between Speaker Furey's ruling on Bill C-14 and the issue at hand. To my mind, the facts on Bill C-14 have to be distinguished. In that instance, Senator Harder moved a motion to concur with the message from the House. Senator Joyal sought to amend this motion so that the Senate would accept the message but suspend the implementation of the "reasonably foreseeable death" criterion up to the time that the government will have requested the Supreme Court's ruling on its constitutionality.

On a point of order, Senator Harder argued that the amendment was beyond the scope of his motion and the amendments addressed by the message. So the only question in that instance was one of scope: specifically, whether Senator Joyal's amendment was bringing entirely new issues into play and whether the amendment could be reasonably seen as being relevant to the message.

Senator Furey observed that the amendment that Senator Joyal had moved accepted most of what the House of Commons had proposed to the Senate in relation to amendments and, further, that the effect of his amendment— if accepted by the two houses — would be to delay the coming into force of the provision of the bill that is already included in the message. As such, the amendment could reasonably be seen as being relevant to the message.

But in this instance, I am making a very different argument before a very different set of facts. My argument is that the amendment does not respect the principle and objectives of Bill C-7, namely to respond to the *Truchon* decision and expand eligibility for medical assistance in dying beyond the end-of-life context. The amendment in fact rejects *Truchon* and rejects the eligibility for medical assistance in dying beyond the end-of-life context.

As such — and here I repeat myself — it is no exaggeration to say that the amendment proposes the opposite of Bill C-7. For these reasons, I respectfully submit that the amendment is clearly out of order. Thank you.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker pro tempore: Does any senator wish to comment on the point of order?

Hon. Pierre J. Dalphond: Honourable senators, I would add my support to that point of order. I have nothing else to say except that I fully agree. Thank you.

Hon. Marilou McPhedran: Your Honour, I am wondering if there could be some guidance on this matter. I know that a number of senators indicated they wish to speak to the amendment. Is it possible to allow debate on the amendment, understanding that you will be making a ruling and that ruling may very well support the position taken by Senator Gold?

It seems to me that what happened with Senator Joyal's amendment in Bill C-14 is still relevant to this situation. I would hope that the voices of senators who did want to speak to at least could be put on the record.

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I would like to say a few words. I would simply add my voice to Senator McPhedran's.

I am not a legal scholar. Senator Gold is a law professor and Senator Dalphond is a retired judge. I'm sure they know the law much better than I do, but I am saddened by the government leader trying to find ways of getting his way here — as he has most of this week — whether or not that is possible to do.

Your Honour, I support Senator McPhedran's amendment. I won't speak to it until you give me the right to speak to it, but I would encourage this chamber to continue the debate. I would challenge the Leader of the Government to accept the democratic will of this chamber to be able to debate this very flawed bill that the government has brought before us and to debate good amendments, like the one Senator McPhedran has brought forward.

I will respect the ruling of the Speaker. Obviously you will want to take this under advisement. I simply want to be on the record that I support our debating this very good amendment.

Hon. Yonah Martin (Deputy Leader of the Opposition): I rise on the point of order, Your Honour.

I was just waiting to see what you would do about this point of order, whether you were taking it under advisement and how this would work. This is our first point of order in this debate.

I am a bit confused about Senator Gold's positions on everything — obviously not on this, I can see why he is raising a point of order. When we had amendments up to this point, for instance, Senator Wallin's amendment that was adopted — and she worked very hard to get that done — it was outside the scope, as other senators have raised. Even our critic spoke against it, as did Senator Petitclerc.

Senator Gold has every right to raise this point of order, but he has been silent on some. He has definitely opposed the Conservative amendments. He has spoken against those and yet abstained at other times. So I just thought, on this particular amendment — to which I personally am not speaking, but I do agree with what Senator McPhedran is saying — I was looking forward to hearing the debate. The fact that there is now a point of order is quite disappointing.

As Senator Plett said, this is an unprecedented situation. We have a hybrid setting. We have had these themes. What happens with this theme now? What happens with this amendment if you're taking your decision under advisement? There are a lot of questions regarding procedure. Perhaps, with the indulgence of the chamber, it is something we could continue in terms of debate.

I look forward to what you have to say, Your Honour. This is a new situation at the moment, so I look to you for guidance.

Hon. Jim Munson: Honourable senators, I understand what Senator Gold is doing. I understand his point of order, but we have the opportunity to listen to the amendment and the arguments being made. That would, to me, entice the rest of us to actually speak to it, to have the same opportunity in this democratic institution, while you're thinking of making your own decision, Your Honour, on this.

I say that because disability groups came before the Standing Senate Committee on Legal and Constitutional Affairs. They were free to and were invited to make their concerns known, from the United Nations to any of the 90 organizations that Senator McPhedran is talking about.

When they came to that point, I assume they didn't come just to speak. They came to be heard. When you're heard, you would automatically think that a senator might move an amendment. I certainly was hoping to speak to this amendment.

[*Translation*]

Hon. Diane Bellemare: Madam Speaker, I'll be very brief. I just want to respond to the comments made by Senator Martin, who compared Senator Wallin's amendments to the amendment currently before us.

I would say that Senator Wallin's amendment expanded the scope of the bill considerably, but without going against it, while Senator McPhedran's amendment definitely goes against the principle of the bill. This amendment completely nullifies it; this is entirely different, and I think the amendment is out of order.

• (1650)

[*English*]

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I would suggest that senators who were supposed to speak on this amendment could speak to the theme overall, and I would also like to make the point that matters pertaining to points of order are subject to the terms of the motion, that we could still proceed with the debate.

[*Translation*]

Hon. Lucie Moncion: Although I support the debate, I would like to go back to some of the points made by Senator Gold. I will comment in English.

[*English*]

I believe that the amendment proposed by Senator McPhedran would negate the essential purpose of the bill as it goes beyond the scope of the bill as approved by this chamber at second reading, so that has been said.

The essential purpose I'm referring to in this context is the removal of a discriminatory provision from the current law. By removing the foreseeability of death as a limiting criterion for access to MAID, Bill C-7 attempts to give effect to the constitutional rights of individuals who are suffering from grievous and irremediable medical conditions as recognized in the *Carter* decision by the Supreme Court of Canada, and reaffirmed in *Truchon* by the Quebec Superior Court. This is in essence what the bill is about.

Senator McPhedran's amendment would preserve the current discriminatory legal framework, as it would remove access to MAID from people who meet the requirements but whose death is not reasonably foreseeable. It would, in my opinion, kill the bill.

Here is a Speaker's ruling from the *Journals of the Senate*, December 9, 2009, on page 1589, and Senator Gold referred to it, taken from the *Companion to the Rules of the Senate of Canada, Second Edition*. For a better understanding of the rules surrounding the scope of an amendment, the ruling of the Speaker reads as follows:

> . . . an amendment moved in committee must respect the principle and scope of the bill, and must be relevant to it. It may generally be helpful to view the principle as the intention underlying a bill. The scope of the bill would then be related to the parameters the bill sets in reaching any goals or objectives that it contains, or the general mechanisms it envisions to fulfil its intentions. Finally, relevancy takes into account how an amendment relates to the scope or principle of the bill under examination. An amendment must respect the principle of the bill it seeks to amend, must be within its scope, and must be relevant to it.

The amendment proposed here is, therefore, inadmissible as it goes against the principle and scope of the bill as passed at second reading by this chamber. And I would ask that before we have a vote on this, Your Honour, that you take this under advisement and that you come back with a ruling for us. Thank you.

The Hon. the Speaker pro tempore: Thank you. Honourable senators, we have four more senators that are with us via video conference who want to intervene on this point of order. I will entertain if you want to put forth arguments that have not been put forth to date, so please consider this.

Senator Forest-Niesing, do you have a new argument in regard to the point of order?

[*Translation*]

Hon. Josée Forest-Niesing: Concerning the point of order, I was only going to thank Senator McPhedran and state that I appreciate the dilemma we find ourselves in.

[*English*]

The Hon. the Speaker pro tempore: Senator Cordy, do you have a new point of view that you want to state?

Hon. Jane Cordy: Yes, I want to talk about an informal agreement that was reached by the leaders.

The Hon. the Speaker pro tempore: Senator Cordy, we are now dealing with the point of order.

Senator Cordy: This deals with the point of order.

The Hon. the Speaker pro tempore: Okay.

Senator Cordy: Point 2.8 says: "if a point of order is raised in relation: (a)to an amendment, the Speaker may direct that proceedings on the bill continue as if the amendment were not before the Senate pending . . ." — "it says his" —

The Hon. the Speaker pro tempore: Yes, thank you, Senator Cordy.

Senator Ataullahjan, do you have a new perspective you want to raise on this point of order?

Hon. Salma Ataullahjan: Your Honour, the entire purpose here is to debate and discuss things, so I would like to hear what the other senators have to say. I thank Senator McPhedran for bringing this amendment forward.

The Hon. the Speaker pro tempore: Thank you. I have taken all your comments into consideration on this point of order, and as soon as possible we'll come back with a ruling.

In the meantime, as per the order that we have all agreed to in regard to the process of debating this bill, I will point to point 2.8:

> if a point of order is raised in relation:
>
> (a)to an amendment, the Speaker may direct that proceedings on the bill continue as if the amendment were not before the Senate pending his decision, and debate on the amendment shall resume after the ruling, if the item is in order, whether the ruling is given at that sitting or at a future sitting; . . .

Therefore, we are continuing our debate on this theme, not on the proposed amendment until we have a ruling.

The next speaker on our list is Senator Plett.

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

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

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I rise today to speak to an issue which deserves much more time and attention than my allotment permits. Although I am certain that other senators will be speaking to this issue as well, it warrants as much amplification as this chamber can give it.

I'm referring to the government's colossal failure to consult with Indigenous peoples. During our committee meetings on Bill C-7, witnesses raised this concern repeatedly. Scott Robertson, Senior Associate of the Indigenous Bar Association told the committee:

> The development and drafting of these amendments have been anything but respectful, and have virtually ignored the participation and insight of Indigenous peoples.

Neil Belanger, Executive Director, British Columbia Aboriginal Network on Disability Society, testified:

> I am only aware of one meeting held by the government with Indigenous organizations, many of which could not attend.

Dr. Carrie Bourassa, Professor, Community Health and Epidemiology, College of Medicine, University of Saskatchewan told us:

> Six elders from Métis and First Nations in British Columbia, Saskatchewan, Manitoba and Ontario offered their knowledge to end-of-life attitudes, practices, issues and concerns. Notably, the elders felt that Indigenous peoples had not been consulted on the issue of MAID . . .

Tyler White, Chief Executive Officer, Siksika Health Services, said:

> It is alarming that the consultation thus far on Bill C-7 with Indigenous peoples of Canada, whom this bill will disproportionately impact, has been grossly inadequate.

Bonnie Brayton, National Executive Director, The DisAbled Women's Network Canada, testified: "Indigenous people with disabilities have not been consulted."

Dr. Thomas Fung, Physician Lead, Siksika Health Services, told us: "No one in our community is aware of the details of this bill, and certainly no one in leadership has been consulted on this."

• (1700)

Colleagues, although my time is limited, the examples of this government's blatant disregard for the concerns of Indigenous peoples and, indeed, all peoples — compromised peoples, different groups — are certainly not.

At one of our committee meetings, I asked a panel of witnesses that consisted of four Indigenous representatives if they thought we should hit the pause button on this bill until more consultation was done. Three out of the four gave us an unequivocal "yes" and the fourth a "maybe." This is a damning indictment of the government's handling of this bill.

During their public consultations on this bill last year, the government held a single round-table discussion with a focus on Indigenous perspectives. At that round table, they did not include a single Métis or Inuit representative, and not a single representative of the Indigenous persons with disabilities.

When we asked Minister Lametti about the stunning failure to consult, here's what he said: "We put the round tables together as best we could." That's their best. Perhaps he neglected to read his own mandate letter from the Prime Minister, which said:

> As minister, I expect you to work in full partnership with Indigenous peoples and communities to advance meaningful reconciliation.

Colleagues, on the one hand, this government has introduced legislation to ensure that the Government of Canada takes all measures necessary to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Yet, on the other hand, they introduce legislation that is deeply troubling to Indigenous persons and are ramming it through without even bothering to properly consult.

What little consultation they did do, they basically ignored.

In their March 2020 *What We Heard Report*, a public consultation on medical assistance in dying, the government wrote the following:

> Some Indigenous people at the roundtable highlighted the differences in how Indigenous people view death and dying. They stated that there is a need for guidance from Elders and spiritual leaders. This would help to make sure MAID is done in a way that is culturally safe and appropriate. Some stakeholders said it was difficult to talk about MAID and advance requests in the North. Many patients speak a different language. Certain words and terms in the MAID law do not exist in their language. This makes communication about MAID difficult.

The report makes it sound like the government was listening, until we found out at committee that none of these concerns have been resolved.

Colleagues, I'm going to take a minute to talk briefly — and not to her amendment, because that's for later — but after speaking with members of the disability community — switching to disability — extensively — and hearing the eloquent testimony of disability advocacy organizations at committee, I am convinced that the entire creation of the second track and the purpose of this legislation is discriminatory, while the first track of death being reasonably foreseeable is available to all Canadians with an irremediable and grievous medical condition who are approaching death. The second track singles out only the disability community and implies that their lives are not worth living.

This is a Charter-protected group that has been singled out and unjustifiably discriminated against. Of all the amendments that we have heard here today, honourable senators, this amendment that Senator McPhedran would like to — I'm not speaking to her amendment; I'm using her only as an illustration — that this is the only one that truly takes to heart what the disability community is asking for. I thank Senator McPhedran.

Colleagues, this entire bill is a colossal, spectacular failure on the part of the government. It is unacceptable and I, for one, am for hitting pause on this situation. Thank you.

Hon. Mary Jane McCallum: Honourable senators, I rise today on debate on Bill C-7.

Once again, I speak to you from the perspective of a First Nations woman and a health professional who practised on reserves in Manitoba since 1973. During that time, I've had many conversations with grassroots people to leaders in Manitoba and throughout Canada regarding the plight of the descendants of Canada's original peoples. As I have previously stated, assisted dying was never one of those conversations.

However, assistance to a good quality of life was always part of the conversations.

In my years of working on reserves, I have seen the complex components of the health system fail the First Nations. In fact, their overall health has deteriorated even more. This is despite the fact that I have worked with many other health professionals who treated First Nations and Métis people appropriately and were dedicated to their work, to the people and to their ethics.

Colleagues, the issues I raise are those articulated to me by First Nations, Métis, Inuit as well as the voices from the disability communities across this land. It's my obligation to ensure that those voices reach the Senate floor, however hard it is. We need to illuminate and understand the far-reaching effects when a segment of the population is ignored and not consulted along racial, ethnic, cultural and socio-economic lines.

They are afraid. They don't know why they continue to be bypassed, why they are placed in a position of severe, continual disadvantage and why the laws that protect others don't protect them but rather leave them under more threat.

At this point in our history, it should not be this difficult to adequately consult Canadians, especially those who will be greatly impacted by a bill. However, First Nations were simply not consulted on Bill C-7 prior to its development — yet now some senators say it's outside the scope of the bill to debate issues like consultation, lack of resources, et cetera.

If First Nations issues were not articulated before the bill was developed and cannot be articulated during the bill, when do we get to speak? There remains an inability to negotiate adequate solutions to safeguard First Nations. Don't we matter? Perhaps these issues would have been better understood and addressed under an appropriate Gender-based Analysis Plus on this bill. From what I have seen, the government's GBA+ is wholly inadequate, leans on international data as opposed to generating enough Canadian-specific content and blatantly does not address the impacts of the bill on different racialized groups whatsoever.

This is another example of corner-cutting adversely impacting minority groups at a much greater rate than others.

Honourable senators, in his January 18 letter to the Senate Legal Committee, Minister Lametti states that under his Charter statement, he included the considerations that would be relevant to the specific rights that may be engaged — sections 15 and 7 — by this bill. I am told that every Canadian has the right to life, liberty and security, the right not to be deprived thereof and for the government to respect the basic principles of justice whenever they intrude on those rights.

Yet it seems every time a bill is drafted, there is very little to no consultations about its effects on First Nations. It seems that the First Nations' issues continually fall under unintended consequences and become subject to jurisdictional hand-wringing.

To some extent, we have the opportunity to fix this bill as we debate and recommend amendments; yet, with the position they've been placed in, the concerns by First Nations, the doctors and the disability community are too huge to be able to be remedied by simply amending this bill.

First Nations have an equal right to life, liberty and security. As First Nations, we have been fighting for the right to a good quality of life; yet with this bill, there is a lack of security. We have heard from individuals, from advocates, from doctors, from the disability community — all of whom are worried about the impacts of this bill.

We don't have tangible clarity on how this bill will affect these groups. How does this bill recognize and enforce the equality rights to minorities and the disadvantaged, as guaranteed in section 15 of the Charter?

Colleagues, I was shocked that some here have stated that medical professionals have the ability to do the capacity assessment work that will be required. With all the recent stories of different forms of institutional racism, be they government, education, policing, corrections, child welfare and so on, the concept of First Nations, Métis and Inuit receiving adequate care in these public institutions is already compromised. To reverse the way health care is given and managed will take years to change the mindset of the humans involved. To add capacity assessment work on top of this seems unrealistic. Where did this certainty come from?

• (1710)

Yes, I understand that we are dealing with the Criminal Code, but it is intimately connected to health care policy. When you look at life holistically, you cannot separate these two. Health care providers will be expected to provide the service, many against their will and unprepared to do so. Patients will be offered the service. That is the reality. I have seen health care delivered and spoken to the nurses and doctors. They are so busy with daily emergency care and, now, COVID-19 that most are overwhelmed. Where would they find the time to discuss and consider this issue adequately and without force?

Honourable senators, I can tell you many stories about individuals who are forced to live a life they don't deserve because they aren't given the resources to deal with their issues. I am already hearing stories about people who are inappropriately being referred for assisted dying and requesting assisted dying due to social circumstances exacerbated by COVID-19. What recourse do families have to deal with these issues? Where are the safeguards for those under threat of having their life terminated inappropriately? Thank you.

Hon. Victor Oh: Honourable senators, I'm here today to speak about the potential negative impacts of Bill C-7 on the disability community.

Concerns regarding prejudice and stereotyping continue to be top of mind for Canadians. One such area that is not getting the attention it deserves is the prejudice against and stereotyping of the infirm and the disabled. We must give voice to the disability community and ensure that the laws we are bringing forward do not negatively impact them.

Just look at those who have been the most impacted by the COVID pandemic in this province and the one next door — those in long-term care homes who, by definition, require the care and attention of others. COVID swept through many of those facilities, killing thousands across Canada. It was a scandal of monumental proportions in the first wave and then was allowed to happen again in the second wave. I do not think for a minute that, if the toll COVID had taken on them had been inflicted on any other group to such an extent, it would have been allowed to happen again in a second wave. This has its counterpart in MAID and disability.

As UN human rights experts stated in January:

> We all accept that it could never be a well-reasoned decision for a person belonging to any other protected group – be it a racial minority, gender or sexual minorities — to end their lives because they experience suffering on account of their status.

Yet we seem to permit this type of thinking of those who are among the most vulnerable. It is not hard to imagine why Krista Carr of Inclusion Canada, a national organization that represents people with disabilities and their families, testified: Our biggest fear has always been that having a disability would become an acceptable reason for state-provided suicide. . . .

This is not idle speculation on her part. Gabrielle Peters, who also testified before the committee, appeared in *Maclean's* magazine last week, in which she described the experience of Dr. Corinna Iampen. Dr. Iampen found herself recovering in the hospital from a permanently disabling injury that was not life-threatening, yet the doctor at her bedside asked if she wanted to speak to the medical assistance in dying team. She was shocked. She was not considering ending her life, but the doctor assumed she would.

Honourable senators, in closing, I want to echo the words of my colleague, Senator Don Plett, who said in his speech the other day:

> . . . our unwillingness to see and hear the disability community when they have been asking for support — while we move at an alarming rate to offer them assisted suicide when we are under no obligation to do so — is frankly a national tragedy.

I would go one step further. It is more than a tragedy; it is a disgrace. In our hurry to offer these options, we are making too many assumptions of what is best for the disability community. It is of the utmost importance that we take additional time to work with the community to gauge their needs and make sure that our efforts offer them the support they need on these important issues. Thank you.

Hon. Kim Pate: Honourable senators, the government has championed measures aimed at increasing equality, such as the Accessible Canada Act and the promise of forthcoming distinctions-based Indigenous health legislation, while simultaneously prioritizing Bill C-7 — a step forward for the rights of some individuals that risks entrenching and increasing inequality for those most marginalized within the health care system.

For those who were not aware before, this pandemic has laid bare the discriminatory treatment and toxic intersectionality of poverty, racism, ableism and ageism. The inadequacy of long-term care; the inaccessibility of palliative care, home care and community-based care; the systemic biases; and the labour crises occasioned by discriminatory attitudes about the value of caregivers in institutions from hospitals to long-term care facilities have resulted in thousands of preventable deaths. With Bill C-7, the government has prioritized in the midst of a pandemic a measure that stands to increase rather than redress these intersecting inequalities and the fatal consequences they have produced.

Many have said the Criminal Code is too blunt an instrument to remedy the complex and long-standing inequality that witnesses have brought to our attention. This is true. However, the Criminal Code is one of very few levers that the federal government has to advance a vision of justice, inclusion, dignity and respect for all persons. Broadening the exemptions to the rules of the Criminal Code in the ways that Bill C-7 demands may provide comfort to Canadians for whom the reach of personal autonomy is largely unfettered by social and material disadvantage. But that comfort will come at a price: the price of the lives of those who exist in the margins, who are already telling us they feel further devalued.

Like the discriminatory attitudes that underpin them, these inequities may be rendered a little less visible, but no less urgent. UN representatives this week issued a direct caution to the Canadian government about discrimination in this bill and failures to consult persons with disabilities. They zeroed in on the unintended consequences of otherwise well-intentioned legislation.

• (1720)

Why did the government not apply a disability lens to MAID? Why did we not, at the very least, ensure the review of the current provisions was conducted prior to consideration of this bill?

Just as we currently look back and shake our heads at the eugenics practises and genocidal legislative and policy decisions of our forebears, many are already questioning the wisdom of a legislative decision to expand the assisted suicide provisions of the Criminal Code without first doing our level best to acknowledge, much less address, the systemic inequalities that give rise to stigma-informed and discriminatory treatment and suffering.

Is it really the case that we can ignore these realities and argue that those urging us to exercise caution are merely paternalistic? That the disability rights community that has fought for autonomy and inclusion for people with disabilities since its inception is somehow just fear mongering and retreating into paternalism?

Our history is rife with examples of where those with privilege and power have trumped the interests of those who are deemed less worthy of protection. Will this bill do so without acknowledging the role that inadequate health, social, housing and economic supports have played in causing pain that adequate supports might relieve?

Today's report of the Parliamentary Budget Officer tells us again what we cannot ignore. Despite federal government housing initiatives, Indigenous families remain one and a half times more likely to be in housing need than non-Indigenous families. Inuit families are 2.4 times more likely. Nearly one third of homeless shelter users in Canada identify as Indigenous. Current programs fail to address and thereby perpetuate colonialism and systemic racism in ways that will affect the care that people with health needs receive and the suffering they experience. How can we consider medical assistance in dying an acceptable choice for those whose only other choices are to be on the streets or in an institution?

Our failure to provide the means for people to live in community has resulted in too many people in long-term institutional care because they cannot access the supports they need to live at home. And, as witnesses — from the Correctional Investigator to health care professionals working with those most marginalized and people living on the streets — have detailed, Bill C-7 measures will ensure death is easier to access than most other services or relief.

We have heard that that non-end-of-life medical assistance in dying is meant to respect the choices of individuals about when their suffering becomes too much to bear. But what is there to choose, honourable colleagues, if poverty, racism, ableism, institutionalization and marginalization obviate other options for relieving suffering?

Are we calling it a choice to sanitize the fact that Canada's abject failure to extend lifelines through social, housing and income supports means that some people who are not dying will be considering death to escape difficult and painful lives?

As senators, we have an obligation to represent the interests of those who are often not well represented in the other place. We need look no further than the Joliette hospital where, on the same day, a relatively well-off, apparently able-bodied White man reported receiving caring and considerate health care, whereas a less well-off Indigenous woman with a disabling heart condition was subjected to sexist and racist abuse as she lay dying.

We can find these examples in most jurisdictions, colleagues. Moreover, as we have seen with Jordan's Principle, and will undoubtedly now see with Joyce's Principle, absent appropriate funding and clear guidelines, words and promises alone will not address the systemic and intersecting inequalities in our health systems. To not, at the very least, have reviewed and agreed to a plan to remedy these inequities in advance of this bill is, to my mind, the epitome of irresponsibility, and I don't consider any one of you, colleagues, irresponsible. *Meegwetch*. Thank you.

Hon. Yvonne Boyer: Honourable senators, today I join you to speak at third reading on Bill C-7. Specifically, I will speak to the subject of Indigenous health and the application of the proposed changes to the Criminal Code.

As a member of the Standing Senate Committee on Legal and Constitutional Affairs, I was privileged to participate in the extensive discussions around the issue of medical assistance in dying during the pre-study and the committee stages. Over countless marathon sessions, our committee heard from experts and individuals affected by this legislation. Many had firsthand experiences with MAID and shared their often heartbreaking stories.

I would like to take a minute to thank all of the witnesses for taking the time to speak with us and for reliving their stories so that we can work together to assess this legislation thoroughly.

As an Indigenous person who has spent my entire professional life either working in the health care system or studying the laws that govern it, the subject matter discussed in this bill is profoundly important to me, and, as I have done with all my work as a senator, I approached the study of this legislation through an Indigenous lens.

Canada has often forgotten to examine or has purposely excluded the impact that legislative changes will have on Indigenous peoples across this country. Sadly, this is again the case with Bill C-7.

As an Indigenous member of the committee studying this legislation, I tried to ensure a diverse range of Indigenous voices were heard at the committee stage. These voices should have been heard much earlier in the process, including during the initial envisioning of this legislation and, certainly, while it was being drafted.

In the testimony we heard from Indigenous witnesses, they all spoke about the profound lack of health care services available to Indigenous peoples across Canada, especially in northern and remote communities. This issue is always a concern of mine, but it is significantly more worrying when discussing this legislation.

In her powerful testimony, Dr. Lisa Richardson, an Indigenous physician and strategic lead for the Centre for Wise Practices in Indigenous Health said:

> In an environment where both systemic and interpersonal racism exists, I don't trust that Indigenous people will be safe. I don't trust that anti-Indigenous prejudice and bias will not affect the decision making and counselling about MAID for Indigenous people, no matter how much education is given.

This sentiment was echoed by Indigenous witnesses and allies throughout our hearings on this bill and during the pre-study. How can we expect Indigenous people to feel safe in accessing a process as deeply personal as MAID, when both this legislation and our health care system as a whole have chosen to ignore systemic racism they face when accessing it? I worry that both lack of access to and the fear of accessing the health care system will make it difficult for Indigenous people to exercise their constitutionally protected autonomy to decide if and when they want to end their lives.

Further to this point, Marcella Daye, Senior Policy Advisor to the Canadian Human Rights Commission, highlighted that the development of culturally appropriate services related to MAID:

> . . . must ensure the involvement of the communities themselves, including, where appropriate, the involvement of elders, so that the events around providing a dignified death are not narrowed to a medical physician-oriented process but that they can fully encompass the ceremonial and cultural importance that exists for many Indigenous persons.

Honourable colleagues, as with any legislation, there are people on all sides of the issue, and during the pre-study and study I found myself completely torn on what I should do in relation to this bill. I believe we must move forward with compassion at the forefront of our decision making. There are people suffering in Canada who experience immeasurable and unimaginable pain that few, if any, of us in this chamber can even imagine.

• (1730)

When I heard the testimony from Dr. Cornelia Wieman, president of the Indigenous Physicians Association of Canada, the potential harm we can do by not passing this became clear to me. In sharing her experiences with us, she said:

> Many Indigenous physicians work on the front lines. We see the suffering of certain people. Granted, we need to provide more health services and supports to people who are, for example, in the midst of a terminal illness, services that they don't necessarily have equitable access to.

But on the other hand, for people who can make that informed decision for themselves, with the existing safeguards in place, people have had access to MAID. Some Indigenous people have done that. She went on to say:

> I have had a very close friend of mine who died of cancer, and sitting with her just for one minute in severe chronic pain to me seemed intolerable, but I wasn't the person with that pain. So we have to also bear in mind that we can talk about these issues in a professional academic way but we must also keep in mind that right now at this very instant there are people who are suffering intolerably.

Colleagues, the longer we delay in passing this bill, the longer we will force people to suffer. The decision to use MAID must be a decision left strictly between a patient and their doctor in a culturally appropriate manner. Indigenous peoples must have the option to opt in or opt out based on their inherent right to self-determination. As sovereign nations, they are the only ones that know what is best for themselves.

In a letter I received from Indigenous leaders across the country, the call was for the Government of Canada to:

> Recognize the value of Aboriginal healing practices by respecting Indigenous peoples' right to self-determination in spiritual matters, including the right to practise our own traditions and customs when supporting those who are dying without discrimination in the health care system.

In discussing the view of Indigenous peoples on any issue, we must first recognize that there is a huge diversity of Indigenous peoples, and no one body or one person can speak for us all. Dr. Suzanne Stewart, director of the Waakebiness-Bryce Institute for Indigenous Health and associate professor at the University of Toronto school of public health, stated that it is important — it is critical —

> . . . to develop Indigenous, community-driven psycho-education materials; clinical Indigenous culturally safe and trauma-informed training for all MAID health professionals; and Indigenous culturally based services for MAID as standard practice in all health care settings offering MAID.

Ultimately, it is my view that we should pass this legislation, but in passing it we must, as a Senate, commit to do better in the future. We cannot continue ignoring Indigenous peoples like legislators in this country have done for centuries.

Our first opportunity to revisit this issue as part of a legislatively mandated parliamentary review is absolutely critical. With the recent announcement by the federal government about distinctions-based Indigenous health legislation, it is my expectation that it will be Indigenous-led and these Indigenous voices will be magnified so that we, as a country, will be able to examine how MAID is being used, and work to improve the process and health care for Indigenous peoples. *Meegwetch*. Thank you.

Hon. Senators: Hear, hear.

The Hon. the Speaker pro tempore: Do any other honourable senators wish to intervene in debate on the theme of vulnerable and minority groups, healthcare (including palliative care) and access to medical assistance in dying?

If not, debate on this theme is considered concluded, and the Senate can proceed with debate on the next theme, which is conscience rights.

Senator Plett: Honourable senators, I'm sure there were some that were hoping I would come in here and some were hoping I would miss this. Nevertheless, Your Honour, I'm presenting an amendment.

Colleagues, I rise today to bring forward an amendment to enshrine meaningful conscience protection in Canada's medical assistance in dying framework.

As senators who took part in the committee study will know, this issue came up on almost every panel during our pre-study, and again in our second committee study last week. In fact, it was striking how often the issue was raised, and how passionate the pleas have been since. There were certainly concerned physicians and associations when we studied Bill C-14, and I advocated on their behalf. But this time, it was one of the most prominent themes of our study.

I contend that there are two reasons for this. First, the question of how this law will be applied by the provinces is no longer hypothetical. We have seen the requirements put on physicians who do not wish to participate in the ending of a patient's life. In fact, as the Canadian Society of Palliative Care Physicians stated, ". . . expectation of physician participation of MAID in Canada far exceeds that of any other permissive jurisdiction in the world." Second, this bill expands access to assisted suicide to Canadians who are not approaching the end of their natural life. This, understandably, is even more in practitioners' greater thoughts.

For some physicians, taking part in or facilitating such a procedure would be a violation of their religious freedom, for some a violation of their medical ethics and their sworn Hippocratic Oath. For some Indigenous practitioners, providing or facilitating MAID would go against their cultural values and belief systems. For some practitioners, it would be a complete violation of their medical judgment to refer, for example, a patient with a disability for a life-ending procedure when it is their professional opinion that there are treatment options available.

During our pre-study, when I asked Minister Lametti about the need for conscience protection in this law, he referenced the clause in Bill C-14 and stated, "That safeguard is still there." However, we know now, clearly, that this clause provides no protection for health care professionals. It is true that no doctor in Canada is required to physically administer the lethal substance to a patient. However, in some parts of our country, practitioners are forced to provide an effective referral that will ultimately result in the death of their patient. The major understanding that seems to remain among legislators and regulators is what a referral means in medicine.

The Canadian Medical Association explained the problem with forced referrals clearly when we were studying Bill C-14. They stated that an effective referral is essentially the endorsement of a procedure, which they acknowledged is morally problematic for many practitioners.

One witness who testified on the last day our pre-study, Dr. Coelho, said she was following the hearings, and noted this deep misunderstanding from some senators of the meaning of a referral. She said physicians make referrals to a specialist, for example, when a treatment is outside of their expertise, noting:

> We don't make referrals for things we don't think are good to our patients. . . . There is an ethical implication in a referral. It is not just a piece of paper and a signing off to someone else.

• (1740)

The government, in Bill C-14, acknowledged that conscience protection was needed. However, the bill included a clause that was unenforceable, which explains why we have varying policies and varying degrees of forced participation across the country.

Presently, most provinces do not require effective referrals and have worked out reasonable access for patients without coercing physicians to participate in the process.

Every practitioner advocating for meaningful conscience protection is more than happy to provide a website, a phone number or provide information on any other self-access mechanism to a patient.

In Alberta, for example, patients have access to the MAID Care Coordination Service Team without needing a referral from a physician. In Manitoba, there is a clear standard of practice explaining that for the grounds of a conscience-based objection a member can provide timely access to a resource that will supply accurate information about a medical treatment or a procedure.

British Columbia's physicians are offered similar protection, and yet — and this is crucial — the provincial colleges have confirmed that in provinces where the doctor has a right to opt out and self-access mechanisms are in place for patients, they have experienced no barrier to access — none whatsoever.

However, in British Columbia there is no institutional protection, which explains why Delta Hospice, a palliative care centre, has been forced to shut down. The hospice chose to opt out of MAID as they believed it was a violation of the fundamental principle of palliative care: namely, not to hasten death. The same lack of institutional protection exists in Ontario, Prince Edward Island and Quebec.

With respect to forced referrals, Nova Scotia mandates effective transfers of care. However, physicians have assured us this has proven to be a referral by another name, as the transfer of care must be a willing MAID provider and has to be initiated by the objecting physician.

Ontario physicians are required to provide effective referrals for their patients, even though Telehealth can be used as a self-access mechanism for MAID. The infrastructure is there, and yet objecting physicians are being forced to leave the profession or the province.

Physicians in this chamber will be familiar with the concept of MRP, or most responsible physician. When a patient is referred for surgery, for example, the surgeon becomes the most responsible physician for that patient during the procedure and would be liable if something unethical ensued. However, Ontario hospital policies are making conscientious objectors who are forced to refer remain the most responsible physician for that patient rather than the MAID provider themselves, even if that is in direct contradiction of the objector's ethics. This is wrong, colleagues.

Many have asserted that this should be left up to the provinces to regulate. However, what has resulted since Bill C-14's enactment is a patchwork of degrees of forced participation and lack of clarity.

The recent Ontario Medical Association's letter to the Senate was quite a remarkable indication of the need for clarity in federal legislation. When a provincial medical association asks Parliament to include explicit conscience protections for their physicians directly in our legislation, that is a pretty good indication that the system is not working.

Yesterday, many of us received a letter from over 40 rabbis expressing grave concerns with the policies of the College of Physicians and Surgeons in Ontario. The letter states:

> The impending enactment of Bill C-7, along with the college's policy of requiring participation or facilitation of MAID, poses grave religious and moral issues to members of the Jewish faith.

The letter continues:

> As it now stands, Bill C-7 would mean observant Jews who are health care workers will either no longer be welcome in the medical field or will be forced to abandon their deeply held beliefs.

The rabbis conclude by pleading with the Senate for conscience rights, protecting physicians from direct or indirect participation in MAID.

In provinces that currently have fulsome conscience protection, many physicians find it unsettling when the policies can and have changed at the whim of the provincial colleges. Physicians have no certainty as to the level of conscience protection they will be entitled to or for how long.

We know that Indigenous groups and leaders are gravely concerned about their lack of conscience protection, particularly as the assisted suicide regime is radically expanded. All of us received a letter from Indigenous leaders across the country stating:

> Given our history with the negative consequences of colonialism and the involuntary imposition of cultural values and ideas, we believe that people should not be compelled to provide or facilitate in the provision of MAiD.

They continue:

> Regardless of one's opinion of MAiD, the right to self-determination and to act on one's conscience is recognized as a fundamental freedom in all peoples.

Colleagues, all of these appeals are a clear indictment of the lack of protection under Bill C-14.

Psychiatrist Sephora Tang, in a powerful presentation told us:

> If the status quo remains, the state is essentially being permitted to compel an unwilling practitioner to engage in an action they believe to be harmful to another person, and effectively sets up the conditions for inflicting moral injury upon health care professionals.

Honourable senators, it has been said that the Criminal Code is a blunt instrument; however, in the context of this legislation, it is our only tool to implement policy with any enforceability.

The amendment will criminalize any individual or institution who compels another individual or institution against their will to provide or facilitate in providing medical assistance in dying. The second clause clarifies that the obligation to provide the information is not included in the term "facility." This is to ensure that physicians will continue to be required to provide information on self-access mechanisms, which have been and continue to be effective across Canada.

Let us be clear, colleagues: The effect of this will be to force provincial colleges to establish policies that are in line with Parliament's intent.

Colleagues, if the last few days have demonstrated anything, it is that there is no clear consensus on how to legislate compassion, how to ensure that adequate safeguards are in place or how to achieve the goal of patient autonomy, and an even higher degree of professional disagreement and moral variances exists within the medical profession.

Given that we know there is no certainty or uniformity among the provinces, no barrier to access in provinces in which practitioners are fully protected, and given the pleas we are receiving to intervene from forced participants, Indigenous leaders, professional associations and even a provincial medical association, it is incumbent upon us to make this protection clear, certain and consistent. In a pluralistic society, I submit this is the only responsible and balanced approach. We owe it to our health care professionals.

MOTION IN AMENDMENT

Hon. Donald Neil Plett (Leader of the Opposition): Therefore, honourable senators, in amendment, I move:

> That Bill C-7, as amended, be not now read a third time, but that it be further amended on page 7 by adding the following after line 30:
>
> “**1.1 The Act is amended by adding the following after section 241.2:**
>
> **241.21 (1)** Every person who compels another person to provide or facilitate the provision of medical assistance in dying is guilty of an offence punishable on summary conviction.
>
> **(2)** For the purposes of subsection (1), a person who provides information on medical assistance in dying to a person who requests it does not facilitate the provision of medical assistance in dying.”.

Thank you, honourable senators.

Some Hon. Senators: Hear, hear.

• (1750)

Hon. Marc Gold (Government Representative in the Senate): Thank you, Senator Plett, for your amendment. I want to begin just by acknowledging the deep conviction that you bring to this issue, how important it is to you. I respect that enormously.

The issue of access to MAID raises complicated issues that engage competing constitutional rights and interests, and the job of legislators — our job as senators — is to strike the appropriate balance between those competing rights in the best interests of Canadians. There is a constitutional right of persons suffering intolerably from irremediable medical conditions to have access to MAID, a right that, as Senator Dupuis correctly noted, is rooted in a long series of Supreme Court decisions focused on the relationship between the autonomy of persons and the state’s intervention in people’s lives through criminal law. There is, of course, also the constitutionally guaranteed freedom of conscience, which is a pillar of our liberal democratic society.

The amendment before us is presented as a means to better protect the conscience rights of those health professionals who do not wish to participate on grounds of conscience in their patients’ request for MAID. Colleagues, the amendment is not necessary to achieve that purpose, nor is it desirable in law or policy, so I will take the time I have to explain why I cannot support it.

The amendment is unnecessary because the current law respects the personal convictions of health care professionals to the degree that is appropriate and does not compel participation in medical assistance in dying and Bill C-7 does not change that. The Criminal Code is clear in section 241.2(9):

> For greater certainty, nothing in this section compels an individual to provide or assist in providing medical assistance in dying.

Moreover, section 2 of the Canadian Charter of Rights and Freedoms, which includes the guarantee of freedom of conscience, protects individuals from being compelled to act contrary to their conscience. I’ll return to the Charter in a moment.

Of course, the amendment does more than this. It makes it a criminal offence to facilitate the provision of MAID. Until I looked into this, I wasn’t sure exactly what that meant. But if you read the letters, as I have, that we have been receiving recently, and, of course, in the testimony of witnesses to which Senator Plett refers and Senator Plett’s speech, it is clear that what this refers to is referrals. This amendment would criminalize referrals that are required by the regulatory bodies in some provinces.

So what would this mean in practical terms? We know the regulation of health care is within the exclusive legislation jurisdiction of the provinces, who have designated regulatory authority to the professional bodies that oversee the health care professions. Some regulatory bodies — Senator Plett mentioned a number of them — do impose a duty to refer on their members. This, as colleagues know from debates and those who followed the testimony, was the subject of a court challenge in Ontario about which we heard testimony from Professor Downie from Dalhousie University. In a lengthy and very comprehensive decision, the Ontario Court of Appeal held that a duty of referral does not infringe upon the conscience rights that are protected by the Canadian Charter of Rights and Freedoms. The court was of the view that the law struck an appropriate balance between the competing constitutional rights and government interests.

Bill C-7 doesn’t change this, but this amendment would. It would limit the constitutional right of a patient seeking MAID to be referred to a health professional who is willing to assist them, and it would limit the ability of provinces to legislate and regulatory bodies under their jurisdiction to craft rules that they see appropriate for the regulation of the profession and the public that the profession serves.

This leads me to an additional problem, which I’m tempted to say is the broader problem with this amendment: Because it reaches so deeply into the area of provincial jurisdiction, it is, in pith and substance, a law that regulates health care providers. Can this be justified as a constitutional matter as a proper exercise of the criminal law power? It’s not very obvious that it can. For a law to be the valid exercise of a criminal law power — Parliament’s power to legislate a criminal law — it must serve a valid criminal law purpose as set out in innumerable cases which I will not cite here.

But the case law generally suggests that for a law to be valid under the criminal law power, it must be directed at some social harm sufficiently important to justify the imposition of criminal sanctions, especially when the law is aimed at the core of what is exclusive provincial jurisdiction— and here, it's not only over health, but it's over the professions and, indeed, it's over employment.

We have heard no evidence of practitioners being compelled to provide MAID against their will. We heard of objections to having to refer patients to other professionals, a requirement that was upheld by Ontario's highest court as consistent with the Charter.

Now, if provinces where the regulatory bodies under their jurisdiction chose or choose not to require health care professionals to refer patients to others for MAID assessment, they are free to do so, subject, of course, to those rules respecting the constitutional rights of persons to have access to MAID — balancing of rights. But in the absence of tangible evidence of real social harm —

The Hon. the Speaker pro tempore: I'm sorry, but your time has expired.

[*Translation*]

Hon. Marie-Françoise Mégie: Honourable colleagues, I will be very brief. I am opposed to this amendment.

I refer you once again to the code of ethics. As you know, the code of ethics governs the practice of a profession, the conduct of those who practise it and their relationship with their clients.

Section 24 of the Quebec Code of Ethics of Physicians protects physicians' freedom of conscience while preserving the right of patients to receive health care and services, including MAID if they request it. This section states, and I quote:

> A physician must, where his personal convictions prevent him from prescribing or providing professional services that may be appropriate, acquaint his patient with such convictions; he must also advise him of the possible consequences of not receiving such professional services.
>
> The physician must then offer to help the patient find another physician.

With regard to medical assistance in dying, section 31 of the Act Respecting End-of-Life Care states that any physician who refuses a request for medical assistance in dying must notify the authorities responsible, who will take the necessary steps to find a physician willing to deal with the request. This section ensures that the rights of both the patient and the physician are respected. Furthermore, the physician-patient relationship is not broken, as Dr. Yves Robert, secretary of the Collège des médecins, stated:

> The patient will still need medical follow-up for everything that does not concern that particular procedure.

Another consequence of this amendment, whether intended or unintended, is that it would criminalize prescriptions that doctors send to pharmacists. In general, a pharmacist must prepare the drugs prescribed by the doctor. Would that mean, in the case of MAID, that the pharmacist is facilitating the procedure? The doctor and the pharmacist would then be guilty of an indictable offence for issuing a prescription in accordance with their code of conduct. Once again, these professionals would be criminalized.

Professional associations are corporations under the law. Are we going to prosecute them for abiding by professional codes of conduct and codes of ethics?

That is why I urge you, honourable senators, to reject this amendment, which could harm the practice of medicine in Canada and which infringes on areas of provincial jurisdiction.

Thank you.

[*English*]

Hon. Denise Batters: Could I start it after the break?

The Hon. the Speaker pro tempore: Honourable senators, do we have leave to see that it is 6:00 and that we take the one-hour break and that we resume our sitting at 7:00?

Hon. Senators: Agreed.

The Hon. the Speaker pro tempore: Thank you.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

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

On the Order:

> Resuming debate on the motion of the Honourable Senator Petitclerc, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), as amended.
>
> And on the motion in amendment of the Honourable Senator Plett, seconded by the Honourable Senator Batters:
>
> That Bill C-7, as amended, be not now read a third time, but that it be further amended on page 7 by adding the following after line 30:
>
> > "**1.1 The Act is amended by adding the following after section 241.2:**
> >
> > **241.21 (1)** Every person who compels another person to provide or facilitate the provision of medical assistance in dying is guilty of an offence punishable on summary conviction.
> >
> > **(2)** For the purposes of subsection (1), a person who provides information on medical assistance in dying to a person who requests it does not facilitate the provision of medical assistance in dying.".

Hon. Denise Batters: Honourable senators, I rise today in support of Senator Plett's amendment, which seeks to ensure that our constitutional rights of freedom of religion and conscience are reflected in the bill before us.

This is the second time we are considering this issue as it relates to medical assistance in dying. It was also raised during the debates over Bill C-14, and there is no doubt in my mind that it will continue to find its way back into this chamber until it is properly dealt with. It was the Supreme Court itself that flagged this issue in *Carter v. Canada* and anticipated that Parliament would take the steps necessary to address it. In its decision, the court said this:

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

Honourable senators, it was the Supreme Court's clear expectation that Parliament would address this matter, and yet to date we have failed to do so. It is my hope that we will not fail once again but that we will pass this amendment and provide physicians and health care practitioners the protection they are asking for.

Regrettably, when Justice Minister David Lametti appeared before the Senate's Legal Committee, he dismissed the issue, stating that: ". . . nothing in the legislation forces a practitioner to furnish MAID to another person." Several senators have repeated that mantra as though it addresses all problems of conscience. But this does not address the core issue, which is a matter of conscience.

This matter of conscience is fundamental in a free society, where freedom of conscience and religion are protected. It is absolutely clear that more robust protections are required in this legislation in order to preserve those fundamental freedoms.

In this regard, I think it is useful to refer to what we have heard from physicians at committee. Dr. Ewan Goligher made the point clearly when he said:

> . . . referral makes a physician morally culpable. Just as I should not refer for euthanasia, nor should I refer for conversion therapy nor should I refer a patient to a physician who will sell prescription opioids — all of those acts of referral would be unacceptable and ones for which I ought to be liable.

Similarly, Dr. Thomas Bouchard stated:

> Our participation, including the form of arranging or referring for this legal service, would be an endorsement or recommendation of following through with MAID, which we can't do.

Dr. Ramona Coelho told our Legal Committee this:

> A referral is when I say: This is something I think is truly good for the patient. So I am going to, because it's not part of my expertise, I am passing it on to a specialist to complete the care that I believe is good. . . . There is an ethical implication in a referral. It is not just a piece of paper and a signing off to someone else.

Very recently, the Ontario Medical Association wrote to our committee, stating this:

> Doctors should not be asked to provide care that is in contradiction to their deeply held beliefs. . . .
>
> It is the view of the OMA that introducing conscience rights directly into legislation would be a positive solution that would strike the right balance between the Charter rights of physicians and their patients.

There can be no doubt this is a fundamental matter of conscience. For centuries, the medical profession has been governed by principles that emphasize the central importance of providing for the care of patients and not of inflicting harm on them in violation of a health care provider's conscience. It would be unthinkable for any legislative body to propose to suddenly change age-old principles and instead demand participation in a manner that violates the conscience of many medical professionals. For reasons of conscience alone, I believe Senator Plett's amendment is vital, and many medical professionals fear the possibility of being forced to do something that may be against their conscience.

As referenced in our Senate committee's report, Marilee Nowgesic of the Canadian Indigenous Nurses Association clearly expressed her concerns about meaningful protection for the conscience rights of Indigenous health care workers. Specifically, she asked:

> Are they going to be punished in their workplace if they do not because they're the only nurse or nurse practitioner in that community that could do this?

As legislators, we have the obligation to address these concerns. If some senators are not moved by the conscience argument alone, we should at least be concerned by the implications of forcing medical professionals to do something that many believe goes against their conscience.

Dr. Ewan Goligher told our committee:

> . . . I have friends and colleagues who have been forced to change practice, in particular, to stop practising palliative care because they are put in a difficult situation where they could face professional discipline for being unwilling to make an effective referral for euthanasia.

> I also know of colleagues who have retired early . . . .

Medical professionals are among the most mobile working professionals in our economy. They are in high demand, not only in Canada but in the United States. I fear that we may inadvertently contribute to placing even greater strains on our health care system if we fail to make every effort to provide what is really a very basic form of conscience protection in the face of the changes being introduced with this legislation.

Honourable senators, this issue won't go away and it is essential that it be addressed properly. Today we can take a step towards making that a reality by supporting Senator Plett's amendment. Thank you.

Hon. Pierre J. Dalphond: Honourable senators, I will not speak in favour of this amendment, and I will explain why. Senators Gold and Mégie explained the principles at stake and the balance to be struck between the freedom of conscience and the right of patients to receive medical assistance in dying, so I will not cover that.

I will do the exercise I was called to do yesterday in terms of the analysis of a proposed new criminal offence, which reads:

> Every person who compels another person to provide or facilitate the provision of medical assistance in dying is guilty of an offence punishable on summary conviction.

The idea here is to provide a fix or a solution for two problems identified by Senator Plett in his speech. The first is about a hospice in B.C., a non-profit society operating on provincial public land and receiving from the provincial government, through the regional health authority, $1.5 million per year in funding.

Further to the adoption of MAID, the regional health authority asked the Delta Hospice Society to provide on-site MAID if required by a patient. Failing that, it would be deprived of public financing. In other words, the regional health authority wanted to guarantee access to MAID.

The second scenario to which Senator Plett referred is the obligation imposed upon a physician who objects to MAID to provide a referral to a colleague or someone else who could provide or assist in providing MAID.

He provides a solution to these two problems, saying that the nature of that answer can be found in criminal law: "Every person who compels another person . . . ." He says that the Delta Hospice Society is compelled because if they do not provide it, they won't get the financing. The answer is, unfortunately, off the mark.

• (1910)

Person is not defined in the Criminal Code. It is defined in the Interpretation Act, and the definition includes an individual or a body, but as stated in the Interpretation Act, section 16, it does not apply to the Crown. A Criminal Code provision does not apply to the Crown unless the Crown is specifically mentioned. And this principle, of course, has been affirmed over the years — for more than 200 years — but I can only quote briefly from the Supreme Court in *Eldorado Nuclear*, "Section 16 of the *Interpretation Act* makes it clear the Crown is immune unless expressly bound." Therefore, this will not apply to the B.C. government. This will not apply to the regional authority in B.C., and this will not apply to the Delta case where the regional authority was providing financing. To the first problem Senator Plett raised, this is not a solution.

The second problem is in regard to obligations to make a second reference to a doctor. If we look at the situation in Quebec — and Senator Mégie referred to it — it's section 31 of the *loi concernant les soins de fin de vie* that provides that if a doctor receives a request for MAID and doesn't want to be engaged in that process, he has an obligation to transfer the request for MAID to another doctor or to the director of the hospital where he's practising or to the director of the regional health authority.

This is the law, and it cannot be changed by the Criminal Code because the provincial Crown — Quebec in that case — has made it through the law and is not covered by what Senator Plett is proposing.

In Ontario, the College of Physicians and Surgeons have adopted two policies that say those who object to MAID must provide an effective referral to another physician or professional health or an agency. They have to provide a referral. Senator Plett says this is terrible. He doesn't want doctors to have to do that because that's going too far.

That case was brought before the Ontario Divisional Court, a branch of the Superior Court. It was appealed to the Ontario Court of Appeal. The Ontario Court of Appeal recognized that some of the doctors had their conscience rights infringed by that but that the right of the patient, on the other hand, was also a right to be protected. Pursuant to section 1 of the Charter of Rights and Freedoms, the balancing meant physicians had to provide a referral.

What is Senator Plett suggesting to us in this exception to the principle? It says there's an exception to the offence he wants to create. A person who provides information to a person who requests it does not facilitate the provision of MAID. Therefore, if the Ontario College of Physicians and Surgeons is ordering every doctor to answer questions that are asked by patients about MAID, this is covered by his exception. Not only will they have to make a referral, but they will also have to provide information. I think he's missing the target. Thank you very much.

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, I rise in support of Senator Plett's amendment to ensure that Bill C-7 contains explicit protections for the conscience rights of practitioners.

During Senate committee hearings on Bill C-7, we heard from many witnesses who raised this issue repeatedly. They expressed deep concern over the lack of protection for conscience rights for those who could not, in good conscience, assist with medical assistance in dying. They urged us to address this deficiency in law.

Their testimony underscored how the failure to provide adequate protection for conscience rights is not some academic exercise but a very real struggle, impacting physicians, health care practitioners and palliative care institutions.

Dr. Jaro Kotalik, professor at the Northern Ontario School of Medicine expressed it this way:

> In spite of the statement in the law of 2016 that nothing in this MAID act affects the genuine freedom of conscience . . . it remains the fact that practitioners are under pressure, especially in some provinces, by administrators and medical colleges to set aside their deep-held convictions.

Minister Lametti repeatedly points to the preamble in Bill C-14 in responding to such concerns that the protection of conscience rights is already in place. But, as Dr. Kotalik, Dr. Sephora Tang and other professionals have claimed in practice of the MAID regime, those protections do not go far enough. They called on the Senate to move an amendment for explicit protection as proposed in Senator Plett's amendment.

As legislators who enacted Bill C-14 and soon, perhaps, Bill C-7, it is our duty to add protections for everyone directly impacted by the legislation, including the medical professionals who are telling us that they do not feel protected. I believe in protecting the rights of Canadians to have access to MAID as much as in protecting the most vulnerable people from having MAID wrongly used.

I also believe in protecting people who feel pressured to offer MAID against their core beliefs as much as protecting all those administering the MAID regime to have the resources to do their job well. I believe in the rights of all these individuals, and this amendment is one step in protecting one of the groups that will be directly impacted by the passage of Bill C-7.

In fact, a news headline that read "Medical schools should deny applicants who object to provide abortion, assisted death" in a mainstream media outlet points to the need to protect conscience rights in Bill C-7 before any such discriminatory policies ever become a reality.

Honourable senators, this is not an ideological conversation about theoretical possibilities. Various witnesses mentioned the reality of physicians and health care workers across the country being forced to choose between their conscience and their profession because they are not being afforded adequate protection of their conscience rights.

As Senator Plett and others have referenced in their statements, even long-standing, well-respected palliative care institutions have been impacted since the passage of Bill C-14. Dr. Neil Hilliard, a palliative care consultant with Fraser East in British Columbia for the last 13 years and associate clinical professor at the University of British Columbia's department of medicine, told the committee about the Delta Hospice Society. He told the committee how all hospices in British Columbia, excluding faith-based hospices, have been mandated to provide MAID, despite this being against the philosophy and practice of palliative care.

Sadly, the nationally recognized Fraser Health palliative care program has become a vestige of its former self. Dr. Hilliard told the committee how for over 30 years the Delta Hospice Society has been committed to palliative care but, once MAID was legalized, the hospice was pressured to provide medical assistance in dying on site in spite of the fact that this was contrary to their constitution.

He explained:

> There is no protection for institutions of conscience. Contrary to the preamble of Bill C-14 committing to facilitate palliative care, we've seen how palliative care programs and hospices have been decimated since the introduction of MAID. . . . Without protection, we risk losing our specialty. Without protections, the 95% of Canadians who wish to live well until they die naturally will face limited access to true hospice palliative care.

We have heard from medical professionals in various regions of the pressures they feel about how the law has been applied in practice. Their conscience rights deserve to be protected as much as the rights as those who choose to offer MAID. Both protections are needed, just as both palliative care and the option of MAID with safeguards are needed. Not one or the other, but both.

I am not a legal expert. I'm not a health professional, but when we hear their pleas for us to put those protections in the law, whether one agrees or disagrees with the choices of those whose conscience does not permit them to assist in MAID, there is no denying the fact that their right to make such a choice is protected by the Constitution and must be reflected in our laws.

Honourable senators, I believe that Senator Plett's amendment will help achieve that, which is why I will be supporting it, and I encourage you to do the same. Thank you.

Hon. Brent Cotter: Honourable senators, I have two or three points to make with respect to this amendment. I am speaking in opposition to the amendment.

First, I have no doubt that Senator Plett's amendment with respect to these conscience rights is heartfelt, and the messages that he and all of us have received from faith communities and others are equally heartfelt. I respect that.

However, my second point is that the mechanism he is choosing to try to achieve his goal is, for various reasons, ill-founded and unwise.

I don't know what others were doing over the Christmas season, but I was spending a fair amount of time reading everything I could get my hands on to better understand medical assistance in dying, including every word of every piece of legislation that has been written in the states of Australia, including Victoria. I was searching for the best understanding I could get on this important and very difficult subject.

• (1920)

One of the things I learned in reading about the legislation in the State of Victoria in Australia, and which Senator Plett relied upon yesterday, is that when translated into the Canadian context, the State of Victoria was using the equivalent of provincial authority when it came to conscience rights. Indeed, the Victoria legislative sanction for violations of conscience rights is professional misconduct, which in Canada is specifically the kind of work that provinces and regulatory bodies for health professionals undertake.

This is important because, as I am sure he appreciates, Senator Plett's proposal is an exercise of provincial jurisdiction disguised as a Criminal Code amendment. This raises two concerns: First, it seems to me highly unusual and inappropriate for us to try to use the Criminal Code essentially to invade provincial jurisdiction.

On this point, Senator Plett's own words make that point. He recounted to us a series of provinces who are doing, from his perspective, "good work" on these questions and a few who are not. But the fact that some are not, even if he is right, does not justify Ottawa wandering into provincial jurisdiction. Indeed, the fact and existence of provincial jurisdiction, including in health, is the very reason why provinces exist: to make those choices.

Indeed, it's actually one of the reasons why we exist, which is to convey regional and provincial perspectives to Ottawa and not the opposite; that is, not to convey Ottawa's perspective into provincial jurisdiction and impose it upon them.

Let me go further. This is surprising to me as well to come from a representative of the Conservative Party of Canada, for this reason: During all of the time that I have followed federal-provincial relations, including a dozen years working in a senior position in a provincial government, Conservatives, in a principled way, have always championed respect for and the protection of provincial jurisdiction. This was true when Ralph Klein was the Premier of Alberta, when Gary Filmon was the Premier of Manitoba, when Mike Harris was the Premier of Ontario and, most recently and perhaps most powerfully, when the Right Honourable Stephen Harper was the Prime Minister of Canada.

There are different ways in which this principle was advanced by Conservative leaders. The phrase "respect for roles and responsibilities" are the catchwords in Canada; "states' rights" by conservatives in the United States. But the bottom line was — and I thought still is — when it came to questions of federal and provincial jurisdiction, the principle advanced by Conservative leaders was "stay in your lane." Indeed, I'm imagining the Right Honourable Stephen Harper, if he's listening to this debate right now, channelling Senator Plett and saying through the ether, "I know you're very principled about this, but please stay in your lane." So it's surprising to me to hear an amendment advanced by Senator Plett that would compromise this long-standing principle.

My second concern is that the use of the Criminal Code in any event is problematic. As many lawyers have told me, this proposed provision is essentially unenforceable. It is structured so poorly that one could never get a conviction. Indeed, you have just heard Senator Dalphond make this point with precision. If that is true, the legislation amounts to no more than an *in terrorem* threat to the many medical professionals in this country who are trying their best to serve their patients with integrity. This is not an honourable and is almost assuredly an unconstitutional use of the Criminal Code, our most powerful law short of the Constitution itself.

My last point is this: On these questions, it is the health professionals who know best and the associations that govern them in the public interest. This is a question that should continue to be left to them. Thank you.

Hon. Rosemary Moodie: Honourable senators, I rise to speak to this amendment on Bill C-7. I intend to vote against this amendment because I believe that clinicians do have well-recognized conscience rights in place in provincial regulations across this country, and that this amendment seeks to accomplish what has already been decided against by the courts.

The medical profession has sought to balance the rights of patients against the moral conscience of clinicians for decades. We see this in the expansive body of research and writing in the medical literature. We see this in the training received by clinicians, training that I've been a part of as a clinical teacher for the past 25 years.

The training provides nurturing, the development of skills such as compassion, listening, empathy and sensitivity to the non-medical factors that affect patients. We see this in the bodies that regulate the clinicians across Canada, bodies that have established clear guidelines that address the need for this balance between the rights of patients and the moral or religious conscience of clinicians — regulatory bodies such as the College of Registered Nurses of Manitoba; the College of Physicians and Surgeons of Ontario; and the Quebec college, the Collège des médecins du Québec.

In Manitoba, guidelines have been established which match the three regulatory nursing bodies there that mirror similar policies across the country where clinicians who exercise their conscience right to opt out from providing MAID have to inform the patient that they will not be participating in this process, must provide the patient information or provide access through deferring and referring to someone else to provide that information, and must continue to provide ongoing care. This speaks to the expectation that physicians should not abandon their patients. The College of Physicians and Surgeons of Ontario, in its ethics rules:

> . . . recognizes that physicians have the right to limit the health services they provide for reasons of conscience or religion.
>
> . . . physicians' freedom of conscience and religion must be balanced against the right of existing and potential patients to access care.

These regulations and standards align completely with the code of ethics elaborated by the Canadian Medical Association.

The Government of Quebec has embedded conscience rights and the need for effective referral in their law in sections 31 and 50 of An Act respecting end-of-life care.

Colleagues, clinicians do not solely practise according to their moral compass but according to rules backed by evidence and experience, rules that ensure best practices, that respect patients' rights and autonomy as well. This amendment seeks to make the rights of patients subordinate to the conscience of clinicians. In a world with this amendment, patients' access to MAID would depend on whether or not fortune provided them with the right clinician. Dying patients or those suffering intolerably would have to undertake their own investigations into MAID, according to Senator Plett, without the guidance or support of clinicians. This would be cruel, a lack of compassion and caring. This is not how we ensure constitutionally protected rights.

It is my interpretation that this amendment would criminalize the colleges, health authorities and other organizations throughout the country, including in Manitoba, and would conflict with Quebec law.

Furthermore, the standards established by these regulatory bodies have been tested in court. The 2019 decision of the Ontario Court of Appeal has addressed the careful balance that needs to occur, considering the rights of patients against the moral conscience of practitioners. Where irreconcilable conflict arises between a physician's moral and religious beliefs and a patient's rights to information and autonomy, physicians' professional obligations and fiduciary duty require that the interests of the patient prevail. That's the world I want to live in.

Colleagues, clinicians involved in providing MAID have told us they seek clarity in the law. They want clear definitions. They want to know that they're practising within the law. This amendment would only add a layer of confusion. "Compel to facilitate" is a phrase that is both vague and has potentially dire consequences for nurses, physicians, colleges, regulators and employers, who could be seen as compelling clinicians under this amendment simply because they issue and enforce rules that require effective referrals.

The requirement of good clinical practice — transfer of care, it's called — with formal exchange of relevant patient information could be construed to be facilitation of MAID and would be subject to summary offence for a clinician. I refer you to Senator Dupuis' concerns raised during yesterday's debate on the perils of vague language in regards to the second clause. If this amendment becomes law, there is a risk that immediate legal action would be taken against regulators.

Honourable senators, while I respect the intention of Senator Plett's amendment, I believe that we have sufficient conscience rights embedded in existing regulations that respect the moral and religious beliefs of clinicians. If this amendment were to pass, patients would lose significant access to MAID and therefore access to constitutionally protected rights. Thank you.

• (1930)

Some Hon. Senators: Hear, hear.

Hon. Stan Kutcher: Honourable senators, I rise today to speak to this amendment. Let me begin by saying that I fully support conscience rights of health care providers in respect of not being compelled to deliver MAID. However, this amendment goes well beyond that. It also does not recognize the bi-directionality in which conscience rights must be discharged. Conscience rights are not a one-way street.

Therefore I respectfully oppose this amendment. In my opinion, it will have the effect of cancelling the gains made over the last few years regarding delivery and access to MAID for those who meet eligibility criteria for MAID. It attacks the fundamental aspects of Canadian health care systems, and it fractures the important roles played by national, provincial and territorial health profession regulators.

The clinicians and the institutions that they work in, and those who regulate what they do, should not be treated as criminals. They are working diligently to meet the considered requests of competent people to seek an end to intolerable suffering.

Every practising clinician plies their professional trade within a complex and complementary framework of oversight, privilege and regulation. This amendment ignores that complex set of responsibilities and criminalizes multiple aspects of how MAID is, and should be, provided and regulated.

With its use of the phrase "compels another person to provide or facilitate," it has the impact of destroying the entire and delicate balance of intersecting responsibilities involving clinicians, regulators, health care institutions and provincial-territorial authorities.

Let me say this more bluntly. This amendment will have the impact of tearing apart the structures that have been created over decades to provide and support clinical care, and protect the rights of patients and providers alike.

This tearing asunder includes the provincial regulatory authorities, specifically the colleges of physicians and surgeons, and the colleges of nurses across this country. It would criminalize boards of health authorities, medical advisory committees and all health care institutions that have MAID policies and bylaws that require informing patients, transferring care, or discharging other professional or clinical duties that might be characterized as facilitating care.

Let us be very clear. There is no coercion being applied on clinicians nor on any institution to provide MAID should they choose not to do so. For example, the Quebec government has put into law the clarification of duties of physicians and executive directors of health care institutions with respect to ensuring a patient who makes a request for MAID is connected to a physician willing to deal with the request. This amendment would force federal intrusion into Quebec's provincial legislative authority. This makes no sense.

Colleges of physicians and surgeons across the country have also put in place policies that compel physicians to make an effective referral or effective transfer of care if they conscientiously object to a request for MAID. These standards do not require clinicians to provide MAID. They are there to ensure that clinicians do not abandon their patients just because they disagree with the patient's decision.

These oversight bodies, not the Criminal Code, are tasked to oversee physician responsibilities for patients. Are the decision makers within these bodies now to be made criminals for trying to protect vulnerable patients from being denied access to a requested and legal clinical intervention?

Colleagues, we need to be aware of the complex intricacies and shared responsibilities that clinicians, regulators, health care institutions and provincial-territorial governments have to support the delivery of care, and to ensure that it is provided in the best interests of the patient — not in the service of a particular ideology, regardless if that ideology is personally or institutionally held. The structures are the same whether the patient is requesting breast cancer surgery, is experiencing a heart attack or is requesting MAID.

Honourable senators, this amendment has the ability to destroy the balance and create a legal quagmire by criminalizing many aspects of this network of intersecting obligations and responsibilities. We can either vote to tear down the Canadian health care system that offers direction and oversight for the provision of MAID, or we can vote to keep it strong and responsive to patients' legitimate and constitutionally grounded rights, not asking clinicians to provide MAID if they do not wish to do so, and providing the safeguards needed to deliver compassionate and supportive MAID-related care.

I urge you to join with me and vote no to this amendment. Thank you. Meegwetch.

Hon. Tony Dean: Honourable senators, I'm concerned about this amendment for the following reasons. As we have heard, medical practitioners already have the right to choose not to perform a MAID procedure, but do have an obligation to refer their patient to another practitioner. Senator Plett reminds us that, in some jurisdictions, this is achieved through different means.

These approaches seem to me to be sufficient in balancing rights and responsibilities. Senator Moodie had, tonight, reminded us that regulatory colleges across the country have worked this out.

There have been many references to the Ontario court decision in this respect. I just want to read a section from that, because I think it's relevant.

> . . . the appellants have no common law, proprietary or constitutional right to practice medicine. As members of a regulated and publicly-funded profession, they are subject to requirements that focus on the public interest, rather than their interests … The practice of a profession devoted to service of the public necessarily gives rise to moral and ethical choices. The issues raised in this proceeding present difficult choices for religious physicians who object to the Policies, but they do have choices. While the solution is not a perfect one for some physicians, such as the individual appellants, it is not a perfect one for their patients either … [The Policies] represent a compromise. They strike a reasonable balance between patients' interests and physicians' Charter-protected religious freedom. In short, they are reasonable limits prescribed by law that are demonstrably justified in a free and democratic society.

Honourable senators, when we find this sort of balance, either in law or in public policy, it's worth preserving.

A second concern with conscience rights, of course, is that it would likely also result in the exercise of those rights in a potentially negative way, in influencing not only patients' inclinations and other choices, but also the perspective of other medical staff in a health care setting. This would not be consistent with the constitutional right of individuals to access MAID.

I think we can also safely conclude that the conscience rights proposed here would create particular difficulties in terms of access for patients in rural and remote communities across the country.

Colleagues, for these reasons I oppose the amendment. Thank you.

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

Hon. Senators: Question.

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

Some Hon. Senators: Nay.

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

Hon. Senators: Yea.

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

Hon. Senators: Nay.

The Hon. the Speaker pro tempore: I believe the nays have it. I see two senators rising.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: The vote will be at 7:54. Call in the senators.

• (1950)

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

YEAS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Boisvenu
Duffy
Housakos
MacDonald
Martin
McCallum
Ngo
Plett
Poirier
Wells—12

NAYS
THE HONOURABLE SENATORS

Anderson
Bellemare
Bernard
Black (*Alberta*)
Boehm
Boniface
Bovey
Boyer
Brazeau
Busson
Christmas
Cordy
Cormier
Cotter
Coyle
Dagenais
Dalphond
Dawson
Deacon (*Nova Scotia*)
Deacon (*Ontario*)
Dean
Downe
Duncan
Dupuis
Forest
Forest-Niesing
Francis
Gagné
Gold
Greene
Harder
Hartling
Jaffer
Keating
Klyne
Kutcher
LaBoucane-Benson
Lankin
Loffreda
Marwah
Massicotte
Mégie
Mercer
Miville-Dechêne
Mockler
Moncion
Moodie
Munson
Omidvar
Pate
Patterson
Petitclerc
Ravalia
Saint-Germain
Seidman
Simons
Smith
Stewart Olsen
Verner
Wallin
Wetston
White
Woo—63

ABSTENTIONS
THE HONOURABLE SENATORS

Griffin
Manning
Richards—3

• (2000)

[*Translation*]

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

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

Hon. Renée Dupuis: At paragraph 132 of *Carter*, the Supreme Court stated the following:

> In our view, nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying.

What follows, according to the court, is in the hands of the physicians' colleges, Parliament and the provincial legislatures. That's exactly what happened after *Carter*. Parliament and provincial legislatures legislated, and the physicians' colleges devised a series of rules, each in their own area of expertise.

According to the CEO of the Federation of Medical Regulatory Authorities of Canada, who appeared before the Standing Senate Committee on Legal and Constitutional Affairs, the organization's stance is that the physician's role is to inform the patient, not to provide counselling. According to the federation, the matter should remain within the jurisdiction of the provinces and the provincial organizations that develop physician codes of ethics, as is currently the case.

Some of my colleagues referred to section 24 of Quebec's Code of Ethics of Physicians and section 31 of Quebec's Act Respecting End-of-Life Care. Another witness who appeared before the committee stated that professional orders whose authority rests on protection of the public have all the authority they need in the provinces to oversee the training and mentoring of physicians and establish practice directives and physician codes of conduct.

Dr. Naud, another witness who appeared before the committee, said, and I quote:

> Consequently, there is no risk that patients are being pressed to choose medical assistance in dying; what we're seeing now is exactly the contrary.

• (2010)

According to him, a patient's choice to request medical assistance in dying is never an impulsive one or made lightly. The executive director and CEO of the Federation of Medical Regulatory Authorities of Canada reiterated the following, and I quote:

> Physicians who conscientiously object still need to act in the best interests of the patient . . . .

That is what the Ontario Court of Appeal found to be a good compromise between the interests of patients and a physician's right to religious freedom.

There does not appear to be any substantive difference between a physician administering medical assistance in dying at a patient's request and a physician choosing, on his own initiative, to administer continuous palliative sedation to a patient outside the framework for medical assistance in dying. In both cases, the physician is administering substances that end a person's life as part of a procedure specific to each of those two contexts.

I find it intriguing that the witnesses who testified in committee to advocate for their conscientious right to refuse to refer a patient requesting medical assistance in dying to another doctor did not have the same conscientious objection to ongoing terminal sedation, a procedure that has been administered for decades, at the physician's own initiative. Thank you.

[*English*]

Hon. Mary Jane McCallum: Honourable senators, I rise to speak to the theme of conscience rights under Bill C-7. I feel this is the appropriate theme and the right time to voice my concern over the direction that this debate has gone at certain times.

In a discussion around conscience rights and the expectation that this bill places on medical practitioners, many without their consent, an equally valid discussion is the conscience rights of senators as we debate, amend and vote on this bill. I think most of our colleagues have been impacted by this legislation at some point in our lives, if not within our own immediate or extended families, friends, neighbours and colleagues —

The Hon. the Speaker pro tempore: Senator McCallum, I have to stop you. We have interpretation issues.

Senator McCallum, I believe you are experiencing technical difficulty because on this end we see that you are unmuted. Senator McCallum, you still have five minutes. I will go to Senator Mégie for her comments, and we'll come back to you after her to see if the issue has been resolved.

[*Translation*]

Hon. Marie-Françoise Mégie: I want to correct the record with regard to continuous palliative sedation, which is administered during the last two weeks of life, when pain or other symptoms become unbearable for the person. The only way to provide relief so they can have a peaceful death is to administer drugs that render them unconscious. These drugs may be administered continuously or intermittently, and if it's the latter, the person could wake up.

These drugs do not induce death; rather, they allow time for the person's natural death to occur, when it's supposed to occur, while preventing them from feeling excruciating pain or choking.

I wanted to correct the record on that. The aim of palliative sedation is not to kill the patient, but rather to alleviate suffering before they die. Thank you.

[*English*]

Senator McCallum: This is a critical piece of legislation that can stir visceral emotions that understandably have the possibility of hasty reactions and decision that can have far-reaching and ill-considered unintended consequences.

I have noted during the course of debate on Bill C-7 the numerous speeches of senators who have had their own personal experiences with assisted dying. This has given honourable senators a specific lens through which they view this legislation, and that lens can sometimes impact one's objectivity. The heady expectation of our job is a fine line to walk, and the blending of our collective and personal emotions and experiences with such sensitive themes and such a delicate piece of legislation is a difficult thing to deny. However, I would urge my colleagues to try and ensure that objectivity and the facts we have heard from witnesses and Canadian citizens guide our judgment on this bill.

We have a sacred obligation in our role as senators to ensure minority rights are not only understood but are also given agency. Whether these individuals be considered minorities based on their race, disability, religion, creed, sexuality or any other relevant defining feature, we senators have a duty to ensure their voices and concerns are elevated and appropriately considered. Having one or multiple of these groups feel threatened and cast aside by a bill we are considering in the Senate should activate bells and red flags that greater diligence is required.

Honourable senators, we are placed at a disadvantage when appropriately balancing the concerns and recommendations we have heard from many disparate groups and points of view. We can access statistics for how many Canadians have accessed MAID, but we cannot access the number of disabled, racialized Canadians or health professionals who feel their concerns are not being heard, or feel that this piece of legislation could put their lives or their patients in danger. Without adequate and fulsome work being done to ensure these minority voices are being accommodated, we are putting certain groups at risk of being further disadvantaged, marginalized and/or quieted.

Despite the amendments that have been put forward to try to correct some of this bill's shortcomings, we still have a bill before us that is considered discriminatory by a number of concerned groups and people who feel they may be an unintended consequence of this bill. I think we would all agree that one such case of an unintended consequence in a matter of life and death is one too many.

As a First Nations senator, I have seen the reality on reserve. I have seen elders who die in pain, but who do so with the acceptance and acknowledgment that this is part of their life's journey. I am concerned about the message this bill sends to our First Nations youth and the cultural ramifications it could have, wherein they arrive at the end of their life's journey with the belief that the sacredness with which life used to be revered will be diluted and made to feel unimportant and less consequential. I am concerned that the message our First Nations youth are left with is that their life is not sacred and appreciated, as had been with their elders, and that their life doesn't carry the same weight and meaning. This is because we now have people who are here to help you die.

• (2020)

It is this issue and various other concerns that I have heard from a number of other groups across the country that form the conscience rights and conscience decisions with which I vote on this bill and its amendment.

Honourable senators, in my life, I too have been impacted by the concept of assisted dying, as many of you have. However, I am striving to not let my personal experience impact on my duty and expectation, to give voice and agency to those minority groups that feel unheard and left vulnerable by this bill. As such, it is with great sincerity that I urge all senators to do the same and to strive to approach this bill with objectivity and with the interest of all Canadians, equally, front of mind. Thank you.

[*Translation*]

The Hon. the Speaker pro tempore: Do any other honourable senators wish to intervene in debate on the theme of conscience rights?

If not, debate on this theme is considered concluded, and the Senate can proceed with debate on the next theme, which is the review process and coming into force of the act.

[*English*]

Hon. Scott Tannas: Your Honour, I will be presenting an amendment at the end of my comments.

Honourable senators, it's an honour to enter the debate on Bill C-7 this evening. I'm a member of the Standing Senate Committee on Legal and Constitutional Affairs, and I listened carefully to the testimony of the witnesses. I was profoundly moved by the courage, honesty and passion of the many men and women who came before us last week. I'm grateful for all they did to help us in our deliberations.

As the hours and the testimony rolled on, I became acutely aware of the importance of this legislation and the impact of MAID on the various segments of our society. One senator remarked that this issue is the most important one of his long career in the Senate, and I tend to agree.

Life and death matters leave very little room for compromise. For me, this was obvious throughout the committee hearings, and it remains so as we work through the various debates here in the chamber.

From beginning to end at the committee and in our debates here in the chamber, it is also obvious that not having a thorough parliamentary review completed in advance of Bill C-7 was most unfortunate. It was not supposed to be this way. We have heard a number of explanations as to why we are without the guidance and recommendations of the Parliamentary Review Committee that was required in Bill C-14, including a minority Parliament and the pandemic. A third reason was brought forward by Minister Lametti who, in his testimony, implied that there was some kind of a logjam in the negotiations around the formation of the Review Committee.

I'd like to thank Senator Boniface for pursuing an excellent line of questioning on this issue, both during the pre-study of Bill C-7 in December and the committee meetings last week. Her questions brought this third issue to light.

If one reads the language of Bill C-14, it is clear that organizational details are vague regarding the contemplated parliamentary review process, and with the benefit of hindsight, probably left too much to negotiation. The amendment that will be proposed shortly will bring more clarity to the review process that everyone seems to agree needs to go forward. The amendment provides a clear mechanism and aims to reduce the need for negotiations later, which as we now understand, is a big risk to getting a project like this off the ground.

The proposed amendment calls for the establishment of a joint parliamentary committee, and specific numbers of senators and MPs on that committee, aligned in the spirit of the prior joint committee's make-up in 2016. It also calls for deadlines for the establishment of the joint committee and a reporting deadline, and an evergreen clause that requires the process to be reset if prorogation or an election intervenes.

Now, let me assure you, on behalf of both me and Senator Boniface, who will shortly second this amendment, there is no pride of authorship with this amendment. If you have subamendments that would improve or clarify our intentions here, please feel free to put them forward. It is very important that we have a solid, clear and fair amendment that hopefully encourages the folks in the other place to simply say "yes" to it.

Instead of rejecting the amendment because you don't agree with the number of senators or the time frames or other details, again, please put a subamendment forward, because passing Bill C-7 with a hope and a wish or even a promise that the review will happen seems to me to be a poor bet. We need to be clear, in writing, in the bill.

I don't want to embarrass anyone by providing past examples of broken promises given to the Senate or to senators about actions that will happen if only we would just pass their bill. In my eight years here in the Senate, I have seen this from this government and from past governments. Clearly, broken promises are a non-partisan program.

There's an old saying: Fool me once, shame on you, fool me twice, shame on me. It would be a terrible shame if we were to find ourselves one, two or three years from now with a new court-ordered bill and a deadline that we would be up against, and find ourselves asking how we got here again.

MOTION IN AMENDMENT ADOPTED

Hon. Scott Tannas: Therefore, honourable senators, in amendment, I move:

> That Bill C-7, as amended, be not now read a third time, but that it be further amended on page 9 by adding the following after line 30:
>
> "**Review**
>
> **5 (1) A comprehensive review of the provisions of the *Criminal Code* relating to medical assistance in dying and their application must be undertaken by a committee of both Houses of Parliament established for that purpose and consisting of**
>
> **(a) 5 members who are members of the Senate; and**
>
> **(b) 11 members who are members of the House of Commons.**
>
> **(2) The committee is to be co-chaired by two of its members, one who is a member of the Senate and one who is a member of the House of Commons.**
>
> **(3) The committee is to be established**
>
> **(a) within 30 days after the day on which this Act receives royal assent; and**
>
> **(b) by the end of the thirtieth sitting day of each new session of Parliament if the committee has not submitted its report in accordance with subsection (4).**
>
> **(4) The committee must submit a report of its review — including a statement of any recommended changes — to both Houses of Parliament no later than**
>
> **(a) September 15, 2021, if no prorogation or dissolution of Parliament occurs between the day on which this Act receives royal assent and that date, or**
>
> **(b) 180 days after the day on which the committee is established, in any other case.**".

• (2030)

The Hon. the Speaker pro tempore: Senator Tannas, will you entertain a question?

Senator Tannas: Sure.

Hon. Lucie Moncion: Senator Tannas, I just wanted to know if 180 days is long enough for a review of the magnitude that you are looking for.

Senator Tannas: I did give this some thought. Six months seems to me to be sufficient time to do it if there is a focus, and I would expect there to be a focus on it. However, as we said, if there is a consensus around a longer period of time, we would welcome a subamendment.

The Hon. the Speaker pro tempore: Senator Martin, do you have a question?

Hon. Yonah Martin (Deputy Leader of the Opposition): Yes, thank you. Senator Tannas, we haven't done the first five-year review, and I agree with you that we should absolutely do the review. What confidence do you have that we would be able to achieve this?

Senator Tannas: You're quite right. There is nothing we can do about either. We could put this in Bill C-7, it could be ignored, and there are, as I understand it, no consequences for it. The problem with Bill C-14 is it's water under the bridge, there are no consequences for it, and it's sufficiently vague that there is nothing we can do about it. The point here with being specific about both houses is that if it isn't happening, we can actually give an instruction. We can make noise because we're one of the partners that are specified in the bill. We don't have that in Bill C-14; we didn't have that in Bill C-14. But if we can pass this amendment, we will have it in Bill C-7.

The Hon. the Speaker pro tempore: Are there any other questions? Senator Harder, via videoconference.

Hon. Peter Harder: Thank you. Senator Tannas, I'm quite sympathetic to the idea of getting a study done. Have you given any thought to just our chamber acting on its own volition, hearing and conducting a review without needing to wait on the other side or, indeed, the government on the other side, to give us guidance? Why don't we just do it ourselves?

Senator Tannas: I think if it's at all possible, we should exhaust all possible ways in which to involve both houses of Parliament. There was terrific work done on the prior committee, and I worry that by doing it ourselves we will not have any leverage with whatever government to see the impacts of the recommendations put forward. I think it's far stronger, far better, and I think everybody agrees, from what I have heard from Minister Lametti and from Senator Gold, that it's desirable, for many reasons, to have the joint committee.

That said, maybe that's what we have to do, if all of this fails somewhere down the road.

Hon. Ratna Omidvar: Senator Tannas, will you take a question, please?

Senator Tannas: Yes.

Senator Omidvar: I too am sympathetic to your amendment. It makes good, common sense, and it lays out a path. My question is whether you can cite a precedent for such a joint committee on a particular bill. If so, were the results positive in the sense that they produced insights that were useful to Parliament?

Senator Tannas: The one that I know best in my own experience was the joint parliamentary committee on this very subject in 2016. There was good work done there under charged, political circumstances in addition to all of the moral questions. The work that got done there was appreciated by all parliamentarians and listened to by the government. Thank you.

The Hon. the Speaker pro tempore: On debate, Senator Gold.

Hon. Marc Gold (Government Representative in the Senate): Thank you, Your Honour. I rise today to speak briefly to the amendment put forward by our colleague directing that a review of the MAID regime be undertaken by a joint parliamentary committee. I want to start by being clear that I fully support the notion that a parliamentary review is absolutely essential to examine and better understand the complicated facets of MAID in some shape or form.

But for reasons that I will set out, and which I have shared with Senator Tannas, I cannot support this amendment. I would like to explain why.

As I have said repeatedly, the government is and remains committed to ensure that the full parliamentary review mandated by Bill C-14, which implemented the MAID regime, is fulfilled. However, the legal and parliamentary environment has changed dramatically and drastically since then. We are now grappling with the uncertain realities of a minority Parliament, which increases the logistical challenges of constituting a joint committee with the other place. The government was also forced to address many elements of the *Truchon* decision, which, rightfully, required urgency and attention.

I know the frustrations that many of my colleagues have expressed around the timeliness of moving forward with the parliamentary review, and I share that frustration. That is why, as Government Representative in the Senate, I circulated some months ago a proposal with all groups to constitute a special Senate committee on the legislative review of Bill C-14 so that this chamber could apply its institutional stability and wisdom in this complex public policy area — a committee, by the way, contemplated explicitly in section 10(1) of Bill C-14.

[*Translation*]

The Senate has undertaken difficult and controversial studies over the years. It has produced comprehensive reports on poverty, mental health, aging and foreign affairs. These reports have influenced government policies and priorities in several areas. They led to the creation of the Mental Health Commission of Canada, helped target spending in our foreign aid programs in sub-Saharan Africa, and promoted investments in expanding broadband access in rural areas in order to connect students and provide educational opportunities.

[*English*]

On MAID specifically, I felt the need to be proactive and circulated this proposal for a process by which the Senate could play a meaningful and constructive role in reviewing the complex legislative and policy issues surrounding medical assistance in dying. Senator Tannas's amendment and the terms outlined of its proposed parliamentary review committee appear to focus exclusively on medical assistance in dying in the context of the Criminal Code. In my opinion, this would result in a study of narrow scope that will not allow senators to fully apply their expertise and judgment. The committee would not be able to appropriately examine many facets of MAID. The intent of the committee examination envisaged in Bill C-14 was to look at the medical assistance in dying framework as a whole, including the state of palliative care in Canada.

I should also point out that the Senate is simply not in a position to mandate a joint committee. It's not up to this chamber to direct or demand the membership of individuals from the other place. It is senators, however, who can guarantee the institutional memory of such a committee that would be expressly set up to study and analyze the subject matter of something as contentious and emotional as medical assistance in dying.

[*Translation*]

After listening to several days of debate and studying the thoughtful amendments proposed by my colleagues, whether or not this chamber chose to adopt them, I would like to hope that many of the suggestions made during the deliberations on Bill C-7 will be an integral part of the discussions and analysis of the MAID review committee. A major part of our debate was about what has and hasn't been working since Bill C-14 came into force.

[*English*]

I am as eager as all of you, colleagues, to begin a comprehensive review into what MAID practitioners, assessors and family members have experienced — the good and the bad. I am 100% in favour of the concept of review. As mentioned, I have circulated a proposal to constitute a special committee. I am fully prepared to revisit this issue at any time and to launch this review immediately. Just give me the word and we'll be off to the races, in control of our own agenda as we should be.

• (2040)

The MAID regime was and is irrefutably consequential, and legislators need to know its effects on those closest to the situation.

Colleagues, while I agree completely with the sentiment and the objectives of the amendment put forward by Senator Tannas, in my judgment it would frankly muddy the waters and generate further complexity in terms of the review. Therefore, and I say this with regret, unfortunately I cannot support this amendment. Thank you.

Hon. Gwen Boniface: Honourable senators, I rise to speak in support of the amendment proposed by Senator Tannas.

This amendment creates a blueprint for review with specified timelines, membership and reporting dates to ensure review of the medical assistance in dying regime receives the appropriate and overdue scrutiny.

Senators, we heard at the committee from all three invited ministers at the pre-study, and then again from the Justice Minister while studying the bill, that they are committed to a parliamentary review. In fact, the Minister of Health stated the Government of Canada is committed to conducting a thorough and exhaustive examination through the parliamentary review process. The Minister of Employment, Workforce Development and Disability Inclusion had this to say in response to a question asked by our colleague Senator Boisvenu speaking of the issue of mental illness:

> I will reiterate that our preference was to address this issue within the broader context of the parliamentary review, which is imminent and which I would suggest, had we not been in a pandemic, would have already started by now.

The Minister of Justice said at the same pre-study a parliamentary review has always been planned and still is.

Now, these three quotes all come from the pre-study at Legal Committee. When I asked Minister Lametti about any update he could provide on the progress of a parliamentary review during the Legal Committee's study of Bill C-7 itself, he said:

> We're committed to doing it. I can't give you any details on what form that parliamentary review will take, but I have been pressing to the best of my abilities to be in a position to make that announcement as soon as possible.

He continued:

> I share your view that it's critically important to have an idea of how we will move forward across both the House of Commons and the Senate and to ensure that we have adequate time to work with experts and work with each other . . . . I'm sorry I can't give an answer on the actual vehicle at this stage.

Well, senators, here is a vehicle. I can sympathize with the position the government finds itself in. A minority government is enough to add complications into planning, let alone a pandemic, but these reasons still do not obviate the critical importance of a review on matters of life and death. It also concerns me that the Minister of Justice couldn't provide any update between when he first appeared for the pre-study and when he returned for our study on the bill itself. Over two months had elapsed with no progress on something so vital.

The Minister of Justice wants to include both houses of Parliament in this review process. This can be found in Senator Tannas' amendment by creating the joint committee. The composition of the joint committee includes both the House and the Senate. Senators can help carry the institutional memory.

The amendment also considers an electoral cycle. I have heard the chatter about the impending election and I expect other senators have too, but the underlying importance of this amendment is that the review is necessary and should be treated as a priority.

The responsibility is on us as senators and members of Parliament in the other place to work together on significant and sometimes contentious issues for all Canadians. We have tough decisions to make, but making tough decisions is the main part of the job as legislators. I have good news, fellow senators: making the choice to conduct a review is an easy decision. It shouldn't matter that we're in a minority government situation, and the speed bumps a minority situation can impose shouldn't be reason to see such a delay on the review process. This is something every parliamentarian should want to see, which I think can make those speed bumps less jarring in this circumstance.

It's not just parliamentarians who want to see a review. We have heard from witnesses testify to this effect as well. For example, Dr. Stephanie Green, President of the Canadian Association of MAID Assessors and Providers, had this to say in a response to a question from Senator Dalphond:

> We welcome a robust conversation, which we expect will be coming forward very soon in the legislated review of Bill C-14. We hope to take part in that discussion.

Helen Long, C.E.O. of Dying with Dignity Canada stated:

> The parliamentary review also calls for study of the use of advance requests, access to MAID by mature minors and the state of palliative care. We repeat our call for immediate commencement of the review to allow a thorough and evidence-based discussion of these issues.

We also heard testimony from witnesses who were questioning why the government was moving forward with Bill C-7 when the five-year review had not yet begun. We heard this question from the Executive Director of Toujours Vivant-Not Dead Yet, Amy Hasbrouck; Dr. Leonie Herx; and Bonnie Brayton with the DisAbled Women's Network of Canada, among others. In fact, a review was possibly the issue that achieved closest to consensus status during our testimony among all witnesses.

This amendment sets up a visible process and removes any uncertainty about a parliamentary review going forward. There are clear timelines to get this joint committee struck and fair reporting dates. Ultimately, honourable senators, the review is long overdue. While the Bill C-7 process has certainly been educational, many issues around MAID are still under-studied and clouded by either misinformation or no information.

Let us pave the way forward. I ask you to support Senator Tannas and this very important amendment. Thank you. *Meegwetch.*

[*Translation*]

The Hon. the Speaker pro tempore: Senator Forest, you had a question, but your time is up.

[*English*]

Hon. Pierre J. Dalphond: Honourable senators, this amendment, if adopted by the other place, will compel the government and the two chambers to soon form a joint special committee to conduct a comprehensive review of medical assistance in dying. I will support this amendment because with the joint committee, such a forum will provide a more high-profile and consequential parliamentary review process than is currently required.

As we know, yesterday this chamber made an amendment in favour of the principle of advance requests speaking with substantial majority. I didn't vote for that amendment because I do believe that we need a detailed framework for a viable model and that we have not yet received adequate study, scrutiny and input from experts.

Yesterday, Senator Munson's comments did resonate with me when he said that by adopting Senator Wallin's amendment, the Senate would send a message to the House of Commons and Canadians that our country needs to be serious about developing advance requests in our public policy.

Forming a joint committee will add to this momentum and possibly give a path to the government to answer to the short amendments adopted yesterday to allow advance directives for MAID. Such a move will then answer Senator Boisvenu's desire to have a diligent and effective parliamentary review toward the framework for advance requests, especially for neurocognitive disorders. I think that would be a nice birthday gift to give to him, as he is going to celebrate one more year tomorrow.

Joint special committees are rare. As it happens, the last one was the Special Joint Committee on Physician-Assisted Dying in 2016. On that committee, the Senate was represented by Senator Seidman and former Senators Cowan, Joyal, Ogilvie and Ruth.

Notably, the joint special committee recommended the ability of MAID for non-terminal, grievous and irremediable medical conditions that cause enduring suffering as proposed by Bill C-7.

• (2050)

The joint committee further recommended that individuals not be excluded from eligibility for medical assistance in dying based on the fact that they have a psychiatric condition, and MAID should be available for those enduring intolerable psychological suffering. This recommendation could be dealt with if the House of Commons accepts Senator Kutcher's amendment.

The joint committee also recommended the availability of advance requests "after one is diagnosed with a condition that is reasonably likely to cause loss of competence or after a diagnosis of a grievous or irremediable condition but before the suffering becomes intolerable."

As in 2016, a joint committee could greatly assist the government in finally delivering results on advance requests and other issues not addressed in Bill C-14 and Bill C-7, as well as review experiences with MAID since 2016.

For these reasons, I invite you to support Senator Tannas's amendment.

Thank you, *meegwetch*.

Hon. Marty Deacon: Honourable senators, I rise today to speak in support of Senator Tannas's amendment.

Over the course of the debate on MAID, the lack of hard evidence, like numbers and case documentation, has been trying. We have seen a number of amendments that were all worthy of our consideration, but I suspect that I speak for many when I say, when deciding which way to vote on some of them, I would have preferred more hard, purposeful and meaningful data.

I give the Legal and Constitutional Affairs Committee all the credit in the world for doing what they did. They moved heaven and earth to hear the 130 witnesses over the course of a few days, and the testimony they gathered has informed my thinking on this legislation a very great deal.

But I think we can agree, colleagues, that on an issue as significant as MAID — to revisit this topic before Parliament has had a chance to conduct a thorough review of the law — we are voting on this bill, it feels like, with one hand a bit tied behind our back.

The review process is often forgotten and made a low priority over time. We cannot and must not let this happen. Facts and data tell the real story if we ask the right questions.

When Bill C-14 passed, we had some idea that the legislation would be challenged, and many rightly surmised that its return to Parliament for some fine-tuning was a foregone conclusion. Hindsight being what it is, it's easy to say that waiting for five years from Royal Assent to commence a review might have been wishful thinking. We did not know that the government would choose to alter some other areas of legislation that the courts didn't address directly, like eliminating the reflection period for those whose death was reasonable and foreseeable. I would have preferred more consistent data that we could have referenced when considering this legislation, but what I saw was incomplete, at times, or came with some fairly significant qualifiers.

Honourable senators, that is why I'll be voting in favour of Senator Tannas's amendment. It starts the clock on this review immediately, striking a parliamentary committee within 30 days of this act receiving Royal Assent. It sets the deadline for its review for this year as well, barring an election. This amendment acknowledges how important a review of the legislation is. It can't fall by the wayside due to logistical difficulties presented to us by the pandemic.

The data must be qualitative, quantitative, and of course, race-based. I don't think it's a stretch to say that we'll be tinkering with the parameters around MAID for some time.

Legal access to this procedure is still relatively new in this country. As time passes, we will learn more about what we have gotten right, and sadly, what we may have gotten wrong. We'll be agile, review, adjust and ensure we are doing this on behalf of all Canadians — all Canadians.

It is crucial, honourable senators, that we learn what we can, as this is quite literally a matter of life and death. Quickly organizing committee meetings when legislation comes our way just won't cut it. We need something with the weight of a parliamentary review to get this right. We need to have a base of knowledge to work off of, so when this comes to us again, as it inevitably will, we have the data and the story.

We need to have proper consultation with the various communities in Canada that this will disproportionately affect and impact. Only then will we be able to tackle this issue in a way that it rightly deserves.

Thank you, honourable senators, and thank you, Senator Tannas, for introducing this amendment, which I look forward to supporting.

Hon. Frances Lankin: Honourable senators, I appreciate the opportunity to speak to this amendment. I also want to thank Senator Tannas and Senator Boniface for bringing this forward to us.

Senator Gold, I understand the points that you have raised. Respectfully, it's not that I disagree with you. I understand. I accept what you have said, but I think there is a route open to us here that we should take, which is represented by the amendment that is in front of us.

People have made the argument, not just on the debate on this amendment but on virtually every amendment we have spoken about, there have been one or more senators who have talked about the lack of review and our inability to get to that — for legitimate reasons — and also how difficult it has been to delve into some of the issues raised in this particular bill without access to the data, and to thoughtful review and discussion between parliamentarians about a road forward.

I would point out that there will inevitably be more court challenges and decisions to come. I don't think any of us can predict when we might be in a situation again of government and Parliament having to respond to timelines in a court decision.

Second, I support the idea of a joint parliamentary review. In addition to the arguments that have been made, perhaps it will bring more gravitas and a higher profile in terms of the recommendations coming from such a review. This is not frequently done, but when it has been done, I think there is great benefit to having senators and members of Parliament from the House of Commons together, sharing views. We play different roles, we come from different backgrounds and expertise to study bills, and we study them in different ways.

A number of speakers over the last few days have spoken to the length of the pre-study and committee study that was undertaken in the Senate, and in the House of Commons there was less time available.

On the other hand, elected politicians have a much closer connection to their constituents. It's not that senators don't consult or work with organizations and don't hear from individual people. We all do. But there is a different relationship that exists between elected members and their constituents and the kinds of constituency work that they do. It is different from what we do. I think we would benefit greatly with the bringing together and the melding of both types of perspectives.

So I will support this, and I urge others to support it as well. Thank you.

[*Translation*]

Hon. Renée Dupuis: Honourable senators, I am quite concerned that governments are not respecting laws passed by Parliament that provide for a parliamentary review mechanism, such as the law on medical assistance in dying that was passed in 2016. I certainly understand that we are dealing with very unusual circumstances, such as COVID-19, that may interfere with a government's ability to take action, but I would like to remind senators that the *Truchon* decision was rendered in September 2019 and that the government knew very well that section 10 of the 2016 law existed. The government could have initiated discussions and started the review at that time. It was a choice the government made, as is its right, its prerogative. However, I think that the Senate's role is to ensure that these parliamentary review mechanisms work.

The review mechanism is very important because it enables Parliament to hold the government to account, follow up on the monitoring of laws, hear from government agencies that are responsible for implementing those laws, and assess social change with regard to a subject covered by a law by hearing from citizens, much like we have been doing these past few weeks with Bill C-7. We have heard from a great many people who said that they sincerely hope that some of the fundamental issues that are not addressed in Bill C-7, and others that are, will be part of this parliamentary review.

• (2100)

I think that this parliamentary review mechanism is crucial to the functioning of our democracy, and I believe that we should focus on determining how the Senate can fulfill its responsibility of ensuring that legislation requiring parliamentary review is respected by governments.

I must say that what concerns me even more is that this is not at all an isolated case. Other laws have been passed, other parliamentary reviews that should have been done still have not been, and this has gone on since long before this government became a minority one.

I will therefore be voting in favour of this amendment.

[*English*]

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

BILL TO AMEND—THIRD READING—DEBATE CONTINUED

On the Order:

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

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, this speech is unplanned but, given the amendment was adopted, I'm still not convinced that a review that hasn't been undertaken in five years can be done in the timeline that was given in the amendment. We heard about the concerns around a lack of consultation with Indigenous communities, the complexities of that and how much time that will take, and we heard from various vulnerable groups, including a vast majority of advocacy groups and those living with disabilities, about their concerns with Bill C-7.

I would absolutely want the review. Senator Tannas, I didn't want to vote against it, yet what I heard senators say in their support of your amendment is that there was a lack of hard evidence. Our study of Bill C-7 was difficult, given the lack of evidence and questions unanswered.

So they supported your amendment, but they're going to support this bill and we are going forward. We have opened it even further. I'm rising today to simply say that, in our consideration in the final vote with Bill C-7, the concerns that were just raised during this amendment debate should be carefully considered by all senators. As a nation, this regime is very concerning. I understand why we had to do it. We needed a federal framework, and we needed to have something in place so that it would protect those we wanted to protect. We all agree on that.

But with Bill C-7, there's a lack of hard evidence that many have said we didn't get to see because there was no review. It does still concern me, so I just wanted to put that on the record. I know we will continue debate at third reading, and I plan to speak to the bill again on Tuesday.

The Hon. the Speaker pro tempore: Do any other honourable senators wish to intervene in debate on the theme of the review process and coming into force of the act?

If not, debate on this theme is considered concluded.

(On motion of Senator Martin, debate adjourned.)

(*At 9:06 p.m., pursuant to the order adopted by the Senate earlier this day, the Senate adjourned until Tuesday, February 16, 2021, at 2 p.m.*)

CONTENTS

Thursday, February 11, 2021

PAGE

SENATORS' STATEMENTS

ROUTINE PROCEEDINGS

QUESTION PERIOD

ORDERS OF THE DAY

CONTENTS

Thursday, February 11, 2021

PAGE

Point of Order—Speaker's Ruling Reserved

Bill to Amend—Third Reading—Debate

Motion in Amendment

Bill to Amend—Third Reading—Motion in Amendment Negatived—Debate

Bill to Amend—Third Reading—Debate

Motion in Amendment Adopted

Bill to Amend—Third Reading—Debate Continued