As a third example, we're familiar with Senator Audette's work as a Commissioner on the National Inquiry into Missing and Murdered Indigenous Women and Girls and their Calls for Justice. We are grateful for the work of the Indigenous Peoples Committee in helping to hold the government to account in answering those Calls through their June report, *Not Enough: All Words and No Action on MMIWG.*

• (2020)

I acknowledge the committee's conclusion that their ongoing vigilance can help answer Calls for Justice 1.7, respecting a National Indigenous Human Rights Ombudsperson and Tribunal, and 1.10, respecting an independent annual reporting mechanism to Parliament.

Senators, in giving Indigenous women legislative focus through Bill S-218, we also acknowledge their distinct legal situation by virtue of section 35 constitutional rights, as well as UNDRIP, set for implementation by way of action plan. Articles 21 and 22 of UNDRIP provide that:

> Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

As UNDRIP becomes federal law, this principle requires legislative attention, as proposed by Bill S-218.

To conclude, government, Parliament and Canadians must do more to approach public policy through a gender and reconciliation lens. We must do more to build a better society for all women, including Indigenous women. This legislation will help. Colleagues, I ask you to join me in supporting Bill S-218 for swift passage to committee. Thank you, *hiy kitatamîhin*.

(On motion of Senator Housakos, for Senator Martin, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Wallin, seconded by the Honourable Senator Tannas, for the second reading of Bill S-248, An Act to amend the Criminal Code (medical assistance in dying).

Hon. Judith G. Seidman: Honourable senators, I rise today in support of Bill S-248, An Act to amend the Criminal Code (medical assistance in dying). I would like to thank Senator Wallin for her passionate and vocal support of advance requests for medical assistance in dying; patient autonomy always has been and remains at the heart of her advocacy.

The objective of Bill S-248 is twofold. It amends the Criminal Code to permit an individual whose death is not reasonably foreseeable to enter into a written agreement to receive medical assistance in dying, or MAID, on a specified day if they lose capacity to consent prior to that day; and to permit an individual who has been diagnosed with a serious and incurable illness, disease or disability to make a written declaration to waive the requirement for final consent when receiving MAID if they lose capacity to consent, are suffering from symptoms outlined in the written declaration and have met all other relevant safeguards outlined in the Criminal Code.

Some of you may wonder whether the introduction of Bill S-248 is premature, given that the new Special Joint Committee on Medical Assistance in Dying was established in March of 2022 and has only completed a portion of its mandate thus far. The committee tabled its first report entitled *Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report* in June 2022. However, I will argue that this bill is not premature; on the contrary, our work is past due, and it is time for us to catch up.

I will bring your attention to three documents that can guide our work: the November 2015 *Final Report* of the Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying, the February 2016 report of the Special Joint Committee on Physician-Assisted Dying entitled *Medical Assistance in Dying: A Patient-Centred Approach* and the 2018 report of The Expert Panel Working Group on Advance Requests for MAID assembled by the Council of Canadian Academies entitled *The State of Knowledge on Advance Requests for Medical Assistance in Dying*. We have the information that we need to act. Now we must have the courage to do so.

The first report for us to consider is that of the Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying. In February 2015, in their ruling in *Carter v. Canada*, the Supreme Court of Canada concluded that the absolute prohibition of MAID defied sections of the Canadian Charter of Rights and Freedoms that protect an individual's right to life, liberty and security. The court determined that it was the responsibility of Parliament and provincial legislators to establish a national legal and regulatory regime for MAID. As the court wrote, "Complex regulatory regimes are better created by Parliament than by the courts."

The Provincial-Territorial Expert Advisory Group was therefore formed to provide non-binding advice to provincial and territorial ministers of health and justice in 11 participating provinces and territories on a pan-Canadian approach to physician-assisted dying. The group's members had professional expertise regarding relevant clinical, legal and ethical issues. The group issued their *Final Report* in November 2015 and made 43 recommendations in total.

Recommendations 12 and 13 concern the timing of completion of a patient declaration form for a request for MAID. The group considered four possibilities regarding the timing of a request and determined that physician-assisted dying should be permitted in the following three scenarios where:

> a) the patient is competent at all times from the initial request to the moment of provision of assistance;

> b) . . . the patient lost competence between the completion of the . . . form and the provision of assistance; or
>
> c) . . . the patient lost competence between the completion of the . . . form and the onset of the enduring intolerable suffering.

The second report for us to consider is that of the Special Joint Committee on Physician-Assisted Dying. In December of 2015, both houses of Parliament established the special joint committee whose purpose was to review existing consultations and reports on assisted dying, consult with Canadians and relevant experts and make recommendations to the federal government for a national framework on MAID.

As one of the 5 senators and 11 MPs of this committee, I can speak to the seriousness with which we conducted our work. Over the course of five weeks in January and February 2016, our committee received over 100 submissions and heard thoughtful and valuable testimony from 61 witnesses who had rich knowledge and expertise in the fields of law, medicine and ethics.

As legislators, we were asked to propose a framework on MAID that both respected the autonomy and dignity of individuals who suffer from a grievous and irremediable medical condition and protected some of society's most vulnerable individuals.

In February of 2016, the special joint committee tabled its report titled *Medical Assistance in Dying: A Patient-Centred Approach*, which made 21 recommendations, including eligibility requirements and procedural safeguards.

A few months later, in June of 2016, the federal government presented Bill C-14 — Canada's first-ever legal framework for MAID — which reflected some but certainly not all the recommendations made by the special joint committee.

One noticeable omission from Bill C-14 was Recommendation 7, which stated:

> That the permission to use advance requests for medical assistance in dying be allowed any time after one is diagnosed with a condition that is reasonably likely to cause loss of competence or after a diagnosis of a grievous or irremediable condition but before the suffering becomes intolerable.

During our hearings, Professor Jocelyn Downie of the Faculties of Law and Medicine at Dalhousie University suggested the following requirements for advance directives:

> . . . at the time of the request, the patient must have a grievous and irremediable condition and be competent, and at the time of the provision of assistance, the patient must still have a grievous and irremediable condition and be experiencing intolerable suffering by the standards set by the patient at the time or prior to losing capacity.

• (2030)

Ms. Linda Jarrett, a member of the Disability Advisory Council at Dying With Dignity Canada, told us:

> The members of our council believe that as with other major life-ending decisions, we should have the ability to make our decisions known now when we are competent and hopefully have them carried out later when possibly we will not be.

Honourable senators, I include these quotes from the report to further demonstrate that Senator Wallin's proposal isn't new; this recommendation was made to our special joint committee by many witnesses over six years ago. The report and witness testimony are easily available on the special joint committee's website.

The third document we have access to is the report from the Expert Panel Working Group on Advance Requests for MAID.

Now, I might remind you, for those of you who were in this chamber when we debated Bill C-14, that bill mandated an independent review within two years of three outstanding and complex issues: one, MAID for mature minors; two, advance requests for MAID; and three, requests for MAID where mental illness is the sole underlying condition. To fulfill the mandate of independent review, the Government of Canada requested that the Council of Canadian Academies, or CCA, assemble a multidisciplinary panel of 43 experts from Canada and abroad to study and address these three topics.

The overall panel was chaired by the Honourable Marie Deschamps, former justice of the Supreme Court of Canada and adjunct professor at McGill University and Université de Sherbrooke. The panel's working group on advance requests was chaired by Associate Professor Jennifer Gibson, Sun Life Financial Chair in Bioethics and Director at the University of Toronto's Joint Centre for Bioethics. It was composed of many well-known experts in the fields of bioethics, law, aging, relevant health care professions and Indigenous knowledge, including Dr. Alika Lafontaine, Professor Trudo Lemmens, Professor Emerita Dorothy Pringle and Dr. Samir Sinha.

In December of 2018, the CCA released three final reports of the expert panel. In the summary of their reports, the expert panel noted that:

> Key drivers for creating an AR for MAID are the desire to have control over one's end of life and the desire to avoid intolerable suffering. For people who wish to receive MAID, the knowledge that they could lose decision-making capacity and thus become ineligible for MAID is a source of fear.

They also observed that the primary risk involved with advance requests for MAID is that an individual may receive an assisted death against their wishes, but they asserted that several safeguards can be implemented to circumvent potential risks or vulnerabilities.

The Expert Panel Working Group on Advance Requests for MAID report entitled *The State of Knowledge on Advance Requests for Medical Assistance in Dying* consists of five substantive chapters: "MAID in Canada: Historical and Current Considerations;" "Advance Requests for MAID: Context and Concepts;" "Issues and Uncertainties Surrounding Advance Requests for MAID: Three Scenarios;" "Evidence from Related Practices in Canada and Abroad;" and "Allowing or Prohibiting Advance Requests for MAID: Considerations."

Although it was not within the scope of the expert panel or its working group to provide recommendations to government, the report does offer important insights, including potential safeguards for advance requests for MAID, and these include systems-level safeguards, legal safeguards, clinical process safeguards, support for health care practitioners and support for patients and families.

Honourable senators, these reports by the expert panel were meant to inform our understanding and guide our work as legislators, and they have yet to be subjected to a review by a parliamentary committee as originally intended in Bill C-14. Our work is long past due.

Today, the Criminal Code laws governing MAID establish two sets of safeguards: one for those whose natural death is reasonably foreseeable and one for those whose death is not reasonably foreseeable.

Individuals who make a voluntary written request to receive MAID must have a grievous and irremediable medical condition, and they must also be mentally competent, free from external influences and be able to give informed consent.

If an individual's death is reasonably foreseeable, they may be allowed to waive the requirement for final consent if, when they were assessed and approved to receive MAID, they possessed decision-making capacity.

Most notably, an individual must have a written arrangement with their practitioner in which the person gives consent in advance to receive MAID on their preferred date if they no longer have the capacity to consent on that date.

In essence, Bill S-248 extends what the law already permits. It will allow all individuals who suffer from a grievous and irremediable medical condition to waive the requirement for final consent and to receive MAID on a specified day or at the onset of the symptoms outlined in their written declaration.

Honourable colleagues, respected experts have been advising policy-makers since 2015 to allow for advance requests, but they have been ignored. If we continue to wait for government action, it may be years before we see any proposed legislative change. As a result, when Canadians are at their most vulnerable, they will experience unnecessary and undesired suffering, unable to exercise their personal autonomy and direct their end-of-life journey. We have at our disposal excellent evidence on how best to proceed. It's time we consider it. I hope you will join me in voting to send this bill to committee. Thank you.

(On motion of Senator Housakos, debate adjourned.)

CRIMINAL CODE

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Kutcher, seconded by the Honourable Senator Boehm, for the second reading of Bill S-251, An Act to repeal section 43 of the Criminal Code (Truth and Reconciliation Commission of Canada's call to action number 6).

Hon. Rosemary Moodie: Honourable senators, one of the central roles of our Senate is being a voice for the voiceless and representing the groups who lack meaningful representation in our political discourse. Bill S-251 fits well within this mission on three fronts. It simultaneously addresses, first, a long-standing concern within Canadian communities; second, a Call to Action from the Truth and Reconciliation Commission's final report; and third, it's an important step towards fulfilling all international human rights commitments.

I'll start by saying I strongly favour this bill and urge us to ensure it receives due consideration in committee, where the voices of Canadians — especially Canadian children — can be heard.

Colleagues, it is well past time to repeal section 43 of the Criminal Code. I want to commend our colleague Senator Kutcher for putting this bill forward because, colleagues, this bill has come before us in many iterations in the past decade. But the truth is that, as we all know, perseverance and persistence are always necessary for real change to happen. For this crucial issue, it is time for us to bring it back for renewed consideration in today's context, recognizing again Canadians' concerns, the need to definitively respond to the Truth and Reconciliation Commission and to fulfill our international commitments.

A few years ago, we hosted a virtual celebration for the Honourable Landon Pearson's ninetieth birthday and during that discussion she said something I knew and you know, but she communicated it in a fresh and simple way when she said, "Parents don't have rights. They have responsibilities. Parents don't have rights. Children have rights. Parents have responsibilities."

I'm strongly in support of helping parents care for their family well. In that regard, we must be sensitive to the role government should play, but interventions from public institutions are sometimes needed to protect children's rights, and then they should be welcomed.