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(HANSARD)

Monday, December 14, 2020

The Honourable LEO HOUSAKOS,
Acting Speaker

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THE SENATE

Monday, December 14, 2020

The Senate met at 6 p.m., the Honourable Leo Housakos, the Acting Speaker, in the chair.

Prayers.

[*Translation*]

SENATORS' STATEMENTS

THE LATE HONOURABLE CLAUDE CASTONGUAY, C.C., G.O.Q.

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, Claude Castonguay passed away on Saturday. I would like to take a moment to pay tribute to him. He was the father of universal health care in Quebec, a former senator and a man whose many, varied contributions strengthened our country's social fabric, particularly the quality of our social safety net.

As columnist Yves Boisvert said so well, Claude Castonguay was one of the last architects of the Quiet Revolution.

Claude Castonguay was originally from Quebec City. He studied actuarial science at Laval University, where he later taught. He also worked and excelled in the business world, notably by establishing a private investment fund that still exists today and by later becoming CEO of the Laurentian Group Corporation and president of the Laurentian Bank. As you know, Senator Castonguay also had an outstanding career in the public service. Not only did he serve in this chamber, but he also served as Minister of Health and Social Services under Robert Bourassa.

What Quebecers remember most about Claude Castonguay today is the important role he played in the creation of the Quebec Pension Plan and the Caisse de dépôt et placement du Québec. That investment fund currently manages more than $300 billion in assets. With those structures in place, the Quebec government was able to implement the recommendations Claude Castonguay had made in the 1960s to Premiers Lesage and Johnson regarding a universal health care program and local medical clinics, better known to Quebecers today as CLSCs.

Now that universal health care has been in place in Canada for over three generations, it's easy to take it for granted, but there was a time in Canada when health problems could force a family into insurmountable debt. Claude Castonguay believed that everyone is entitled to good quality health care, regardless of their social class, that everyone should have the same opportunities in life and that no one should be unfairly left out because they can't afford to pay for the heath care they need.

Rest in peace, Claude Castonguay. Generations of Quebecers will forever be grateful.

[*English*]

THE HONOURABLE WANDA ELAINE THOMAS BERNARD, O.C., O.N.S.

CONGRATULATIONS ON BEING NAMED ONE OF CANADA'S TOP 10 POWER WOMEN

Hon. Jane Cordy: Honourable senators, it is unmistakable that each person possesses some sort of personal power, whether it be authority, knowledge, skill, talent, money, votes, charisma, charm or ambition, but it is also unmistakably recognizable that there are those who know how to wield their personal power, turn it into passion and use it for the good of others.

I know that I am privileged to know a number of such people and I am fortunate to call some of them trusted colleagues, and it delights me when their work is acknowledged in some way by the country at large. So I was happy to learn that my friend and Progressive Senate Group colleague Senator — and Dr. — Wanda Thomas Bernard has been named by OptiMYz Women's Wellness magazine as one of Canada's Top 10 Power Women.

Senator Thomas Bernard was named because of her work as a social worker, academic, community activist and advocate for social change. Highlighted is her extensive work with human rights cases. Having worked with her on the Human Rights Committee while she was chair, I can certainly attest to her commitment to the work of that committee and her unwavering dedication to improving the lives of Canadians.

This sense of mission has perhaps been sharpened by the adversity she has endured throughout her lifetime. Senator Thomas Bernard has dealt with the loss of her father at an early age. She has also spoken several times in this chamber of the racism that she and her family have encountered.

Senator Thomas Bernard is acutely aware of how community is of utmost importance in dealing with such challenges. As a fellow Nova Scotian, I admire the contributions she has made to making our province a better place. Such initiatives include serving as a founding member of the Association of Black Social Workers, a former chair of the Nova Scotia Advisory Council on the Status of Women, as well as being a member of the National Coalition of Advisory Councils on the Status of Women. At Dalhousie University's School of Social Work, she was appointed as Special Advisor on Diversity and Inclusiveness. Senator Thomas Bernard is a recipient of both the Order of Nova Scotia and the Order of Canada.

Honourable senators, Senator Thomas Bernard is passionate; and what is more, she cares. The things she has done and the things she continues to do for Nova Scotians — and, indeed, all Canadians — make her a role model for all of us. She is most definitely a power woman — and a woman of power. Congratulations to our Senator Wanda Thomas Bernard.

LIZ WESTCOTT

CONGRATULATIONS ON RETIREMENT

Hon. Gwen Boniface: Honourable senators, I rise today to salute a champion of women's rights on the occasion of her retirement. Liz Westcott is a woman whose work has left an indelible mark on our region. For almost 30 years, Liz has served my city of Orillia and surrounding area as Executive Director of the Green Haven Shelter for Women.

Liz has been the lifeblood behind the shelter since it opened in 1991 and has been a strong and steadfast advocate for the women and children it served. Over the years, Green Haven has weathered funding cuts while raising 20% of its operating budget. Liz found creative ways to do this, including operating a thrift shop and partnering with the arts community to put on productions that not only provided much-needed funds but shone a light on the issues of violence against women.

Liz Westcott's legacy, among the many lives she touched, will be the newly built shelter for Green Haven, which recently opened — a project 12 years in the making.

• (1810)

The beautiful new building has increased bed capacity and living space to help women and their children fleeing violence, providing a safe alternative from an abusive home. They also operate a crisis line and outreach program for transition to life after life at the shelter.

Honourable senators, we know the statistics are grim. In Canada, every six days a woman is murdered by an intimate partner. Hundreds of thousands suffer violence. The biggest threat to a woman's safety is from the person who is supposed to love her.

The pandemic has proven to add extra challenges for at-risk women. Green Haven and other shelters had to adapt to the new conditions, and find unique ways to serve their clients, who became increasingly vulnerable during lockdown, such as changing their service model from intake to outreach. But through it all, Liz Westcott and Green Haven have been a steady presence for the women in desperate need of their services. They have truly been the frontline workers.

Honourable senators, I join member of Parliament Bruce Stanton in congratulating Liz Westcott on her remarkable and steadfast service to our community. Please join me in wishing her the very best of health and happiness in her retirement. Thank you. *Meegwetch*.

[*Translation*]

THE LATE HONOURABLE CLAUDE CASTONGUAY, C.C., G.O.Q.

Hon. Claude Carignan: Honourable senators, like the Leader of the Government, I would like to pay tribute to former senator Claude Castonguay, who passed away late on Friday or early on Saturday. He was 91. I want to begin by offering my deep condolences to his family and friends, especially his wife Marie, his children Monique, Joanne and Philippe, and his five grandchildren.

It's never easy to pay tribute to someone in three minutes, especially when it's a man who led such a rich, full life, or who is a veritable giant.

Claude Castonguay, known as the father of health insurance in Quebec, was an architect of the Quiet Revolution and a major contributor to modern Quebec. He was often called upon to act as a consultant when it came time to undertake major change. For instance, he was instrumental in crafting the Quebec pension plan.

Senator Castonguay was truly a man of deliberation and action. He was also an independent man who put the well-being of Quebecers far above political sparring. His career in politics was brief, but he was a minister in the Bourassa government for three years and was appointed as a senator by the Right Honourable Brian Mulroney, a position he held for more than two years. Through his commitment and influence, Claude Castonguay certainly made an extraordinary contribution to our society.

I had the privilege of working alongside him when we were members of an advisory board for a large corporation. Mr. Castonguay was larger than life, and I remember him as keenly intelligent, alert, extremely kind, courteous and gracious. He was a true gentleman. His legacy is vast, and he did so much for Quebecers.

On November 1, he published his parting words in *La Presse* upon retiring as a contributor to the newspaper. I quote:

> Living longer, as so many of us do these days, also means growing old longer. That oxymoron is a good description of what it means. It means we must live longer with everything that implies.
>
> Specifically, we have a moral obligation to live with dignity and, to the extent possible, with serenity.

Those wise words could not be more fitting in the context of today's debate on medical assistance in dying. If I were to choose one word that best describes Mr. Castonguay, it would be "dignity." Thank you, Claude.

Hon. Jean-Guy Dagenais: Honourable senators, like my Quebec colleagues who spoke before me, I want to take a few moments to pay tribute to one of the greatest builders of modern Quebec society, Claude Castonguay, who passed away on Saturday at the age of 91.

For a period spanning almost 60 years of Quebec's history, Claude Castonguay fought to ensure that all Quebecers, no matter how rich or poor, would have free access to a health care system.

Premier Daniel Johnson recruited him in 1966 to chair a special commission on the state of Quebec's health care and social services and to make recommendations to the government. The Union Nationale government lost the election in 1970, one month after introducing a bill to create Quebec's health care system.

However, Robert Bourassa recruited Claude Castonguay, who entered politics as a Liberal and was appointed Minister of Health, Family and Social Welfare. In the months immediately following his election, Claude Castonguay shepherded through the bill to create Quebec's health care system. That was when Quebec's health card was first introduced, which many call the "castonguette." Not everyone was happy about this major change. Many of you have probably forgotten that the creation of the Quebec health care system, in the middle of the October Crisis in 1970, led to a strike by physicians who did not agree with the notion of government-run health care.

Although Mr. Castonguay played a major role in Quebec's political history, he was not a career politician. He was elected in 1970, but did not run again in 1973. He said that he had accomplished what he had set out to do. Many years later, in 1990, Prime Minister Brian Mulroney appointed him to the Senate, and he served in this chamber as a Progressive Conservative senator. His stint in the Senate was short as well. Two years later, he went back to the private sector, where it became clear that he could do more for society unfettered by party lines.

As a member of commissions and committees, Claude Castonguay shared his knowledge and his forward-thinking social vision. He did not need to be elected to change things. Decade after decade, ever since Jean Lesage, politicians have turned to Claude Castonguay for advice on our society's biggest issues. As a quiet revolutionary, he never missed an opportunity to participate in Quebec's social debates in his own way. Even when no one actually asked for his opinion, he did not hesitate to leverage his media platforms, issuing critiques that often rattled decision-makers. In 2007, more than 25 years after creating Quebec's health care system, Claude Castonguay was tasked with re-evaluating it, especially its funding structure. In 2008, Mr. Castonguay revisited his 1970 idea, once again proposing a $25 user fee for access to health care, which he had considered in 2006 given the public health care system's funding shortfall.

Throughout his life, Mr. Castonguay advocated that money should not be a barrier to receiving medical services and that health problems should never jeopardize a family's economic health. Quebec would certainly not be the province it is today without Claude Castonguay's contribution to the social changes that currently set Quebec apart from the rest.

On behalf of all Quebecers, I want to thank Claude Castonguay for the important legacy he left us. Thank you.

Hon. Diane Bellemare: Honourable senators, Quebec lost a leading figure in the province's economic and social development history when the Honourable Claude Castonguay died on Saturday, December 12 at the age of 91. Quebecers all knew him as the father of health insurance, but he actually did much more for Quebec. He taught at Laval University and worked in the public and private sectors, where he raised public awareness about the actuarial science field. He left his mark on the Laurentian Group Corporation as its CEO and on many other insurance institutions. He mentored many people, including Senator Saint-Germain, and others through the Raoul Dandurand Chair, of which he was the founding president.

Claude Castonguay was a quiet revolutionary, a social architect and one of the builders of modern Quebec. He advised political parties, wrote reports that led to the creation of the Quebec Pension Plan, and chaired commissions of inquiry. He was also involved in the review of the Constitution. He earned all kinds of recognition for his contributions, including about a dozen honorary doctorates.

I had the pleasure of knowing him when I was a fellow at CIRANO. His daughter Joanne introduced us. We often had lunch together to discuss matters of public policy. He wrote the foreword to my book, *Créer et partager la prospérité : Sortir l'économie canadienne de l'impasse*, which was published in 2013. My husband and I had the privilege of visiting his home on the Magdalen Islands where he spent many summers. He set up an art studio there for him and his wife. He loved painting and he loved crossing the Atlantic on winter cruises to write.

I was deeply impressed by this accomplished man. We had the chance to talk about the Senate several times. As you know, he was appointed to the Senate in 1990 by former prime minister Brian Mulroney to help resolve certain impasses in our august institution. He soon realized that our world was not a good fit for him, as he found it to be too adversarial and partisan. He warned me.

• (1820)

The Honourable Claude Castonguay proved that one can change the world without partisan politics. He had the stature, composure, diligence, passion and credibility needed to advance his ideas in the public domain.

Claude Castonguay really cared about Quebec, his family and everyone around him. Quebec's economic and social well-being was his primary motivation. He continued to reflect on ways to improve Quebec's social fabric right until the end. He recently suggested rethinking our model for caring for the elderly with a decisive shift towards home care. As Senator Carignan was saying, he announced to his readers in *La Presse* on November 1 that he no longer had the energy to write.

My deepest condolences go out to his wife, Marie, as well as his children, Monique, Joanne and Philippe, his grandchildren and all his loved ones. I'm sorry I didn't have time to say goodbye and thank him.

[*English*]

ROUTINE PROCEEDINGS

PANDEMIC-RELATED FISCAL CRISIS FACING NAV CANADA

NOTICE OF INQUIRY

Hon. Paula Simons: Honourable senators, I give notice that, two days hence:

> I will call the attention of the Senate to the pandemic-related fiscal crisis facing NAV CANADA and its impact on levels of air traffic control and public safety services at regional airports across Canada.

QUESTION PERIOD

VETERANS AFFAIRS

SETTLEMENT OF CLAIMS

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. Senator Gold, I have previously raised with you the defamation lawsuit brought by Mr. Sean Bruyea, a veteran who was personally attacked in a newspaper column by the former Minister of Veteran Affairs Seamus O'Regan. The day after Mr. Bruyea's initial criticism of the minister was published in the media, Veterans Affairs cancelled the reimbursement of child care expenses for Mr. Bruyea's son. The very next day. This was obviously retribution against the veteran for daring to criticize the minister. An investigation by the Office of the Veterans Ombudsman has agreed that child care funding was inappropriately cancelled.

Targeting a small child and taking away support for his child care because your government doesn't care for what his father has to say is petty and vindictive. Will you apologize to Mr. Bruyea and his family for what they've had to endure once again at the hands of your government?

Hon. Marc Gold (Government Representative in the Senate): Thank you, honourable senator, for raising this question. The circumstances are certainly not easy to hear. I will have to make inquiries with the government to find out the facts, of which I am largely unaware. I will certainly report back.

Senator Plett: Will you then further ask your government to commit immediately to restoring the child care benefits for Mr. Bruyea's son, and will you commit to never targeting any veteran's child in this way ever again? It's shameful that these questions even need to be asked of the Government of Canada.

Senator Gold: Honourable senator, thank you for your question. I certainly will commit to making inquiries. I assure this chamber that I will come back with answers when I receive them.

FOREIGN AFFAIRS

CANADA-CHINA RELATIONS

Hon. Thanh Hai Ngo: Honourable senators, my question is for the Government Leader in the Senate. Last week, we were horrified to learn from the leaked "China files" the extent of the Trudeau government's policy of appeasement vis-à-vis China by inviting the Chinese People's Liberation Army to Toronto for training. Not only did the Trudeau government and the Deputy Minister of Foreign Affairs refuse to support the Chief of the Defence Staff's decision to cancel the military training with the PLA scheduled in 2019, but they also disregarded concerns from our Five Eyes allies regarding the knowledge transfer between Canada and the Chinese People's Liberation Army. Going against our trusted military expertise is absolutely appalling.

My question to you is very simple: How incompetent, negligent, utterly reckless and dangerous can the Trudeau government and this deputy minister be to blatantly oppose sound military decision making by inviting the Chinese People's Liberation Army into Canada?

Hon. Marc Gold (Government Representative in the Senate): Honourable senator, thank you for raising this important issue. The form of your question makes it impossible for me to answer, because this is not a case of incompetence or any of those other matters you raised. This is a matter that has been aired quite publicly, and I don't think it's helpful, in terms of getting a proper answer, to make the assumptions you have in the form of your question. Having said all of that, I will make inquiries about all of the facts of this case and be happy to report to this chamber.

Senator Ngo: In those "China files," we also shockingly learned that Meng Wanzhou is referred to as Ms. Meng, while our two Michaels are only referred to as "consul" cases, not even deserving of the mention of their names. This is unacceptable and completely abhorrent. We know that 123 Canadians are also languishing in Chinese prisons, but that number might not be accurate; it could be more.

Senator Gold, how many Canadians — or "consul" cases, to use your government's words — are detained in China? How many years have they been detained for, and what is the Trudeau government doing to secure their release?

Senator Gold: Any Canadian detained illegally in China is one too many. The government, as I've reported many times in this chamber, is working tirelessly to seek ways with our allies to resolve their cases so that they can be returned home to Canada. The government continues to work hard to try to resolve the many complicated issues that define our rather difficult relationship with China. I certainly do not have the numbers. I will make inquiries and report back.

[*Translation*]

INTERNATIONAL TRADE

CANADA-UNITED STATES-MEXICO AGREEMENT— ONLINE SEXUAL EXPLOITATION

Hon. Julie Miville-Dechêne: My question is for the Government Representative in the Senate. Senator Gold, I've just learned with a great deal of disappointment that, under the free trade agreement with the United Sates and Mexico, the Government of Canada made a commitment to amend our laws so that internet platforms like Pornhub are not held responsible for content uploaded onto their sites by members of the public. That means that Canada has accepted that website immunity provided under U.S. legislation for 20 years also applies to Canada. I am very surprised because this prevents us from using legitimate tools to rein in sites that show videos of children and women being raped. Is that true, Senator Gold?

• (1830)

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question and for your hard work on this issue.

As you quite rightly pointed out, there are provisions in the North American Free Trade Agreement that make it difficult to deal with a company like Pornhub. Web giants like Facebook, YouTube and Pornhub are protected under section 230 of the Communications Decency Act of 1996. This section stipulates that platforms cannot be held responsible for the content that users upload to their sites.

However, I've been informed that the Canadian government is actively working on drafting new regulations that would require online platforms to remove any illegal content, including hate speech, sexual exploitation of children and violent or extremist content from their sites. The government plans to introduce these regulations as soon as possible. It is working on this with its provincial colleagues and international partners.

Dear colleagues, there is something I want to add. The government has informed me that it is currently reviewing Bill S-203, An Act to restrict young persons' online access to sexually explicit material. As soon as I have more information on this matter, I'll let you know.

Senator Miville-Dechêne: Thank you for the information about Bill S-203, but I'm very disappointed that our laws will be subject to those of the United States under the free trade agreement.

My second question is this. Does Pornhub receive tax benefits from the federal government? Many federal programs target technology firms. If so, do you intend to change the eligibility criteria so as not to indirectly support, through funding, companies that offer sexually explicit or pornographic entertainment and that sexually exploit minors? Giving these companies tax benefits indirectly helps companies that host websites with videos depicting sexual exploitation.

Senator Gold: Thank you for that question. I have no idea whether Pornhub or the company that owns it received funding or assistance from the government. I will look into it and inform the chamber as soon as I have an answer to that question.

[*English*]

FOREIGN AFFAIRS

HUMAN RIGHTS IN IRAN

Hon. Marilou McPhedran: My question is for the Government Representative in the Senate.

Iranian lawyer Nasrin Sotoudeh is a human rights defender who continues to be persecuted by the Iranian government for her work. She was sentenced in absentia for "espionage in hiding" for a total sentence of 38 years in prison and 148 lashes.

Nasrin Sotoudeh has dedicated her life, peacefully and professionally, to defending human rights. To quote a UN expert statement:

> The evidence suggests Ms. Sotoudeh's imprisonment, both now and in the past, is State retaliation for her tireless work defending human rights.

She has been forced to return to prison after being released on temporary furlough last month after an extended hunger strike, due to the horrible circumstances of her imprisonment. Her forced return was contrary to medical experts saying she needed time to recover from COVID-19 before forcing her, in her weakened state, back in the superspreader environment of the prison.

Leader, will the Government of Canada commit to pushing for Iran to quash Ms. Sotoudeh's unjust conviction and sentence, and will the Government of Canada push for her to be released to receive the health care she so desperately needs?

Hon. Marc Gold (Government Representative in the Senate): Honourable senator, thank you for raising the horrible and unacceptable situation that she is facing. The government is committed to holding Iran to account for its human rights violations. That's why earlier this month the government called on Iran to comply with its international human rights obligations. The government is committed to working to assist people like Nasrin Sotoudeh, and we will continue, the government will continue, to defend human rights and hold Iran to account for its actions.

Senator McPhedran: Senator Gold, will the Government of Canada also push to quash the pending six-year prison sentence and ban on travel and online activities against her husband, Reza Khandan, who was arrested shortly after posting updates about his wife's arrest, clearly indicating that his conviction and sentence were imposed to silence Ms. Sotoudeh?

Senator Gold: Thank you for raising that with me and bringing this to the attention of the chamber. I will have to make inquiries as to the specifics of the case, but please rest assured I will do my very best.

Hon. Leo Housakos (The Hon. the Acting Speaker): Honourable senators, we seem to have technical difficulties.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1840)

INTERNATIONAL TRADE

CANADA-UNITED KINGDOM TRADE CONTINUITY AGREEMENT

Hon. Douglas Black: Honourable senators, my question is for Senator Gold, the Leader of the Government in the Senate. As we know, in two and a half weeks the U.K. — which incidentally is our fifth-largest trading partner and many would argue our greatest ally — will be leaving the EU. That, of course, creates a problem for Canada.

Recognizing that, on November 21, Canada and the United Kingdom came to a transitional trade agreement. This agreement is going to pick up the requirements of CETA on an interim basis to assist Canadian businesses that trade with the U.K. Again, recognizing the urgency of this, the Government of Canada tabled in the other place Bill C-18 last week.

The MPs have gone home. Bill C-18 is nowhere. The government of the U.K. is calling on our government to act. Businesses across the country are calling on us to act. Senator Gold, your government has created a situation where there is an enormous risk of disrupting trade with our ally and causing incredible hardship to various industries.

Senator Gold, what is going on? What do we intend to do on January 1 for those businesses that trade with the U.K. and those businesses in the U.K. that trade with Canada?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. It is one that preoccupies not only parliamentarians but businesses as well.

The trade agreement that was reached, which essentially incorporated the main benefits of our EU trade deal, was only introduced last week. It was only concluded sometime before that. Regrettably, the circumstances in the other place made it impossible for them to get it over the finish line.

I am advised that the government has been working not only with its counterparts in the U.K. to affect efforts to mediate the impact of the implementing legislation not being passed but also with stakeholders and businesses across the country.

It is not a happy situation, but the government is working hard, again with its counterparts in the U.K. and across this country, to make sure that the impacts are mitigated to the fullest extent possible.

Senator D. Black: Senator Gold, thank you very much for that. Of course, the problem is that the impacts cannot be mitigated in the whole. There are some workarounds that are possible, but there are many industries that are simply going to be penalized. Even the U.K. government last week issued an unprecedented release saying they are deeply concerned and disappointed that Canada has been unable to honour its commitments.

Senator Gold, I repeat: this is not the place that we want our exporters of beef, plastics, automotive and others to be. Again, this requires more than talk. Something is required over the next two and a half weeks. What will that be?

Senator Gold: Senator, thank you again. The government has no disagreement with you with regard to the importance of this, but it is simply not possible that implementing legislation will be passed before the end of this year. Efforts are being made, and there are a number of areas being pursued so that Canadian businesses do not, in fact, suffer.

CANADA REVENUE AGENCY

CANADA EMERGENCY RESPONSE BENEFIT

Hon. Dennis Glen Patterson: Honourable senators, my question is for the Leader of the Government in the Senate.

Senator Gold, today CBC reported on 441,000 so-called “education letters” sent to those who applied for CERB, stating they have to repay thousands of dollars due to being ineligible.

As Senator Martin raised last week, we see that business owners who did not net $5,000 after expenses were not eligible, and the government will require repayment of the $14,000 accessed over the seven-month life of the CERB program. This distinction between net income after expenses was not clear to anyone short of a tax expert.

I would further argue that if you are making less than $5,000 in a year, you absolutely deserve this type of support during COVID. Report after report is telling us that thousands of small businesses across the country are failing or doomed to fail in the next few months.

The government also confirmed in May that it issued a memo suspending the Compliance and Enforcement Policy, effectively stopping the referral of these cases to the department's Integrity Services Branch. The Prime Minister stated in the other place that the government would continue to work with Canadians who made good-faith mistakes.

Senator, given the government's removal of safeguards that would have normally prevented an overpayment and the government's lack of clarity on the issue of net versus gross income — due to the rush to deliver this funding and the indisputable fact that Canadian small businesses are being crippled by the pandemic — will the Government of Canada grant clemency to the struggling small-business owners who are now being made to repay the entirety of CERB payments?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. This is an issue that, of course, has been raised in this chamber before. The government continues to work on possible solutions.

My understanding is that the letters to which you referred were advising recipients that they may be required to repay and invited them to work with CRA in order to resolve these issues.

The government continues to seek an equitable solution to this. In the circumstances that the government and we were faced with in the rollout of these programs, the government was caught between a rock and a hard place. It had to take the position not to put in too many front-end barriers that would preclude support being given, and the consequence of that has been, in some cases, overpayment. However, the government remains committed to finding a solution that's fair and equitable to all those who acted in good faith.

Senator Patterson: The CBC also reported that clarification on this point of net versus gross was added in the "frequently asked questions" section of the website sometime after April 21 — over a month after the program's launch date.

Senator Gold, do you think it fair that the same government that instructed its officials to ignore potentially ineligible applicants should go back to struggling Canadians and demand repayment? It doesn't matter if there are longer repayment terms; Canada has been clear that it will recoup the money it feels it is owed. For those who acted in good faith, is it fair to bleed them of $14,000?

Senator Gold: Senator, again, thank you for your question. But I can only repeat that the government is seeking solutions that are fair and equitable to those who acted in good faith.

CANADA PENSION PLAN

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

Across Canada, small businesses are suffering due to COVID-related restrictions on their operations, including those in my province of British Columbia. A Canadian Federation of Independent Business survey found, as of November 30, only 40% of B.C.'s small businesses had normal staffing levels and just 31% of them had normal revenue.

On January 1, the federal government will raise Canada Pension Plan payroll deductions on businesses struggling to survive: yet another demand on the struggling businesses as we've heard time and time again.

When the CPP premium increases were first announced in 2016, former Minister Morneau promised they would be "very modest" and "relatively painless." Leader, this is sort of a "yes" or "no" question. It's clear to me that this is a terrible time to raise taxes on small businesses, but the government doesn't seem to agree. Will your government delay the CPP payroll tax hike set to take place in just over two weeks?

Hon. Marc Gold (Government Representative in the Senate): I must be genetically incapable of answering simply. It must be my university background. I don't know the answer to your question and would not presume to give an answer.

• (1850)

The government is doing everything it can to support Canadians, and it is doing it in so many different ways that it's important to look at it globally. I will make inquiries as to what their intentions are, certainly, and I may have a yes or no answer for you when I get an answer from the government.

Senator Martin: Thank you, leader. Currently, only about 40% of Canada's small businesses are fully staffed. By increasing the payroll tax on January 1, the government will make it harder for them to hire workers in the new year.

Your government often says it makes evidence-based decisions. Has your government studied how next month's CPP premium hike will hurt the ability of local employers to hire staff, and have you studied how the payroll tax hike will harm Canada's ability to recover economically from COVID-19? If the answer is yes, such studies have been undertaken, would you table that analysis here in the Senate?

Senator Gold: Thank you for your question. I don't know the answer to your specific question, but I can assure this chamber that the government looks at the impact of all of its measures on the economy and on those who make up our economy, whether it is in the programs of support that they provided for small businesses, whether its rent relief and wage subsidies or whether it's with regard to other measures such as the ones that you mentioned. Each and every measure is analyzed to see what impact it will have not only on the revenue side but on the impact on the economy.

I don't know the specific answer to your question. I will be happy to inquire.

FINANCE

FISCAL UPDATE

Hon. Tony Loffreda: My question is for the Government Representative in the Senate. Senator Gold, we all know diversity is extremely important to our economy, and it's no secret that women have been greatly affected during this pandemic.

In the Fall Economic Statement, the government reiterated its promise in the Speech from the Throne to create an action plan for women in the economy. This action plan is to be guided by a task force of experts to help more women get back into the workforce.

Senator Gold, can you tell us when this task force will meet? Can you tell us who will serve on this task force? Is there any update you can share with us today? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator, for your questions. As you rightly point out and as we know all too well, the pandemic has had a disproportionate impact on women, who often take on extra responsibilities not only for home schooling and taking care of their sick children, but also having to juggle their own careers and jobs in a most difficult economic environment.

I don't have a specific answer or an update with regard to the advisory committee and the task force. I hope information regarding that will be forthcoming soon.

Senator Loffreda: Senator Gold, it's important, as you know. Some experts say that this pandemic has turned back the clock three decades on women in the labour force. As you do know, there are currently programs targeting women entrepreneurs, namely the Women Entrepreneurship Fund, and strategies to help women-owned and women-led businesses across Canada grow and reach new markets.

Could you tell us where this new action plan fits in with these other women-focused programs? Could you give us an update on whether these programs will be updated or improved or still stay as they currently are? Thank you.

Senator Gold: That's a good question, and I appreciate it. Thank you, senator.

The government is committed to creating an action plan for women in the economy. It will look at it from a feminist perspective, an intersectional perspective and, really, a holistic perspective because, as your question implies, it's important to see how these actions fit into a whole suite of measures, both the programs that have been introduced as a result of the pandemic and also the general structural programs in our country to help Canadians launch businesses and survive in business.

The government's assumption is that by strengthening individuals, families and the businesses that they create, we help strengthen the economy and create a more resilient society to get through this difficulty and come out of it stronger.

[*Translation*]

ENVIRONMENT AND CLIMATE CHANGE

CARBON TAX

Hon. Jean-Guy Dagenais: My question is for the Leader of the Government in the Senate. On Friday, I was surprised to hear the Prime Minister's new climate change commitments. Since coming to power, Prime Minister Trudeau has been making the rounds trumpeting his environment policies. However, just last week, Germanwatch, the Climate Action Network and the NewClimate Institute ranked Canada 58th out of 61 countries on its climate change performance index.

According to that same report, Canada comes dead last in overall energy use.

Mr. Leader, can you tell us if Prime Minister Trudeau will stop dreaming someday, or was he just taking advantage of all the excitement over the vaccine to set crazy new targets while quietly slipping in a major carbon tax hike?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, esteemed colleague. This question gives me the opportunity to point out that, after years of criticism of this government for its speeches on the environment, Minister Wilkinson has announced a robust plan that will have Canada move forward by implementing concrete measures to fight climate change. This plan has the support of economists and experts in this field.

I also want to point out that this plan is part of Canada's comprehensive approach, which includes targets in the bill introduced in the other place. Canada can be proud of the concrete and serious measures implemented by this government to combat this existential problem for us, our children and our grandchildren.

Senator Dagenais: I would like to remind you, leader, that there will be a large increase in the carbon tax. Even though certain provinces will receive some money, between you and me, consumers will end up paying this astronomical increase in the carbon tax. I believe it is a hidden tax.

Senator Gold: Senator, perhaps you didn't hear Minister Wilkinson's speech, which was quite clear. Yes, there will be a steady increase in the carbon tax until we reach our targets. That is the most effective way to combat climate change.

It's important to note that Canadians will receive quarterly payments that will come from this carbon tax increase. For those living in Ontario, it will amount to roughly $2,000 a year, and in Alberta it will be about $3,400.

Canadians will have more money in their pockets while seriously tackling climate change. For the first time, this government is taking concrete action while still considering the well-being of Canadians.

• (1900)

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Chantal Petitclerc moved second reading of Bill C-7, An Act to amend the Criminal Code (medical assistance in dying).

She said: Honourable senators, I rise today to lead off our debate on Bill C-7, which would amend the Criminal Code with respect to medical assistance in dying.

[*English*]

As I was preparing to speak today, I was reminded of the great blues singer Long John Baldry, who, in 1971, released an album called "It Ain't Easy." He came back in 1991 with another album, this time titled "It Still Ain't Easy."

Colleagues, may I suggest that this is exactly how we feel as we embark, five years after Bill C-14, on the study of Bill C-7: It still ain't easy. And it's perfectly okay that it's not easy. After all, this is a very complex legal issue, and most of all, it touches all of us to the core. We must acknowledge this. We are sitting here as human beings with our own experiences and beliefs when it comes to end of life, and we can't make abstraction of this. But we are also here with this important responsibility as legislators, and we have a bill in front of us that we have the privilege to study, debate, improve if needed and vote on.

[*Translation*]

Bill C-7 is another step in our country's developing history of medical assistance in dying. This is not the first step, and we know that it will not be the last. Before I talk about the bill, I'd like to take a moment to say that there are individuals behind both the previous steps and those to come.

[*English*]

Individuals who, while suffering unbearable pain, chose to fight for their Charter rights to be respected. I want to thank them and pay tribute to their strength in the face of change and adversity.

In 1993, Sue Rodriguez told us, "If I cannot give consent to my own death, whose body is this? Who owns my life?" On September 30 of that year, the court decided against her 5 to 4.

In 2015, Kay Carter and Gloria Taylor continued that fight and were the focus of the Supreme Court's 2015 *Carter* decision, which led to the enactment of former Bill C-14 in June 2016.

Julia Lamb, Nicole Gladu and Jean Truchon: They were the courageous individuals behind two Charter challenges to the requirement that MAID be limited to end-of-life circumstances.

[*Translation*]

In her testimony before Justice Baudouin, Ms. Gladu said the following about her extreme suffering, and I quote:

> The degeneration is unpredictable. The disease is like a staircase that one does not descend step by step, but falls down from landing to landing. I have reached the basement.

[*English*]

Mr. Truchon and Ms. Gladu were successful in this challenge in Quebec, and the government made a compassionate decision not to appeal, and to change the MAID regime for all of Canada. I think this was the right decision, and today I speak to you as the sponsor of this legislative proposal brought forward by the government in response.

But let me be clear: I am also speaking as a person with a disability, as an independent senator who supported, like many of us, the Senate amendments to Bill C-14 in 2016, and who provided in 2018 an affidavit in support of Julia Lamb who, as I said, was challenging the constitutionality of the provision that is limiting MAID only to people whose natural death was reasonably foreseeable. Therefore, it is with a great sense of responsibility that I speak today in support of Bill C-7.

[*Translation*]

In order to address this matter effectively and thoroughly, the Standing Senate Committee on Legal and Constitutional Affairs has already undertaken a pre-study of the bill. The committee heard more than 80 witnesses with diverse expertise and points of view.

I commend the work of the members of the steering committee of that committee, namely Senators Jaffer, Batters and Dalphond. Organizing this 28-hour marathon of hearings in five full days was no small feat, and they did it diligently and professionally.

Honourable senators, as you can see on reading the committee report, the witnesses' positions on many of the issues are very nuanced. For example, while some experts support excluding anyone suffering from mental illness alone from receiving MAID, others feel that this exclusion minimizes the suffering of that group of Canadians. I would not be surprised if the divergence of opinions on this specific topic takes up a lot of time in our upcoming debates.

[*English*]

That being said, I want to recognize that, for many of us, this conversation on MAID is not new. Senators were part of the Special Joint Committee on Physician-Assisted Dying that examined this issue early in 2016, including Senator Seidman, who made important contributions. We had lengthy debates on medical assistance in dying in the spring of 2016, when we then passed Bill C-14 in response to the *Carter* decision.

The fundamental question of whether to permit medical assistance in dying is behind us, and as we study this bill, we have nearly five years of Canadian experience with MAID.

[*Translation*]

What Bill C-7 is proposing today is to expand eligibility for MAID to any competent adult who has an illness, disease or disability, is in an advanced state of decline in capability, and is experiencing intolerable and irremediable suffering, regardless of whether that person's natural death is reasonably foreseeable.

This is a major change to the MAID regime, a change fuelled by compassion and the right to a dignified end of life.

A February 2020 Ipsos poll found that 71% of Canadians support expanding eligibility for MAID. That is what also came out of the consultations that the Government of Canada held in January and February 2020 when developing this bill. During those consultations, approximately 300,000 Canadians completed an online survey. This high rate of participation shows how important Canadians think this issue is. In an effort to ensure that the changes to the federal MAID regime reflect changes in the views and needs of Canadians, Minister Lametti, Minister Hajdu and Minister Qualtrough spoke with various stakeholders across the country. One of those round tables focused on the views of Indigenous peoples.

[*English*]

Before I move on to explain the bill in greater detail, please allow me to pause here to address the concerns that some national disability organizations and individuals with disabilities have expressed about Bill C-7.

Bill C-7 repeals the end-of-life limit on MAID, recognizing the right of individuals suffering unbearable pain to choose a dignified end to their life. There is a fear that the removal of the "reasonably foreseeable death" criteria will result in a MAID regime that would discriminate against persons with disabilities by singling them out as a category of persons who can obtain medical assistance in dying on the basis of their suffering. Some believe that this would send the message that their lives are of less value.

• (1910)

There are over 6.2 million persons with disabilities in this country, each unique in their limits and potential, and too many are put in situations of vulnerability. It is a very difficult task to reconcile opposed points of view within such a diverse community.

One thing I know for sure is we cannot and should not shy away from the conversation on social and community support services to ensure the full realization of the rights of persons with disabilities. The truth is, when it comes to care and services to persons with disabilities in this country, we still have a lot of work to do and it's fair to recognize that.

We must do more to support persons with disabilities in this country, to ensure that they have access to proper housing and to the supports they need. We have heard the government commit to being part of the solution. Very strong commitments were made recently in this chamber during the last Speech from the Throne. I will always continue to add my voice to those of other groups and individuals who campaign for this cause so that this promise of a disability inclusion plan, but also the measures in the Accessible Canada Act adopted last year, quickly and efficiently translate into actions.

On the one hand, Bill C-7 aims to allow access to MAID to relieve intolerable suffering before death is reasonably foreseeable. On the other hand, we must ensure that efforts are put forward to make sure that persons with disabilities have access to everything they need to live a full and rich life. These goals are not mutually exclusive. At the Legal Committee, Professor Downie told us:

> We must not hold individuals hostage to social failings. What we have to do is always operate on a parallel track. Therefore you allow the access to MAID at the same time you make those commitments to the enhancement of supports. We did that with palliative care. They very much did that in Quebec with palliative care. That was the appropriate form of analysis that Justice Smith said we should take with respect to MAID and palliative care. I would say the same for disability supports . . . .

I agree with that.

[*Translation*]

What I would like to say to persons with disabilities like me is that we must not be divided. On the contrary, we must come together and ask, what still needs to be done in this country, and how can we ensure that every Canadian with a disability has access to everything they need? What battles lie ahead, and how can we win them together? We have to think all of these things over carefully, bearing in mind that each individual, regardless of the gravity of their situation, has the right to be respected, and not infantilized, the way persons with disabilities have often been treated in the past.

Rest assured that I will remain an ally in this battle.

I would like to take some time to explain what Bill C-7 proposes to change with regard to the MAID regime in Canada.

[*English*]

There are four main aspects of the bill. The first aspect concerns eligibility criteria, and these changes are fairly straightforward: the eligibility criterion requiring a reasonably foreseeable natural death would be repealed. As I have already described, this change would, in effect, adopt the outcome of the *Truchon* and *Gladu* decisions for the whole of Canada.

One result of this change is that many persons whose sole underlying condition is a mental illness could be expected to meet the new eligibility criteria. While persons whose only condition is a mental illness are not excluded under the current regime, in fact, they are rarely eligible because of the requirement for reasonably foreseeable death.

In light of specific risks related to mental illness, the bill proposes to exclude from MAID eligibility persons whose sole underlying medical condition is a mental illness. Persons who have a physical illness, disease or disability would not be excluded if they happen to also have a mental illness.

I have heard concerns from my honourable colleagues and from witnesses at Legal Committee hearings about this exclusion. Like many, I firmly believe that we need to have this conversation, but we also need to approach the question with patience and recognition that there is much we still do not know and do. We heard that while there are greater challenges in predicting the trajectory of many mental illnesses, the possibility of improved quality of life is sometimes present. Some experts are concerned about the impact that allowing MAID on the basis of a mental illness might have on suicide prevention and clinical practice.

[*Translation*]

I know some senators are primarily concerned about the constitutionality of this exclusion, rather than its merits as a political choice.

The main reason for this exclusion is concern about prematurely ending the lives of people with mental illness under circumstances in which their quality of life could improve over time. Experts told us there are no clinical standards for assessing whether a mental health condition is irremediable.

Like me, you have all heard Minister Lametti repeatedly acknowledge that mental illnesses are very grave illnesses that cause suffering and that that suffering is no less serious than physical suffering. The exclusion is not a sign of a lack of empathy or compassion.

Until the study of this bill is complete and this question properly considered, I continue to think that we must proceed cautiously on this highly complex issue that involves serious risks.

[*English*]

The second aspect of the bill is the safeguards. The bill would use the criterion of a "reasonably foreseeable natural death" to create a two-track system.

In the first track, those whose death is reasonably foreseeable would continue to benefit from the current safeguards with two changes. The 10-day reflection period would be repealed and a person would only need one independent witness to sign their MAID request instead of two. That independent witness could be someone who is paid to provide health or personal care services to the person requesting MAID. The intentions of those changes are quite straightforward: alleviate barriers to access and reduce suffering.

In the second track, those whose deaths are not reasonably foreseeable would benefit from an enhanced set of safeguards. In addition to those safeguards required when death is reasonably foreseeable, practitioners would have to assess a person's MAID request over a minimum assessment period of 90 days.

[*Translation*]

If neither of those two MAID assessors has expertise in the condition that is causing the person's suffering, they would have to consult a practitioner who does.

The person requesting MAID must be informed of all means available to relieve their suffering, including psychological counselling and mental health and disability support services. They must also be offered consultations with professionals who provide those services. Both practitioners have to discuss those means of relieving suffering with the person requesting MAID and be of the view that the person has seriously considered those means.

[*English*]

In my view, these safeguards strike the right balance between protecting those who may be in situations of vulnerability and respect for the person's autonomy and self-determination. They require that the person be informed and seriously consider all treatment options without forcing them to pursue treatments they don't want. A practitioner with appropriate expertise must provide input to make sure no option to alleviate suffering is overlooked. These all ensure that the person makes an informed decision.

• (1920)

The third aspect of Bill C-7 is that of a waiver of final consent. This one is unrelated to the changes in the eligibility criteria. Instead, this would seek to address an unfair situation that arises when a person is approved for MAID but loses decision-making capacity and therefore cannot provide a final consent to the MAID procedure immediately before it would be provided, despite their request having been approved and the procedure planned.

With this amendment, a person could agree with the practitioner in writing that the practitioner can proceed on the chosen date in the event that they have lost decision-making capacity. This would be permitted for persons whose death is reasonably foreseeable and only in the circumstances where the MAID request is already approved, the procedure is planned and there is a risk of loss of capacity.

[*Translation*]

This change is being proposed in response to the lived experience of people like Audrey Parker who are forced to plan their MAID procedure earlier than they would have liked because they're afraid of losing their decision-making capacity before they receive that medical assistance in dying. Audrey Parker, who lived in Halifax, was suffering from terminal cancer, and her MAID request had been granted. She had to make the decision to receive it earlier than she would have liked because she was afraid of losing her decision-making capacity before the date she had chosen.

[*English*]

I know there is a great deal of interest and support from Canadians and from you, honourable colleagues, to explore the issue of advance requests for MAID following a diagnosis of a condition, for example, like Alzheimer's disease. I too strongly support the need for that conversation and look forward to it, but I would like to invite us to focus our work on the bill that is before us today.

Providing for advance requests in this scenario would be a very complex task, and expert views vary on whether and how to safely allow advance requests for MAID. It requires us to consider safeguards for two completely distinct acts that may be many years apart — the making of the document setting out the wish for MAID and the provision of MAID for a person who can no longer consent on the basis of the earlier document. It is not clear that addressing all of the necessary parameters could or should be accomplished through amendments to the Criminal Code.

There is a parliamentary review of the MAID provisions on the horizon, and that will be a better forum to discuss the kinds of mechanisms that might be needed to address advance requests in a safe and effective way.

[*Translation*]

The fourth and final category of amendments that the bill proposes concerns the monitoring regime. These changes would allow the collection of information in a wider range of circumstances, including information about preliminary assessments that might be made before a request is put in writing. Consultations will take place before the regulations are amended. In the other place, an amendment by the Standing Committee on Justice and Human Rights requires that the Minister of Health consult with the minister responsible for the status of persons with disabilities in carrying out his or her reporting obligations concerning the collection of information and production of reports.

[*English*]

I think this is a very worthwhile amendment that will ensure the perspectives of persons with disabilities are taken into account when crafting changes to the monitoring regulations and when producing the monitoring reports in the future.

Before we begin our debate on this very important bill, I want to say this: Here we are, dear colleagues, having to debate this very difficult bill. The situation is not perfect, let's face it. We are, after all, in the second wave of a pandemic. This bill is coming to us as a court response with a deadline. We do not know yet what will emerge from the extension request submitted last Friday. The parliamentary review of the current regime and on other complex circumstances in which a person may seek access to medical assistance in dying has not begun, let alone been completed to support our reflection.

But here we are. We have the bill in front of us, and it is our job to study it. It is also a deeply humbling privilege and honour to be called to debate such important issues.

What drives my passion to seriously and thoroughly study Bill C-7 is the deep knowledge that right now, individuals outside Quebec are waiting for us to pass this bill, suffering unbearable and irremediable pain. How many of these individuals does it take to make it crucial? For me, one is too many. And already, a number of persons whose natural death is not reasonably foreseeable, who are suffering unbearably, who have tried everything and who wished to have access to medical assistance in dying have had to obtain this right from the Superior Court of Quebec.

[*Translation*]

These people are not statistics. Their names are Lise, Lorraine, Ghislaine, Giselyne, Céline. Just last Thursday, December 10, Guy Labbé, who is living with Parkinson's disease and is in excruciating pain, was forced to turn to the courts. He finally obtained an order authorizing him to receive medical assistance in dying.

[*English*]

Julia Lamb was meant to appear and testify at the Legal Committee on her rights and on her unbearable suffering, but she could not appear due to her suffering. Let the cruel irony of that sink in. She could not testify on her suffering because of how unbearable it is, but she sent a statement where she said the following:

> Bill C-7 is hope for many. It must uphold compassion and choice. The pillars of the *Carter* decision, the human rights of Canadians with incurable, grievous illness and intolerable suffering matter, and should be reflected in this legislation that was ordered to improve on the previous bill that got it wrong. It now must get it right for all of us that were left out.

As we embark on this study, I hope that the words, views and rights of Julia, Nicole, Jean and all these individuals will be acknowledged and respected.

You have their testimonies and can read them. You know that under unbearable pain, they decided to fight for themselves and for those in the same situation. I will not rest until I know that their fight was not worthless.

This is my plea for us, dear colleagues, to commit to work together to, step by step, take this piece of legislation to the finish line. Thank you.

The Hon. the Acting Speaker: Questions?

Hon. Donald Neil Plett (Leader of the Opposition): I'm wondering whether the senator would take a question.

Senator Petitclerc: Absolutely.

Senator Plett: Thank you, senator.

• (1930)

First of all, thank you for your speech. My question is not going to be about the speech. My question will refer to what we are being asked to do here in the Senate by Minister Lametti, Senator Gold, and I read today by Senator Petitclerc.

You are suggesting, senator, that there is a lot of urgency to this. You say the debate "will be passionate, it will be intense, it will be thorough."

> Adding urgency to the situations that senators being pressed to put the bill through all legislative hoops by Friday, the court-imposed deadline for revamping Canada's assisted dying regime.

"It is true that it is a matter of life and death and we cannot rush it," you further said. "What I'm telling my colleagues is let's be efficient, let's be thorough, let's be productive." I think we all agree with that.

Senator, you have indicated clearly that you believe that we can take this life and death situation, that you have very capably explained — and certainly again not wanting to take anything away from what you are saying — is urgent. I think you are eminently qualified to be the sponsor of this legislation. You're doing a good job.

The government, of course, has had 16 months. They started with this back in September of 2019. They have asked for two extensions. They couldn't get it done in the House until Thursday of last week, and then Minister Lametti says, when he asks for the extension to February 26, that he hopes the senators will put their shoulder to the wheel and rush through this august chamber of second sober thought in four days. And you're suggesting that we hand this over to the committee by Wednesday. That means today and tomorrow for debate and then give it to the committee by Wednesday, and the committee study it Wednesday, bring it back Thursday and we have Royal Assent by Friday.

My question is this, Senator Petitclerc: Do you actually believe that we should do that, or do you believe that we should take the time this chamber needs to discuss a life and death situation, that 81 expert witnesses, not one of them could agree that this was good legislation? Minister Qualtrough agreed there were problems with this. You and I were at committee for that.

Hon. Lucie Moncion (The Hon. the Acting Speaker): Senator Plett, are you on debate?

Senator Plett: I'm not on debate. I'm asking a question.

The Hon. the Acting Speaker: You're three minutes into your question.

Senator Plett: Thank you. Senator Petitclerc, do you believe that we should be able to rush this through in the manner that you have suggested, that Senator Gold has suggested and Minister Lametti has suggested, or should we do our job here?

[*Translation*]

Senator Petitclerc: Thank you, Senator, for your question.

[*English*]

I never said that we should rush or that we can rush something that is that important. When I was asked, is it possible to complete second reading within a certain number of days; everything is possible. You've been here longer than me, you know everything is possible, but I am not asking for that. If you hear my speech, all I'm asking is that we have time to study. We have had the committees, we are here at second reading. All I'm asking is cooperation that if we have something to say — and many of us have something to say and should say it because it is important — well, we do it, we do it proactively, we do it efficiently and then we do it step by step.

I'm a former athlete, so I come from a world where you focus on what you can control. There are things you can't control. I can't control many things. I don't know what the decision will be for the extension. I don't know what other senators will do or how many will need to speak. But what I know is that we have a responsibility to show up, and if we have something to say on this bill, we do it and we don't delay it just because we don't agree or whatever reason. That is all that I am asking. So how long is that going to take? I don't know.

[*Translation*]

Hon. René Cormier: Thank you, Senator Petitclerc, for your very clear speech and your commitment to this extremely important bill. I would like to come back to the issue of people living with disabilities. As you said, meetings were held with various groups. Some people in those groups expressed very serious concerns about the fact that allowing for medical assistance in dying when natural death is not reasonably foreseeable could send a negative message to people living with disabilities, a message that their life may not be as valued in Canadian society as that of all other Canadians. I'm paraphrasing here, but these people said that the government will provide

people living with disabilities the option of medical assistance in dying rather than improving care and the adapted services they are calling for so that they can enjoy a full life.

I'm well aware of the fact that the bill cannot resolve all of the problems with the health care system, particularly those related to palliative care and support. Could you reassure me with regard to that situation? How will the safeguards set out in the bill protect people living with disabilities? How can the government better reassure these groups that are concerned about the stereotypes that they see in this bill?

Senator Petitclerc: Thank you for your question, Senator Cormier. It is true, and, as I said in my speech, we cannot ignore the fact that many people living with disabilities and many of the organizations that represent them are concerned about the message that this bill might send. The message is not set out in the bill itself, which states that all lives have equal value. However, that concern does exist and we need to take it into account.

We also need to remember that these groups have emphasized that MAID is one thing, but that we also need to consider health care, services, and access to the health care and services for Canadians with disabilities. I am very aware of that fact. This government has already taken some steps in the right direction with the Throne Speech and Bill C-81, which was passed last year. There is still a lot to be done. I agree with those who, like Professor Downie, one of our witnesses, believe that some action is needed. However, everything can't be accomplished in a bill to amend the Criminal Code regarding MAID. These things need to be done in parallel. I think that we all have a role to play in this, and we must continue to push for these changes.

Furthermore, I want to thank the groups representing people with disabilities that testified and that will likely be back to testify. These groups are making us all aware of all of the flaws in the system.

We also need to listen to Jean Truchon, Nicole Gladu and Julia Lamb. These individuals have rights protected under the Canadian Charter of Rights and Freedoms. These rights were recognized in the *Carter* decision and have again been recognized by Justice Baudouin. They said that when someone has access to care and is aware of all of the options, but they are nevertheless experiencing intolerable suffering, they must be able to exercise their right to die with dignity. I believe it is possible to reconcile both of these notions. They are not mutually exclusive.

[*English*]

Hon. Jane Cordy: Senator Petitclerc, thank you for your passion and your comments on Bill C-7. It's a good start to our debate in the Senate. We're here because of a court decision for the second time, first for Bill C-14 and now for Bill C-7. This is a challenging decision for many of us when looking at the whole idea of MAID, so I appreciate the seriousness of your comments this evening. However, Senator Petitclerc, how do we ensure that MAID is not the only option for those who are ill?

• (1940)

We're pretty lucky in our society because of our positions, but many don't have access to a lot of services. They may not have a family doctor, safe housing, a living income, great health care — particularly if they're in a rural area — and they may not have access to palliative care close to their home. I appreciate this bill is not designed to fix all of those things, but how do we ensure that MAID is not just a default position because the person doesn't feel they have any other choice?

Senator Petitclerc: Thank you, senator. That is an important question. I agree with you when you said in your question that we cannot address all of this in a bill to amend the Criminal Code, but we need to keep it in mind. We need to make sure that those services are accessible and available for those who want to access them.

When I was studying this bill, one of the things that made me feel confident is looking at the data. Of the people who had access to medical assistance when their death was foreseeable under the current regime, 80% of them also had access to palliative care and used palliative care. For me, this really means that it's not one or the other. They have to work together.

That's not what we're doing right now with this Criminal Code amendment, but in this country we need to make sure that we offer the care, the tools and the services so that when a person chooses medical assistance in dying it is not because of a lack of care. It is because their pain is so unbearable and they have tried everything else. Then they make the decision, as is their right, to access medical assistance in dying.

I believe we have to work on those things in parallel.

Hon. Percy E. Downe: Thank you, senator, for your outstanding speech. However, given your sporting background, there's a sense of "déjà vu all over again," to use a baseball expression. When we first discussed this issue five years ago, many senators expressed concern about the constitutionality of the bill. We're now, again, expressing concerns in many quarters about the constitutionality of the bill.

As sponsor of the bill, can you explain why the government didn't simply refer the bill to the court for review before it came to Parliament?

Senator Petitclerc: Thank you for the question. My understanding is that the government and Minister Lametti did not appeal out of compassion.

[*Translation*]

Justice Baudouin's ruling in *Truchon* —

The Hon. the Acting Speaker: I'm sorry, senator, but your time is up. Are you asking for five more minutes?

Senator Petitclerc: Yes, please.

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

Hon. Senators: Agreed.

[*English*]

Senator Petitclerc: What I know is that the government decided not to appeal, and I think it was the right decision. It was not my decision to make. It is the government's decision to make and, like you, I've heard many opinions on that. However, in the end we are here with this bill. I believe it was the right decision not to appeal because of the decision in *Truchon* and because of the individuals. I cannot make abstractions of individuals who are in situations where they need to have access; they want to make that decision. Appealing this decision would have put us even further into that process, so I respect that decision.

Hon. Donna Dasko: Will the senator take a question?

[*Translation*]

Senator Petitclerc: Absolutely, I'd be happy to.

[*English*]

Senator Dasko: Thank you for your thoughtful and sensitive discussion and presentation of the bill.

My mother passed away from Alzheimer's two years ago. So many Canadians suffer from Alzheimer's and dementia, and you referred to it in your speech.

Could you express what you would say to somebody who has Alzheimer's or dementia about what they should do when they can no longer control their abilities, their consent and their situation? What do you say to them with respect to the bill and their prospects? What should they do? Thank you.

Senator Petitclerc: Thank you for the question. You are referring to advance directives. For those of us who were here when we debated Bill C-14, it was already something that we had a lot of debate about, and that was considered a priority and very important. We now have five years of experience with medical assistance in dying in Canada. We had the review that was meant to begin last June. The review was meant to study mature minors, mental illness and advance directives. We need to have that conversation. I would say it is cruel that we are not having this conversation yet, and I'm looking forward to having it. At the same time, those are very complex issues. We need to have the discussion and the studies. We need to do it right. So there is not much we can say, except to hope that we start that review as soon as possible and we move on.

At the beginning of my speech, one of the things I said is that it's not the first time we have had a conversation on MAID and it will not be the last. This is an example that we will revisit. Well, I hope we will because I support having this very important conversation on advance directives.

Hon. Pamela Wallin: Thank you for your remarks, Senator Petitclerc. I want to follow up, because I know you've all heard my comments and my speeches on this. I'm in favour of the concept of MAID. I am puzzled by your optimism that somehow we are going to have this discussion, after —

• (1950)

The Hon. the Acting Speaker: Senator Wallin, I'm sorry to interrupt. Senator Petitclerc's time has expired. Is leave granted for an extra five minutes?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Please go ahead.

Senator Wallin: Thank you very much. I appreciate that and thank you for the support in the chamber. It's partly to do with my frustration, and I'm surprised at your optimism. You were part of that whole discussion when we went through this in 2016. We were promised there would be hearings. There was a "study" on this issue, but the groups and the individuals that studied it weren't allowed to make any recommendations and therefore nothing was done.

We have just missed a year of parliamentary review yet again.

It's one of those issues, when you talk about the pain and suffering of people. Every second that we delay, we are making somebody's life, somewhere, hell. However, if we had this concept of advance directive, advance request, actually wrestled — I know it's a bit complicated, but it's not so complicated that we can't do it — so I'm just wondering what gives you the confidence that we're actually going to have that debate and it's going to result in changes to this legislation?

Senator Petitclerc: It is a very good question. I am an optimistic person, so maybe that explains part of it. That being said, I think you are right that we've had five years of medical assistance in dying now.

[*Translation*]

The Council of Canadian Academies did some of the work, as you said. Now we'll wait for Parliament's review. I say this every time I get the chance: it needs to be done as soon as possible. At this point, that's what I can do. What I do know is that, because of the risks involved and the complexity and seriousness of this issue, we have to take a close look at advance directives. We can't just open that door without doing our homework. Of that I am sure.

[*English*]

We have to get to that. Like you, yes, I am optimistic. I don't have the answer as to when. I will certainly always support you in saying that it has to be soon and it has to be done well, and that this is something that is very important.

Senator Wallin: What I'm looking for is some obligation on the part of the government that the government agrees to study this issue, with an agreement to come to a conclusion. You referenced the academy but they were deliberately denied the right to make actual recommendations. Government, so far, has made no commitment to actually study this issue and incorporate it into this legislation or any future legislation.

We could go on talking about this for the next 50 years, but the problem is we need to deal with the people — particularly that Catch-22 group, those with Alzheimer's or some form of dementia — who are excluded because they can't give consent.

Senator Petitclerc: Very simply, Senator Wallin, what I want to answer is that I agree with you, and if I had a way to make that conversation an obligation, of course, I agree with that.

But I don't have that answer. I don't know how to make that happen, but again, I hope it will happen.

The Hon. the Acting Speaker: Senator Martin, you have 22 seconds.

Hon. Yonah Martin (Deputy Leader of the Opposition): I'm looking at these very extensive blues from the other place, and a lot of amendments were proposed. They were all rejected. I'm curious as to your openness or your conversations with the government on amendments that could come from this chamber.

The Hon. the Acting Speaker: Senator Petitclerc are you requesting an extra five minutes.

An Hon. Senator: No.

[*Translation*]

Senator Petitclerc: I'd be happy to answer the question, but it's up to my colleagues.

[*English*]

The Hon. the Acting Speaker: Leave was denied, senator, I'm sorry.

Senator Carignan, on debate.

[*Translation*]

Hon. Claude Carignan: Honourable senators, as the official opposition critic for Bill C-7 on medical assistance in dying, I rise today to present a few of my observations and remarks on the matter.

I want to begin by applauding my colleagues on the Standing Senate Committee on Legal and Constitutional Affairs. The committee heard 81 witnesses over five intensive days of hearings in late November. Those witnesses from every corner of Canada shared their very helpful and at times very emotional thoughts on Bill C-7. In my speech, I will provide some background and a brief presentation on the bill. I will then talk about some of the legal aspects that seem problematic to me.

In 2015, in *Carter v. Canada (Attorney General)*, the Supreme Court ruled that the Criminal Code prohibition on assisted suicide was unconstitutional in that the prohibition denied the right to medical assistance in dying to adults with grievous and irremediable conditions that cause enduring suffering that is intolerable.

The court found that the prohibition on assisted suicide violated section 7 of the Canadian Charter because it was overbroad. According to the court, this prohibition went beyond its objective, which was to protect vulnerable persons from being induced to commit suicide at a time of weakness.

In December 2015, the House of Commons and the Senate created a special joint committee to examine the options for a legislative response to *Carter*. In its report, released in February 2016, the committee reminded the government that medical assistance in dying is a complex issue.

[*English*]

However, it's also indicated in this report that the difficulty involved cannot be an excuse to discriminate against people with mental illness. In this respect, the committee is clear on pages 14 and 15 of its report, when it recommends:

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

And it warns the government that:

> The difficulty surrounding these situations is not a justification to discriminate against affected individuals by denying them access to MAID.

[*Translation*]

After receiving the joint committee's report, the federal government passed Bill C-14 in June 2016 in response to the *Carter* decision. That is the legislation that currently governs the right to medical assistance in dying for individuals experiencing enduring and intolerable suffering. Bill C-14 contains important safeguards, such as requiring two independent medical practitioners or nurse practitioners to ensure that the patient's medical situation meets each of the eligibility criteria before obtaining medical assistance in dying.

However, the current Bill C-14 provisions restrict the right to medical assistance in dying to only those whose natural death is reasonably foreseeable, a restriction not referred to in the *Carter* decision. The Senate, you will recall, had expressed its disagreement with that restriction. On June 15, 2016, the Senate passed third reading of Bill C-14 removing the reasonably foreseeable natural death requirement from the text of the bill because of strong concerns raised by senators regarding the constitutionality of denying the right to medical assistance in dying to individuals whose natural death is not reasonably foreseeable. In fact, the result of that Senate amendment placed us in the same legal position as we are today without Bill C-7 and with the *Truchon* decision.

• (2000)

However, the government in the House of Commons rejected the Senate's proposed amendment and the Senate didn't insist. Bill C-14 came into force on June 17, 2016, without this amendment, and what transpired clearly demonstrates that the House of Commons would have had everything to gain from following senators' recommendations.

[*English*]

Indeed, on September 11, 2019, the Quebec Superior Court concluded in its decision concerning Jean Truchon and Nicole Gladu that prohibiting individuals whose natural death is not reasonably foreseeable from access to MAID is unconstitutional. The Attorney General of Canada decided not to appeal the decision.

The *Truchon* decision — written by Justice Baudouin, now a Quebec Court of Appeal judge — has important similarities to the *Carter* judgment. Among other things, the judge concluded that the criterion of "reasonably foreseeable natural death" was over broad and violated section 7 of the Charter, since — and I quote paragraph 573 of the decision:

> . . .
>
> . . . it prevents some people, competent and fully informed, such as Mr. Truchon and Ms. Gladu . . . who express a rational desire to end the suffering caused by their grievous and irremediable condition, from requesting such assistance.

To reach this legal conclusion, Justice Baudouin analyzed, as in the *Carter* judgment, voluminous evidence, including several expert testimonies.

[*Translation*]

Justice Baudouin concluded that the requirement of a reasonably foreseeable natural death under Bill C-14 violates not only section 7 of the Canadian Charter of Rights and Freedoms, but also section 15, which protects the right to equality. Justice Baudouin established that this restriction to the right to medical assistance in dying violates section 15 because it discriminates against certain persons with a disability. By excluding people whose natural death is not reasonably foreseeable, the law deprives them of the right to medical assistance in dying, even in cases like that of Mr. Truchon, who was, and I quote paragraph 681 of the ruling, "fully capable of exercising fundamental choices concerning his life and his death," in the context where he had enduring and intolerable suffering.

Under the current legislation, individuals who are suffering from irremediable health issues and who want to end their lives have three options, which are all tragic. The first option is to continue living against their will until their natural death, suffering through their illness. The second option is to refuse to drink and eat in an attempt to die, which adds to their suffering until their death. The third option is to choose to die in a violent and horrific way, such as throwing themselves in front of a bus, drowning themselves or, and I quote paragraph 30 of the decision, "[buying] a drug on the street and [taking] a lethal dose." These are all of the methods Mr. Truchon considered before he went to court to challenge the constitutionality of denying people whose death is not reasonably foreseeable from accessing medical assistance in dying.

Justice Baudouin pointed out that section 15(1) of the Charter states that laws apply equally to everyone and that they must not discriminate against individuals or groups based on, and I quote, "mental or physical disability." Justice Baudouin stated the following in paragraph 662:

> . . . disability is characterized by a virtually infinite variety that leads to "distinctions drawn between various disabilities."

On November 20, 2020, as we were beginning our pre-study of the bill in the Senate and the House of Commons was in the middle of debating it, the Supreme Court of Canada rendered a very important decision about discrimination against people with mental illness. In paragraph 61 of *Ontario (Attorney General) v. G*, the court indicated, and I quote:

> . . . persons with disabilities are not flawed, nor can they all be painted with the same brush. . . . diversity within those labelled disabled is not the exception but the rule . . . . Section 15's promise of respect for "the equal worth and human dignity of all persons" (*Eldridge*, at para. 54) requires that those with disabilities be considered and treated as worthy and afforded dignity in their plurality.

The recognition of diversity among people who are seriously ill and who have a disability is an important element in Justice Baudouin's legal reasoning. In paragraph 250 of her ruling, she indicates, and I quote:

> Although some of these people appear very vulnerable because of their health conditions, they may nevertheless be fully capable of consenting to receive medical assistance in dying.

Justice Baudouin finds that the reasonably foreseeable natural death requirement created by Bill C-14 is tantamount to saying that all persons with disabilities are vulnerable. It sends the message that the state believes that those with disabilities must be protected from themselves as it does not actually believe that they are truly capable of consenting to medical assistance in dying. According to Justice Baudouin, by perpetuating this stereotype, the criterion of reasonably foreseeable death violates the right to equality established by section 15 of the Charter. In response to *Truchon*, which invalidated the notion of reasonably foreseeable death as found in the federal legislation, and which also invalidated the notion of end of life in Quebec legislation, the Government of Quebec chose not to appeal. It also did not amend its legislation, but instead undertook wide-ranging consultations on offering medical assistance in dying to those suffering from mental illness.

For his part, on February 24, 2020, Minister Lametti introduced a bill in the House of Commons at first reading stage and gave a speech at second reading stage two days later. This bill died on the Order Paper on August 18, 2020, as a result of the government's decision to prorogue Parliament in an attempt to avoid answering many embarrassing questions about a scandal. This prorogation didn't help advance the bill that the

government nevertheless deemed to be necessary to respond to *Truchon*. On October 5, after a six-week voluntary hiatus, the government introduced Bill C-7, which we are now studying.

[*English*]

On December 11, the Attorney General of Canada announced that he requested an additional extension, the third one of the Quebec Superior Court *Truchon* ruling. For the purpose of this speech, I will take for granted that this extension will not be given, since the Attorney General's request has not yet been heard and approved.

[*Translation*]

After deciding not to appeal the *Truchon* decision, the Department of Justice introduced Bill C-7 in response. However, the content of the bill, particularly the exclusion of persons whose sole condition is a mental illness from medical assistance in dying, is not in keeping with the conclusions in *Truchon*. Why the Minister of Justice chose to go this route is beyond me. The bill that's supposed to be the government's response to *Truchon* violates the principles that Justice Baudouin applied in *Truchon*.

Honourable colleagues, let's remember that, by deciding not to appeal the decision, the department is accepting the decision and its conclusions and, as such, that it stands as *res judicata* in Quebec. The proposed exclusion of mental illness in Bill C-7 excludes a large group of people who, despite their health problems, would be perfectly capable of giving informed consent to receive medical assistance in dying.

This situation is a clear violation of Justice Baudouin's conclusions, which I quoted. If the constitutionality of the mental illness exclusion in Bill C-7 is challenged in Quebec courts, the Attorney General of Canada will not be able to convince the courts to hand down a decision contrary to the Superior Court's 2019 ruling in *Truchon*, especially given the more recent Supreme Court of Canada ruling in *Ontario (Attorney General) v. G*, which was handed down barely three weeks ago. Let me make it clear, however, that the *Truchon* ruling applies only in Quebec, not in other provinces, because it was not appealed to the Supreme Court of Canada.

• (2010)

Today the Department of Justice is urging the Senate to pass Bill C-7 despite its obvious legal flaws, arguing that the court's suspension period in *Truchon* expires on December 18 and that, as of that date, the reasonably foreseeable natural death criterion will have no effect, as it is deemed unconstitutional in Quebec. Keep in mind that if Bill C-7 is not passed, the current legislative framework resulting from Bill C-14 will continue to exist. I would even say that it will continue to work, but it will allow people in Quebec whose death is not reasonably foreseeable, including persons whose mental illness is their only health problem, to request medical assistance in dying.

Again, the legal situation in Quebec is identical to what it would have been if the House of Commons had accepted the amendment proposed by the Senate on June 15, 2016. I will repeat that the ruling in *Truchon* applies only to Quebec, meaning that the entirety of the Bill C-14 framework, including the reasonably foreseeable death criterion, continues to apply in the other provinces.

It is patently false to say that there will be a legal vacuum in Quebec if Bill C-7 doesn't pass. If it is not passed, everything else in the Bill C-14 framework will continue to apply in Quebec. For example, requests for MAID will continue to be rigorously evaluated by two independent medical practitioners or nurse practitioners. In addition, the Quebec regime for end-of-life care will also continue to apply.

The strict eligibility criteria set out in the Criminal Code will continue to apply and will allow only adults with very serious medical conditions to obtain medical assistance in dying, that is, only those who suffer from an incurable disease or disability that causes enduring and intolerable suffering and is characterized by an advanced state of irreversible decline in the patient's capability. The Bill C-14 regime also provides, as a safeguard, that the patient must be informed of the means available to relieve their suffering, including palliative care.

Given the strict criteria that must be met in order to obtain medical assistance in dying under the Bill C-14 regime, there is no legal vacuum that would jeopardize the safety of Canadians if Bill C-7 is not passed by December 18. A MAID regime will continue to function in Canada.

In addition to this regime, Quebec's legislation, the Act respecting end-of-life care, continues to apply and to provide protections ensuring that medical assistance in dying is only offered to patients who suffer from a serious and incurable illness and who satisfy the strict conditions set out in section 26 of the Quebec law.

In Quebec, the Attorney General of Quebec, unlike his Canadian counterpart, didn't request for the stay of judgment to be extended past March 11. The Government of Quebec also hasn't amended its act since *Truchon*, which is interesting. This proves that the Government of Quebec is open to the idea that a person who isn't at the end of life could obtain medical assistance in dying, even if their only health problem is a mental health issue. Even worse, if Bill C-7 is adopted in its current form, the federal government is restricting the application of medical assistance in dying in Quebec and is requiring the Quebec government to review its legislation and prohibit medical assistance in dying when the patient's only health issue is a serious mental health illness.

After this brief overview of the state of the law, let's now examine the content of Bill C-7.

Bill C-7 removes the "reasonably foreseeable death" criterion as a condition for accessing MAID, but it adds an exclusion for mental illness, which covers a broad spectrum, given that the term "mental illness" is not defined in the bill.

I remind senators that the "reasonably foreseeable death" criterion was widely criticized for being vague and unclear, with no real medical justification. Nevertheless, the government decided to maintain this criterion in Bill C-7 in order to create a new way to access MAID for individuals whose natural death is not reasonably foreseeable.

There are some additional safeguards in these types of cases. There is a minimum 90-day period between the date that the assessment of a MAID request begins and the date that the request could be carried out. Some witnesses, such as lawyer Jean-Pierre Ménard, said that this waiting period is much too long and forces people in intolerable pain to needlessly suffer longer. Mr. Ménard said the following in his testimony on November 25:

> I would argue that it is a dangerous principle because it creates two categories of citizens: those who can have straightforward access to medical assistance in dying and those who don't have the right to immediate access because of a series of formalities to be followed. It treats those whose death is not foreseeable as vulnerable, which is not the case. It doesn't factor in their circumstances.
>
> Once there are criteria for reasonably foreseeable death, it puts citizens on the same footing, shifting responsibility to physicians for determining the circumstances and deciding which patient requests should be acted upon. The 90-day waiting period attached to this is unacceptable; it's as if we wanted to punish people for having requested medical assistance in dying when most of them have been thinking about it for a long time. An additional 90 days of suffering is completely useless and pointless.

In contrast, other witnesses felt that this 90-day waiting period was much too short. They gave the example of victims of serious accidents that left them paraplegic or quadriplegic. The first few months after such an accident are extremely distressing. It generally takes several months, if not years, for someone in that situation to fully come to terms with what happened and accept it. The fact that this bill opens the door to medical assistance in dying for people with disabilities and provides for such a short waiting period of 90 days between the beginning of the assessment and the administration of the procedure has many people worried.

[*English*]

Another amendment proposed in Bill C-7 is the removal of the 10-day period between the moment when an individual makes a request for medical assistance in dying and the moment when the assistance is provided. This delay, introduced in Bill C-14, applied to people whose natural death is reasonably foreseeable.

Removing this delay has caused concern among witnesses heard by the Senate committee. Some presented that the delay was unreasonable and unduly prolonged the suffering of an individual who has chosen MAID. Other witnesses told us that this delay was important because it provided the person with time to reflect and, in some cases, individuals could change their minds during this period. However, these statements were not really supported by valid data, according to some witnesses.

[*Translation*]

Bill C-7 also establishes that only one witness is required to sign a patient's MAID request, instead of the two witnesses required under Bill C-14. Bill C-7 also allows individuals who are paid to care for the patient to act as witnesses.

Bill C-7 also gives people at the end of life the option to sign a waiver of final consent to MAID. Under Bill C-14, the practitioner administering a substance to the individual to cause their death must ask them immediately before administering it if they still consent to MAID. Under Bill C-7, the person requesting MAID can sign a waiver of final consent in advance. This is possible provided that a number of strict conditions set out in the bill are met. Specifically, the patient must have entered into an arrangement in writing with the practitioner for a substance to be administered to cause their death on a specified day and the patient must no longer have the capacity to consent on that day.

However, honourable colleagues, I would like to draw your attention to this specific point. Just before the practitioner administers the procedure, if the person demonstrates refusal by words, sounds or gestures or resists the administration of the substance in any way, the practitioner must immediately halt the procedure.

• (2020)

Furthermore, the Department of Justice saw fit to add the following to the bill, and I quote:

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

Frankly, honourable colleagues, I wouldn't want to be the doctor who has to apply that rule. It remains a matter of interpretation; however, how can anyone be certain whether a gesture, movement or sound is voluntary or involuntary and whether it constitutes a waiver of consent to the administration of medical assistance in dying?

I have outlined for you the main changes in Bill C-7. We heard from a number of witnesses who expressed their concerns and worries about this bill. In fact, of all the witnesses we heard from during the pre-study of this bill — there were more than 80 — only two witnesses were entirely in favour of this bill, and they were the two government ministers involved in its drafting, Minister Lametti and Minister Hajdu. Those ministers did, however, invite us to modify the definition of the term "mental health." Minister Qualtrough, meanwhile, was visibly uncomfortable.

Honourable senators, while the Liberal government is pressuring us to adopt a bill to allow more people to receive medical assistance in dying, it is extremely worrisome that during the hearings at the Standing Senate Committee on Legal and Constitutional Affairs, several stakeholders deplored the underfunding and limited accessibility of services that can improve the quality of life of persons likely to be eligible for medical assistance in dying. I am thinking about home support services for people who are sick or have disabilities and about

palliative care, especially when we know that before MAID is administered, health professionals have to notify patients of the other options available to them.

In the brief she submitted to the Standing Senate Committee on Legal and Constitutional Affairs, professor and physician Romayne Gallagher rightly notes, and I quote:

> Good quality palliative care provides escalating therapy for symptoms that do not respond to basic treatment. . . . This kind of care has been shown to reduce symptoms of depression, improve the quality of life, and sometimes lengthens life. The earlier the intervention the better the prevention of suffering, distress and despair.

According to the data interpreted by Dr. Gallagher in her brief, a proportion of patients in Canada who received medical assistance in dying in 2019, and I quote:

> . . . had absolutely no access to palliative care. . . .

I asked the Minister of Health about these pressing needs and the federal government's underfunding of palliative care, and I presented some related statistics when she appeared before the Legal Affairs Committee on November 25. The minister was not able to give me a compelling answer to fix this problem. The statistics I cited show that federal funding is woefully inadequate to meet palliative care needs, particularly in British Columbia, Manitoba and Alberta. In fact, funding is inadequate in every province.

The committee's hearings once again exposed the difficulties that Indigenous people experience accessing health care, especially palliative care, home care for persons with disabilities in their own communities, and, in particular, in rural or remote regions. Minister Lametti readily acknowledged in his testimony on November 23 that these individuals face systemic discrimination in the health care system.

I want to use my remaining time to discuss the obvious constitutional weaknesses of two key measures in the bill. The first is the exclusion of mental illness, and the second has to do with the 90-day waiting period to access MAID required for patients who are not at end of life.

The exclusion of mental illness set out in Bill C-7 deprives a large category of people, people who are suffering from mental illness, from any right to medical assistance in dying without taking into account the unique personal circumstances of each individual in that group. That situation goes against the factual finding of Justice Baudouin set out in paragraph 466, which establishes the following, and I quote:

> The physicians involved are able to assess the patients' capacity to consent and identify signs of ambivalence, mental disorders affecting or likely to affect the decision-making process. . . .

The Minister of Justice contradicted the judge's finding when he stated in his February 26, 2020, speech before the House of Commons that the exclusion of mental illness was necessary. He said, and I quote:

> . . . the trajectory of mental illness is more difficult to predict than that of most physical illnesses. This means that there is a greater risk of providing medical assistance in dying to people whose condition could improve. It is also more difficult to carry out competency assessments for individuals with a mental illness. In the case of some mental illnesses, the desire to die is itself a symptom of the illness, which makes it particularly difficult to determine whether the individual's request is truly voluntary.

The Minister of Justice's arguments in favour of the need to exclude mental illness in Bill C-7 were refuted by witnesses who appeared before the committee, including Dr. Jeffrey Kirby. The arguments also go against the conclusion in paragraph 406 of *Truchon*, which reads as follows:

> . . . the issue of psychiatric illnesses as the sole condition granting access to a request for medical assistance in dying is but one facet of the reality of people who might request medical assistance in dying. The Attorney General is mistaken on the importance to be assigned to the issue of the presence of psychiatric illnesses under the legislative provisions currently in force, because the Attorney General confuses the person's capacity to consent with the presence of a diagnosed mental illness. . . . the overwhelming evidence, on a balance of probabilities, does not at this time raise any doubt as to the quality of the process for assessing the capacity of a patient who has requested medical assistance in dying in Canada, whether or not the patient is suffering from a psychiatric condition.

[*English*]

Furthermore, should the court conclude that excluding mental illness is in violation of the Charter of Rights, the Minister of Justice made a very weak argument, it seems to me, to justify these violations under section 1 of the Charter. The minister stated in his speech on November 3, 2020, before a House committee that this exclusion:

> . . . gives Parliament more time to reflect on this complex question, which is fraught with serious risks, to determine whether it is possible to craft a safe MAID regime for this category of persons. . . .

The minister reiterated this argument after his speech when Senator Dasko asked the minister if he thought that the exclusion of mental illness complied with section 1.

[*Translation*]

As I publicly said to the minister in our committee deliberations, this justification will not stand up in court for long. I find it unacceptable that a huge burden is being placed on people who are seriously ill or have serious disabilities by forcing them to once again go to court to challenge the constitutionality of a law that infringes on their rights. The Canadian Charter of Rights and Freedoms serves, among other

things, to protect minorities and vulnerable persons. I believe that this principle will be violated by the passage of legislation with such obvious constitutional weaknesses because the government needs more time to conduct consultations and surveys that it should have done long ago.

I mentioned earlier that in the *Truchon* and *Carter* decisions, a Criminal Code prohibition restricting medical assistance in dying was found to violate section 7 because of the overbreadth of the prohibition. It is clear to me that the exclusion in Bill C-7 of mental illness, which includes a broad spectrum of different individuals, is overly broad since it applies to patients whose physicians are able to properly assess whether their consent to medical assistance in dying is informed.

I would add that in her analysis of section 7 and section 1, Justice Baudouin rejected the Attorney General's argument that the reasonably foreseeable natural death criterion is justified for preventing physicians' errors in assessing patient consent. In paragraph 636 of her ruling, the judge concludes that:

> . . . the legislative regime in place is fully able, even without the challenged requirement, of screening and identifying persons who do not meet the other eligibility criteria, such as incompetent or suicidal persons.

• (2030)

The mental illness exclusion in Bill C-7 also derogates from the rights to equality protected under section 15 of the Charter. Here I am relying on the Supreme Court ruling in *Ontario (Attorney General) v. G* that I mentioned earlier. In that ruling, the court found a Criminal Code rule unconstitutional on the ground that it was discriminatory toward persons found not criminally responsible on account of mental disorder. This Criminal Code rule denies some of these people the opportunity to not be required to provide personal information to the police to be entered into the National Sex Offender Registry and the opportunity to have that information removed from the registry after a certain period of time.

[*English*]

The *G* decision is a reminder that a rule of law violates section 15 if, on one hand, it treats those who have a mental disability differently from those who do not, and if, on the other hand, this different treatment perpetuates discriminatory perceptions or imposes an unjustified prejudice on people with mental illness.

[*Translation*]

The mental illness exclusion provided for in Bill C-7 explicitly establishes a distinction based on the fact that an individual has a mental illness. If this exclusion comes into force, a person whose sole condition is a serious and incurable mental illness that causes enduring and intolerable suffering and results in an irreversible decline in capability will be deprived of any right to medical assistance in dying, even if two independent medical practitioners or nurse practitioners decide that the individual has the capacity to provide informed consent. By contrast, a person suffering from a physical illness of the same severity, who is not affected by the exclusion provided for in Bill C-7, could have the right to medical assistance in dying.

The exclusion set out in Bill C-7 explicitly creates a distinction that puts people suffering from mental illness at a disadvantage by depriving them of an advantage, that of obtaining medical assistance in dying. Furthermore, this exclusion perpetuates the prejudice that, generally speaking, people with a mental disability are not capable of giving informed consent to make crucial decisions about their lives, such as deciding to use medical assistance in dying to put an end to intolerable and irremediable suffering.

I think it is very troubling that someone whose physical state is deteriorating but whose mental state remains good is eligible for MAID, while someone with a degenerative disease like Alzheimer's, which attacks a person's brain before their physical state deteriorates, is not eligible.

[*English*]

I will conclude my speech by saying a few words about the 90-day waiting period that, if adopted, would delay medical assistance in dying for people whose death is not foreseeable. This delay seems to be in violation of section 7 of the Charter. As in the case of the exclusion of mental illness, this delay is too broad since it can force an individual to live, against their will, another 90 days of intolerable suffering, even if they could be fully capable of consenting to MAID.

[*Translation*]

The government could have gone with a waiting period of less than 90 days, which would be less harmful. It could also have included an exemption to this waiting period for individuals who have thought through their decision to request MAID and who can also show that this 90-day waiting period is causing them extreme suffering, even after exhausting all possible care options.

If a court were to find that the 90-day deadline violates section 7, the government would have a much harder time justifying this violation by invoking section 1. The Supreme Court of Canada, in a number of decisions, including *Carter*, affirmed that it was difficult to justify a violation of section 7 by invoking section 1.

In addition, the Quebec bar has said that the 90-day waiting period is, and I quote, "questionable given that it does not appear to be based on any empirical data or objective justification." This quote is from the brief that the Quebec bar presented to the Standing Committee on Justice and Human Rights on October 29, 2020.

In closing, I believe that some aspects of Bill C-7 are unconstitutional because they violate sections 7 and 15 of the Charter by denying or delaying access to medical assistance in dying for certain categories of patients, even in cases where the patient is able to give informed consent and is enduring extreme and unappeasable suffering. I believe that these measures go against the teachings of the Quebec Superior Court in *Truchon* and the Supreme Court of Canada in *Carter* and in *Ontario (Attorney General) v. G*.

Thank you.

[*English*]

Hon. Peter Harder: Honourable senators, I rise to add my voice to the debate on Bill C-7.

I have and will continue to listen carefully to colleagues, and recognize that this is a deeply personal issue for many, whether because of individual experiences or profoundly held beliefs. I respect these views and do not doubt the sincerity of any senator.

Bill C-7, however, is legislation passed by the other place, requiring our review and consent before it can come into effect. It is before us as a result of the Quebec Superior Court decision overturning certain provisions of Bill C-14, based on their constitutionality. Bill C-7 is a response to the *Truchon* decision in Quebec. Bill C-7 is not a relitigation of Bill C-14, passed in 2016.

I agree with colleagues that the time given us has been unreasonable, and there is blame enough to go around. A global pandemic, a shift in government policies and priorities as a result, a prorogation to reset and filibustering in the other place does not help matters. But this is the hand we have been dealt, and we are perfectly able to deal with this bill and perform our constitutional duties.

First, Bill C-7, is not new government policy or priority. It is a response to a judicial decision and must be respected as such. For those of you who suggest that the government should have appealed the Quebec Superior Court decision and allow the Supreme Court to make a final ruling, a position with which I have some personal sympathy, I remind you that the joint parliamentary committee and this chamber — as Senator Carignan suggested on June 11, 2016 — pointed out the likely unconstitutionality of "a reasonable and foreseeable natural death."

An amendment was passed in the Senate to that effect and was subsequently rejected by the other place. The Senate then acquiesced to the decision of the elected members — as it should. To suggest that the bill be shelved or defeated is, quite frankly, not the job of this chamber.

Second, Bill C-7 is not a relitigation of Bill C-14. MAID is the law of the land. The issue of constitutionality to the limit of reasonable and foreseeable natural death in the context of a MAID request has been decided. It is unconstitutional.

To deny that same request to an individual who is suffering from a prolonged and irremediable illness is now permitted in the province of Quebec. The only question before us is whether this same request may be made by Canadians suffering from a prolonged and irremediable illness in the rest of Canada.

We have heard concerns expressed by advocates for the disabled that Bill C-7 will open the door to MAID for those whose underlying reasons for their requests are due to their circumstances or lack of support, because of government failings. Lack of financial support, adequate housing or access to home care and palliative care are valid concerns for those managing life with a disability. These are also questions that constitutionally fall under the jurisdiction of the provincial governments, such as governance of the medical practice. Bill C-7 does not address any of these issues; they are out of scope.

• (2040)

Provinces are taking up the matter, however. A new bill dealing squarely with palliative care, the Compassionate Care Act, was passed two weeks ago with all-party support in my province of Ontario. The purpose of the legislation is to oblige the Minister of Health to develop a provincial framework designed to support improved access to palliative care provided through hospitals, home care, long-term homes and hospices. This underscores that it is a matter for provincial jurisdiction, with the federal government playing an important collaborative role. COVID may be the motivation for this provincial legislation, but it is a step forward for the disabled and those requiring assistance to live their lives to the fullest.

What Bill C-7 does is provide safeguards for those applying for MAID but whose death is not imminently foreseeable. The bigger concern for disability advocates right now should be the fact that the safeguards of a 90-day waiting period will not be in place in the province of Quebec as of December 19 should the courts not grant the government's request for an extension to February 26, or Parliament fails to enact the bill before that date.

I am in favour of, where possible, providing as much support as needed to those who require assistance in order to live their lives. I also support the choices made by competent adults who have reached a point where the suffering they endure has become so intolerable and determined irremediable that, after much thought and prayer, they have decided to request an assessment for MAID. I would like to quote from paragraph 680 of Justice Baudouin's decision:

> The legislator's connection between the reasonably foreseeable natural death requirement and the vulnerability of all persons with disabilities betrays, with respect, a paternalistic view of individuals as plaintiffs. Because of their disabilities, the state considers implausible . . . that these people can give a valid consent to medical assistance to die, autonomy being necessarily compromised by their vulnerability . . . .

The disability rights communities have fought long and hard for equality. Being limited physically does not preclude an individual's entitlement to make the same choices being afforded to those who are in similar straits but whose death is more predictable. Bill C-7 is righting a paternalistic wrong as argued by the plaintiffs in *Truchon*, and by delaying this bill the Senate is effectively asking competent adults to suffer longer or wait until their disease brings them closer to death.

As for the exclusion of MAID access to those whose sole underlying medical condition is mental illness, I agree with comments made in the chamber by Senator Gold. Without consensus within the psychiatric community itself, it is obvious that this issue needs far more reflection and study. Unless and until experts in the field are able to reach some form of agreement, I suggest that this question be taken up during the review process.

Bill C-14 mandated a five-year review to start in June 2020. While I regret that this provision has not proceeded in the time frame mandated in law, the Minister of Justice and the Minister of Health, in testimony at committee, have stated that this review will begin quickly. From my perspective, I would be in favour of such a being review undertaken by this chamber. We have the skill set, the experience and the institutional memory now of five years to take on this difficult subject.

Regardless of future political winds or fortune, Senate members of such a review committee could continue on with their analysis and report back with results and recommendations. The information obtained by this committee would be an important tool for the government going forward in formulating policy priorities on this sensitive subject.

Bill C-7 was passed in the other place by an overwhelming majority of duly elected MPs from five parties. This is not the result of a majority Parliament whipping its 212 members in order to have a controversial bill pass with limited hearing or debate. I hope colleagues will recognize the significance of Bill C-7 arriving in the Senate during a minority House of Commons.

As a result, I will not vote in favour of amendments that would in any way alter the provisions of Bill C-7 or delay or prohibit its passage. The safeguards in the bill are necessary for those accessing MAID in Quebec, and Canadians in the rest of the country should not have their suffering prolonged because this chamber was unable to finalize legislation that was passed by an overwhelming majority of their duly elected representatives.

Bill C-7 is about respect for choice and autonomy. Justice Baudouin ruled that MAID, as written, discriminated against people with disabilities who are not near death. The bill before us corrects that error and offers the right choice to all Canadians and respect for the choices made by competent individuals who wish to die with dignity.

I have an enormous amount of respect for Sue Rodriguez, Kay Carter, Gloria Taylor, Jean Truchon and Nicole Gladu who fought courageously for their right to choose and who paved the way in allowing these same rights for all Canadians in difficult and similar circumstances. Let us honour them by deliberating, debating and passing this legislation expeditiously. It is my hope that we can send Bill C-7 to committee before we rise for the Christmas break and return to finalize deliberations immediately on our return, so that we can meet the obligation to finish this legislation in mid-February.

Some Hon. Senators: Hear, hear.

Senator Plett: Would Senator Harder take a question from a fellow Mennonite?

Senator Harder: I would indeed, even from a relative.

Senator Plett: Thank you. Senator Harder, I would like to go over some timelines. I went over them in three and a half minutes. I'll try to do this a little faster than the three and a half minutes.

In September of 2019, the Quebec Superior Court struck down the clause that death must be reasonably foreseeable. Minister Lametti did not appeal that decision. Prime Minister Trudeau asked for an extension, and the court gave the government until March 20 to revise the law: six whole months. Minister Lametti and Minister Hajdu tabled Bill C-7 in the last week of February, as they were already running out of time. They asked the court for a four-month extension to July 20. This letter said that the extension would "give Parliament time to consider and enact proposed amendments." This extension was granted.

As we got closer to July, the government asked for another extension, this time a six-month extension, citing the pandemic. This extension was granted: the new deadline is December 18, 2020.

The government then prorogued Parliament to cover up its own scandal, but that's a topic for another day. After Parliament returned, it took them a week and a half to table identical legislation. They had killed their own bill. This happened on October 5, 2020 — more than two months ago. They sent this bill to the Senate late last week.

All of these things happened. The government sets the legislative agenda, and yet your biggest criticism of why this took so long for us to get here, when it was not being debated, is because of a filibuster.

I watched the debate in the House, Senator Harder, and I thought it was very respectful. I really believe that, as in this chamber, members of the House of Commons had the right to put their concerns on the record. They were given very little time. The government could have called this much earlier, but they didn't.

I'm asking a question; trust me. This time Senator Housakos is in the chair, and he'll remind me.

The Hon. the Acting Speaker: Order, please. I just want to highlight to colleagues that, in debate, senators have the right to ask questions. The time frame is not similar to what you would have in Question Period. I want to remind all colleagues in the chamber that, in debate, we're working at the pleasure of the person on debate, which happens to be Senator Harder. It also is the most important opportunity to engage in debate and have an exchange of ideas in this particular sequence as a chamber, so the chair always has the ability to give latitude to both the speaker on debate and the senator who is participating on debate in these circumstances.

Senator Plett, you have the floor.

Senator Plett: Thank you, Your Honour. I will now be brief.

Senator Harder, how is filibustering respectful debate, and why was that your main reason for the bill being stalled when it has taken 16 months to get here and less than one week of debate?

• (2050)

Senator Harder: I thank the senator for the repeat of an earlier question, although in an elongated form. Let me just repeat what I said: I did say "filibuster" after I itemized five other measures that had caused delay. I didn't see the senator dispute any of those. He just disputed the one that his leader instigated in the other chamber. Let me simply say, colleagues, that we have the time necessary to have a deliberative debate, to review this legislation and benefit from the pre-study that has already taken place, and let's get on with it and do what the Senate does best, which is to reflect on the legislation that we have.

I would also argue, as I tried in my speech to suggest, that legislation of this nature in a minority House of Commons has, in my view, a stronger deference obligation on our part, as I hope it would on the honourable senators.

Senator Plett: I don't know whether you listened to our leader's speech which he made in the other place, but he said that we — the Conservative Party of Canada — will stand up for the vulnerable. We will stand up for the disabled, we will stand up for the Indigenous communities, and we will debate this 24 hours a day, seven days a week if we have to because we stand up for the people who are suffering, the vulnerable.

Where, Senator Harder — I want an answer — where is that filibustering? I think that's respectful debate, and somebody should stand up for them because this government is not.

Senator Harder: Let me repeat yet again that the joy the senator gets in discussing the filibuster in the other place is a great disguise for not engaging on the constitutional issues that his colleague raised just before me.

The Hon. the Acting Speaker: We have a question from Senator Dupuis, if Senator Harder would accept it.

Your time has run out, Senator Harder. Would you like five more minutes to take more questions?

Senator Harder: I will leave it in the hands of the chamber.

The Hon. the Acting Speaker: Is leave granted for five more minutes?

Hon. Senators: Agreed.

[*Translation*]

Hon. Renée Dupuis: Thank you for your comments, Senator Harder. I see that you care about Quebec patients who are suffering intolerably. My question is this. Did I understand correctly that you think we need to vote in favour of Bill C-7 so as not to leave Quebec patients in a sort of legal vacuum?

[*English*]

Senator Harder: Senator, I tried to describe how I saw the legislation, and the legislation is a considered response by the House of Commons to the obligations the government had and the House of Commons has undertaken to respond to the court judgment.

My comments with respect to amendments in this place were to underscore my respect for the balance that the House of Commons has undertaken and that they themselves have shared, and that I would share as well, and their concerns that the vulnerable be protected and that the legislation be proceeded with in an expeditious fashion.

[*Translation*]

Senator Dupuis: Senator Harder, I invite you to read the report of the Quebec commission on end-of-life care, which was released in April 2019 and covers the period from 2015 to 2018. In this report, the commission indicates that the introduction of the federal act, and therefore of the amendment to the Criminal Code to respond to *Carter*, created an extremely difficult and complex situation for physicians offering medical assistance in dying in Quebec. In other words, we are living with two systems, including the Quebec system, which is very specific and contains every protective measure required for patients. However, given the legislation that was invalidated by *Truchon*, the Quebec system is now facing a situation of legal conflict.

[*English*]

Senator Harder: I thank the honourable senator for her question. This was an issue that we also debated in the course of Bill C-14 because Bill C-14 came at us in that context, and it was ultimately the decision of this chamber and Parliament to introduce the regime of Bill C-14, which has allowed Canada to lead in the legislative framework for medical assistance in dying. And it isn't perfect. It wasn't expected to be perfect. It intended to learn from the experience of implementation and also to reserve for future deliberate study a number of very difficult issues, some of which have been raised in the chamber today, and some of which were raised in the pre-study.

(On motion of Senator Kutcher, debate adjourned.)

(*At 8:57 p.m., pursuant to the order adopted by the Senate on October 27, 2020, the Senate adjourned until 2 p.m., tomorrow*.)

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