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Friday, June 3, 2016

The Honourable GEORGE J. FUREY
Speaker

CONTENTS

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THE SENATE

Friday, June 3, 2016

The Senate met at 9 a.m., the Speaker in the chair.

Prayers.

ROUTINE PROCEEDINGS

ADJOURNMENT

NOTICE OF MOTION

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I give notice that, at the end of Government Business today, I will move:

> That, when the Senate adjourns today, it do stand adjourned until Tuesday, June 7, 2016, at 2 p.m.

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

Hon. Senators: Agreed.

QUESTION PERIOD

FOREIGN AFFAIRS

CANADA-CHINA RELATIONS—
REQUEST FOR APOLOGY

Hon. Thanh Hai Ngo: This is a question for the Leader of the Government in the Senate.

Senator Harder, China's foreign minister met with Minister Dion this week to discuss ways to strengthen the Canada-China relationship. Both governments seem to want closer ties. Last December, China's ambassador called for a Canada-China free trade agreement, which is why this government has made improving this relationship a priority.

Yesterday, Minister Wang stated that Canada-China relations enter a new golden age, but if this is a new chapter in our history with China, it is a very poor start.

China has a long history of displaying contempt for human rights, both within China and abroad, despite the fact that the Chinese constitution guarantees the right of Chinese citizens to enjoy freedom of speech, of the press, of assembly, of association, of procession and demonstration. These rights are just for show because they are routinely trampled.

At the press conference after the meeting this week, a reporter expressed concern on the issues of human rights and the South China Sea. The reporter questioned why Canada was pursuing closer ties with China, given these circumstances, and how China and Canada plan to improve human rights and regional security.

Minister Wang, instead of answering questions, refused. He called the reporter arrogant, accused him of asking an irresponsible question that was prejudiced against China and stated that they had no right to speak about China's human rights record.

This is unacceptable. Minister Wang's response was extremely disrespectful towards the reporter and demonstrated a fundamental disregard for freedom of the press in general. His claim that members of the Canadian press are somehow arrogant and prejudiced for raising legitimate concerns about the Canada-China relationship are frankly insulting.

My question to you, Mr. Leader: What action will the government take to address the minister's disrespectful comments, and will the government demand an apology from Minister Wang?

Hon. Peter Harder (Government Representative in the Senate): I want to thank the honourable member for his question. It is the view of the Government of Canada that an engagement with China on a wide range of subjects is indeed appropriate and in Canada's interest. That obviously includes an opportunity to discuss areas where we can improve, including economic engagement in some sectors. The complementarity study that both governments engaged in over the last number of years is before ministers, and the Prime Minister, as everybody will know, will be attending the G20 summit that is being hosted in Hangzhou in the fall.

In that context, a number of ministers have engaged with officials of the G20, including the host, China, and in that context the visit of the foreign minister to Canada was in preparation for that bilateral and multilateral event.

The Government of Canada takes every opportunity of engagement with China to raise issues where we do not agree. These include the issues on human rights. They can include issues on contested economic and security issues. That was the case and that will be the case for this government in all visits and opportunities that are appropriate.

Senator Ngo: Thank you for your explanation, leader, but the question I'm asking here is not about the engagement between Canada and China. I'm asking this: Will the government demand an apology from Minister Wang for the disrespectful comments towards a reporter?

Senator Harder: I think if we began to apologize to every reporter who has been insulted we would have very busy ministers. I certainly do not associate at all with the comments

of the Foreign Minister of China, and I certainly associate myself with comments from other senators on this matter yesterday in the house.

I will take your suggestion to the government. I obviously cannot, on behalf of the government, respond directly to the question, but I want to assure all senators that freedom of the press is very much part of an agenda on a broad set of human rights and social and political rights that the government would want to undertake with all countries.

Hon. Jim Munson: I have a supplementary, Your Honour.

Mr. Leader, it's very unusual for a foreign minister on a trip to see another foreign minister to be having a meeting with that foreign minister, then being granted a meeting with the Prime Minister. We don't usually see that sort of thing. I know you're talking about the preparation for the G20, but I understand as well that China's foreign minister insisted on seeing Prime Minister Trudeau. I understand the Prime Minister is going to China in August with a big delegation to talk about trade and other issues.

• (0910)

Our foreign minister neglected to step into the breach, so to speak, on a very legitimate question that was asked of him first, not of the foreign minister, thus leaving open this void. Having been part of that scene in the Prime Minister's Office at one time, can you assure us that in these meetings with Mr. Xi Jinping, who has quite an authoritarian voice and an iron rule of China these days — that is, if you believe what you read from sinologists like Charles Burton of Brock University, and others like Jonathan Manthorpe, writing in iPolitics — when the issue of human rights does come up, it is spoken to directly? There are ways and means for prime ministers to talk to other presidents and prime ministers about the general area of human rights.

Let's not forget, Mr. Harder, that — Mr. Leader of the Senate —

An Hon. Senator: Oh!

Senator Munson: I said that because of his past diplomatic work on the Canada China Business Council. He knows China.

The other part is that we can't ignore trade with China. We simply can't. We also can't ignore that there are hundreds of dissidents —

Senator Mockler: What's your question?

Senator Munson: This is an opportunity for me to speak. It's Friday morning. I had a good rest. I feel pretty good about everything.

Senator Mercer: Pay attention, Percy!

Senator Munson: At least, Senator Mockler, I'm allowed to talk like this inside this chamber, outside of this chamber and anywhere in this country. I couldn't be talking like this in China, I can tell you that —

Some Hon. Senators: Hear, hear!

Senator Munson: — because I have visited a number of Chinese jails, including the one in the Forbidden City.

Now that you have me going, do you know what the Chinese government loves to say? I was hauled in by the police a few times and roughed up a wee bit. They would love to say, "Mr. Munson, your stories hurt the feelings of the Chinese people." They always say that. They say that to everybody. I would say, "How can the Chinese people's feelings be hurt if they haven't heard my stories, because you won't allow them to hear my stories?"

All I'm saying in this story this morning is that when it comes to human rights and dissidents in China, can you assure us that Mr. Trudeau will bring up the specific names, particularly that of the Nobel Peace Prize winner — and many others —who are languishing in prison? I think it's extremely important that Canada shows its face and doesn't go through a back door as Great Britain has and Germany is trying to do. You can't talk to the Dalai Lama, and bully politics are happening with the present leadership. I think we need these assurances as a nation.

Senator Harder: I thank the honourable senator for his statement/question. As one who has been directly engaged in speaking with Chinese officials on issues of human rights as well as economic issues and as one who has attended numerous prime ministers' engagements with Chinese leadership on these issues, I can assure you that the Government of Canada will continue to exercise its responsibilities in all aspects of the relationship, including the promotion of human rights and inquiries on issues of concern to Canadians and indeed this chamber.

I will take the specific request of the honourable senator to the Government of Canada, but I do want to emphasize that the tradition of Canadian diplomacy has been active on these issues and will continue to be active as we engage the number two economy in the world through their transition as well.

RUSSIA—SERGEI MAGNITSKY

Hon. Wilfred P. Moore: I have a supplementary question, Your Honour, with regard to the human rights issue.

Leader, the Liberal government, and those of us who worked for it in the last campaign, indicated that we will be a government of change, standing up for human rights issues, and so on. I want to know where the government is with regard to the Magnitsky file and the law that was brought in in the United States. Our colleague Senator Wells has spoken about this a few times and he's still on that file. Our former colleague, the Honourable Irwin Cotler, has been speaking out about this. This is an opportunity for Canada to stand up for this young man who was beaten to

death in a Russian jail at the hands of operatives operating under the direction of President Putin, I understand, and his oligarchy colleagues.

As I say, this is an opportunity for Canada to stand up for this young man who died in this prison, beaten to death for standing up for the rule of law. We have a chance here to do something right. I think we should follow the model set by our colleagues in the United States who did pass a law dealing with this. I'm wondering if you know of that and what we can expect to see on that file.

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. This is a very serious matter, and the government has engaged with the appropriate Russian authorities to express its views. You will know that the minister has asked the standing committee in the other chamber to specifically make reference to the proposed legal changes, and the government awaits that report.

Senator Moore: The matter has been referred to which committee, and when can we expect to have a report?

Senator Harder: I don't have it with me, because there wasn't to be a Question Period, the particular answer on that timing, but I will inquire and get that to you, senator.

NATIONAL REVENUE

TERRORISM FINANCING

Hon. Daniel Lang: Honourable senators, when the Minister of National Revenue was here, I raised a question about terrorism financing. This house didn't get a clear response from her in respect to the question that was put.

For background, I want to reiterate that during the course of our National Security and Defence Committee studies, we learned that six charitable organizations over the last number of years had their charitable status revoked because of either indirect or direct involvement in terrorism financing. Yet at the same time, there have been no charges. As far as I can make out, there has been no follow-up in respect to the information that was disclosed during the course or at the end of those audits. That, in my judgment, Your Honour, is a travesty. Laws are on the books for the purposes of following up on the question of terrorism financing. They're very clear. Yet, for whatever reasons, the various agencies have decided not to act.

That being said, in addition, over the last five years 120 cases were referred to the Canada Revenue Agency by FINTRAC, identifying terrorism financing that had taken place either directly or indirectly in this country.

My question to the Minister of National Revenue, who did not respond to me, was this: Are we coming to a conclusion in investigating those identified terrorism financing cases? Have we come to a conclusion on any of those cases? Are we proceeding to refer them to the proper authorities for further consideration in the judicial process? I would like a clear answer and Canadians would like a clear answer, because this type of financing in this country is totally unacceptable.

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. We'll take note of it and respond.

• (0920)

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Baker, P.C., seconded by the Honourable Senator Eggleton, P.C., for the second reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying).

Hon. Paul E. McIntyre: Honourable senators, I rise today in this chamber to speak on Bill C-14.

On February 6, 2015, the Supreme Court of Canada rendered its unanimous decision in *Carter*. In that decision, the court basically stated that criminal laws prohibiting physician assistance in dying were found to limit the rights to life, liberty and security of person found in section 7 of the Charter. It also declared that sections 241(b) and 14 of the Criminal Code are void.

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

The effect of this declaration was suspended for 12 months, which was extended on January 15, 2016, to June 6, 2016, to allow the government to develop the legislation. In the interim, Superior Courts may grant individual exemptions.

It is important to note that the issue of medical assistance in dying, or MAID, was addressed in court cases, including the unsuccessful challenge to the code's prohibition on assisted suicide in the *Rodriguez* case, 1993.

In 2014, the Quebec legislature passed its own legislation on medical aid in dying with Bill 52, An Act respecting end-of-life care.

In response to the *Carter* decision, the federal government established the external panel on options. The panel provided a report summarizing the consultations it held on the issue.

A provincial-territorial expert advisory group also reported and made a number of recommendations relating to MAID.

A special joint committee also was established. That committee tabled its report with 20 recommendations.

Bill C-14 was then developed. Quebec's Bill 52, the *Carter* decision, the external panel report, the provincial-territorial advisory group report and the special joint committee report and Bill C-14 have all been addressed by colleagues in this chamber. Therefore, I will not elaborate any further on these matters.

I will simply point out that Bill C-14 would allow for greater flexibility than the laws that exist in the United States. They are limited to terminally ill patients. At the same time, it does not go as far as some of the more permissive regimes in the European countries such as Belgium and the Netherlands.

In January 2016, I noted that the French Parliament voted in terminal sedation, not euthanasia. In other words, the law would let doctors keep terminally ill patients sedated until death comes, but it stops short of legalizing euthanasia or assisted suicide.

In France, there were years of tense debate over the issue and the long journey through Parliament. It is important to note that the common law recognizes the right of an adult, a competent person, to refuse medical treatment or to demand that treatment, once begun, be withdrawn or discontinued.

In January 1992, the Quebec Superior Court ruled in the case of Nancy B., a woman suffering from an incurable disease, that turning off a respirator at her request and letting nature take its course would not be a criminal offence.

[*Translation*]

Note that there already exists some type of assistance in dying in hospitals. Take for example a person with an incurable illness who is living out their last days in palliative care. Upon consulting the family, the doctor can decide to take the patient off the respirator, stop intravenous feeding and increase the morphine dosage. The patient then has only a few hours left. This is not euthanasia, but the distinction is rather subtle.

[*English*]

In order to meet the Supreme Court of Canada deadline to have a new bill in place before the existing law expires, both the House of Commons and the Senate have held pre-studies of the bill. Both pre-studies have been completed. An order of reference authorized the Standing Senate Committee on Legal and Constitutional Affairs to examine the subject matter on Bill C-14.

In total, the committee heard from 66 witnesses, including the Minister of Justice, the Minister of Health, regulatory authorities, professional organizations, along with many experts, academics, medical practitioners and other stakeholders. It also received many written submissions. The committee concluded its pre-study of Bill C-14 and issued a report containing a number of recommendations to strengthen the bill.

As noted in its recommendations, Bill C-14 needs stronger safeguards before the Senate can even think about passing it. If no new law is passed by June 6, the only federal regulation for doctor-assisted suicide would be the broad parameters set out by the court in the *Carter* decision.

Colleagues, Bill C-14 is a personal and divisive issue. Some stakeholders that appeared before the Senate Legal Committee suggested that the government has taken a reasonable approach to the issues of MAID. Others identified potential legal issues with the bill, such as restricting the availability of MAID.

Since the bill does not permit MAID for mature minors and individuals with psychiatric conditions, and does not permit the use of advanced directives, court challenges to the bill are likely.

Some have argued that MAID will be available only to terminally ill individuals, although the bill, as you know, does not explicitly state that one must have a terminal illness to have access to MAID. Some have argued that if only terminally ill individuals are eligible for MAID, it would be contrary to the *Carter* decision.

Some parliamentarians and other stakeholders have suggested that the government do one of two things: either invoke the "notwithstanding" clause or refer the bill to the Supreme Court of Canada for a determination as to whether the bill complies with the Charter and is consistent with *Carter* to avoid future potential Charter challenges.

It has also been suggested that Bill C-14 should provide for judicial authorization; in other words, Superior Court judges would be mandated to certify that all legal requirements for access to physician-assisted suicide or euthanasia have been fulfilled. They point out that judicial involvement would provide better protection both against abuse of physician aid in dying and for vulnerable people.

The safeguard requirement has a history of judicial recognition. For example, Chief Justice McLachlin imposed it in her dissent in *Rodriguez*, as did the trial judge in *Carter*, during the period of her judgment's suspension, likewise for the five judges of the Supreme Court in granting the four-month extension to draft legislation in response to the *Carter* judgment for cases of physician aid in dying occurring during the interim period.

There's also well-established precedent for legislating quasi-judicial or judicial review of physician decision making in another health care context. Provincial and mental health legislation often requires such involvement in the involuntary commitment of a person to a psychiatric hospital. This would avoid the potential of abuse of power to inflict death, especially on vulnerable people.

Those opposed to this recommendation or proposal felt it would be too costly for individuals requesting MAID.

Current proponents for the legislation of euthanasia and assisted suicide list a number of justifications, including limitations in the effectiveness of palliative care, in alleviating the pain and suffering of all Canadians. The argument that the law "as it currently stands" violates the Charter, recognition that assisted suicide takes place despite its illegality and is occurring without adequate controls.

In contrast, those who are against the legalization often raise the following arguments, such as legalization could result in abuses, particularly with respect to vulnerable members of society. The bill as is could lead to changes to the law with respect to incompetent persons, people under the age of 18 or those who are unable to make decisions for themselves for a variety of reasons, including mental illness.

• (0930)

Honourable senators, I leave you with two quotations. In her appearance before the Senate Legal Committee, the Minister of Justice and Attorney General of Canada concluded her remarks with the following:

> The approach that we took in Bill C-14 responds to the Carter decision with sensitivity on all of the issues that were before the court in that case, and creates a responsible and fair legal framework to permit medical assistance in dying across Canada for the first time in our country's history.

On the other hand, Margaret Sommerville a professor of law at McGill University had this to say:

> I urge you to recognise the full weight and seriousness of the decisions you must make about Bill C-14 and to the largest extent possible decide in a way that does the least damage to the value of respect for life; prevents abuse; maintains as fully as possible in the circumstances the protection of vulnerable peoples; and prevents PAD becoming the norm for how we die.
>
> What you decide about Bill C-14 will be major component in determining what shared foundational values of Canadian society will be, not just in the present but also in the long-term future. You face a momentous decision and have an enormous responsibility to decide ethically, prudently and wisely.

Honourable senators, I leave you with those thoughts.

Hon. Ratna Omidvar: Thank you, honourable senators. As I have watched our deliberations and discussions over the last two days, I am filled with pride that I have the privilege to be one of you. We have shown Canadians that the Senate is the place where one can have reasoned, independent, civil, non-partisan debate, and that we are no longer the "slumber zone," in the language of the media.

I may not agree with the positions of the senators who have spoken before me on Bill C-14, but they have all done so with great conviction and intelligence and I salute them all.

I will however add my voice to Senator Lankin's call for the chamber to recognize that it is made up of three different parts. There are the two political caucuses and then there is us. For now we are a small group, but we are positioned to grow, so I urge the chamber to consider us as your full partners with equal voice, not a group of people for whom you are making kind yet special accommodations. I thank you for all the kindnesses, but I also know kindnesses can be taken away, rights cannot. It would indeed have been a signal if, along with Senators Cowan and Carignan, either Senator Sinclair or Senator Pratte could have made the opening statements, and I hope we see something like this happen in September.

I will speak very briefly on Bill C-14. Much has been said on many different aspects of it, and I would like to signal my support for a federal bill which regulates medically assisted dying so that it is accessible to all who desire and qualify for it.

This is not an easy position for me to take. I grew up in a culture where you wait respectfully for death. My mother, who lives with me and has lived with me for 30 years, now has spinal stenosis, a condition which we have heard much about. She is bent over by 50 per cent and her condition is going to get progressively worse. We know that.

She talks to me often about death and she talks to me often about a good death, and she asks me what we are doing in this chamber, and we talk about our cultural beliefs because these will get in the way of whatever choice we make. And I say to her that this law and our deliberations today are not about her or me or about our personal beliefs but what is the right response for all Canadians given the Supreme Court ruling. Our job is to ensure that we deliberate on the merits and demerits of the bill and that we pay special attention to the rights of minorities and vulnerable people.

So I want to speak about a vulnerability that has not yet been referred to, and that is poverty and put a very brief poverty lens on Bill C-14.

Honourable senators, we know that death comes to everyone. It does not discriminate between rich and poor; it does not discriminate based on your class or religion or your occupation but strikes all of us eventually. In that sense, even if life is not equal, death certainly is the great equalizer. Using modern-day language, perhaps one could say death seeks equal opportunity. The bill that we send back to the House of Commons should, therefore, ensure equally that access to its provisions are not variably available, but universally so.

I first want to examine the question of what will happen if the bill does not pass. Like most of you, I don't believe the sky will fall in. People will have access through provincial systems or through provincial courts where no system exists, but there will be diversity on how each province chooses to interpret the guidelines, as has been the case, we know, on abortion. I can foresee Canadians shopping for the option in different provinces that suits their conditions best. And shopping, as we all know, can be expensive.

Poor people, people who live in social housing, people on welfare, cleaning ladies, taxi drivers, new immigrants, single mothers, many senior citizens, do not have the resources to travel

with companions to other provinces. Neither do they have the time, the money, the social capital or the knowledge of the justice system to embark on costly and exhausting court challenges.

Let me give you some examples, and you all know them well. Kay Carter lived in a nice nursing home in Vancouver and could afford to travel to Zurich to access physician-assisted death. Gillian Bennett was the wife of noted philosopher Jonathan Bennett who was educated in Oxford. Sue Rodriguez was a real estate agent and came from a solid middle-class background. Gloria Taylor was a residential care worker. Ms. S, the plaintiff in the Alberta case, was a clinical psychologist

None of them were wealthy, but they were not poor. And while this is certainly not evidence but rather anecdotes, my intuition tells me that access through the court systems would be out of reach for poor people.

This brings me to Bill C-14. We have heard from many lawyers and many experts, and I must say as a layperson I'm conflicted with what I hear, but even as a layperson I can predict that with the lack of clarity and ambiguity in language we can expect a range of lawsuits from individuals who seek to confirm their access to it.

Again I ask you, who has the resources, the social capital, the time, the money to embark on such an arduous journey? Not poor people.

So let's have a bill that provides equal access across the country, but let's also have a bill that, as far as we can, negates the need for expensive court challenges. As we proceed on our deliberations, and keeping the rights of vulnerable poor people in mind, we must consider the unequal impact of no legislation and the unequal impact of flawed legislation. Thank you.

[*Translation*]

Hon. Jean-Guy Dagenais: Honourable senators, I want to be very clear from the outset that I am in favour of medical assistance in dying; I just don't agree with the current approach.

This bill is incomplete and poorly written. It is also discriminatory and above all unconstitutional. Why pass this bill when other much wiser and perfectly legal avenues exist?

The current government is creating a false urgency, which many lawyers reject, in fact. It is making false claims of a legal vacuum that many experts have criticized.

Some people testified before the Standing Senate Committee on Legal and Constitutional Affairs. I am relying on the opinion of Jean-Pierre Ménard, an authority on patient rights, and that of constitutional expert Benoît Pelletier to support my position. They both say that Bill C-14 cannot be passed in its current form.

• (0940)

I was struck by the words of Dr. Barrette, Quebec's health minister. He called some of the vague notions in Bill C-14 "impracticable." That speaks to how poorly written this bill is. Let us all remember that doctors are the ones who will wield the needles to end human beings' lives. Just imagine the situation if a doctor refused to act because the law is vague.

As written, Bill C-14 will prolong the suffering of some patients. This legislation could even lead to people committing suicide prematurely because they have lost any hope of dying with dignity. As Senator Pratte said, it is an unacceptable choice.

We know that this legislation will be at the centre of a legal challenge, which will be time-consuming and cost Canadian taxpayers a lot of money in legal fees. Do we really need that?

The Supreme Court was quite clear in *Carter* about what is acceptable. Ever since then, the government has been playing word games instead of acting openly, thoughtfully and transparently. I can assure you that there is no emergency or legal void now. Nor will there be one tomorrow, the day after, or even on Monday, June 6. If we pass this bill, all we will have is a bad medical assistance in dying law. It would be irresponsible of us to vote under pressure in favour of Bill C-14 as presented by the government. Instead, we should ask ourselves why the government is not following the guidelines set out by the highest court in the land.

I think the government should follow Quebec's lead and launch genuine consultations immediately. It should spend a year building consensus. If the government refuses to get the conversation started, it should immediately refer its bill to the Supreme Court for validation before making it law.

The study of Bill C-14 gives senators a unique opportunity to protect the rights of Canadians and assert their independence from the House of Commons in a historic way.

In closing, I would like to address those whom I heard saying that it would be better to pass this bad bill than to have no legislation at all. I want to tell them that my personal independence, and especially my integrity, will not allow me to vote for this bill. As a senator, I have the power and the duty to protect Canadians from a bill that is flawed and unconstitutional.

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, to begin, I would like to tell you a little story. I want to share the comments that one of my dear colleagues made when she was at the end of her life. I am talking about Lise Poulin Simon, with whom I wrote books and who was a kindred spirit when it came to economics research. She passed away in 1995 after enduring a lot of suffering. Before she fell into a medically induced coma, she told me that, over the past few weeks, she had learned one thing. This is what she said: "The pain is there for a reason. It helped me to accept death." The words of this extremely intelligent woman have always stayed with me and I share them with you. At the end of her life, she was reading philosophy texts and trying to focus on that subject. Her words really touched me.

Bill C-14 on medical assistance in dying is a very emotional subject. I attended several meetings of the Standing Senate Committee on Legal and Constitutional Affairs and the atmosphere in the room was thick with emotion. I felt that it would be difficult to remain objective while addressing this

subject. As the Honourable Senator Sinclair reminded us yesterday, we all have the same duty to put our preferences aside to try to fulfil our constitutional role, our role as a chamber of sober second thought, and our role as a chamber that complements, rather than opposes, the House of Commons, even if sometimes we may critique the work done there. Our role is to be open to acting in a way that complements the work of the House of Commons. In my opinion, our role is not necessarily to change the nature of a bill, unless it is something that Canadians are truly opposed to or it raises serious moral, ethical, constitutional or other problems.

I want to start by saying that I completely agree with the principle of Bill C-14, for the same reasons that I supported the principle of Bill S-225, which was introduced by the Honourable Senator Nancy Ruth and the Honourable Senator Larry Campbell. I support Bill C-14 because we cannot deny that Canadians are in favour of medical assistance in dying.

I know that we cannot always trust the polls, but they can still help us determine how socially acceptable a bill may be. There have been some comprehensive polls in recent years. One Ipsos Reid survey, conducted on behalf of Dying With Dignity, revealed that 84 per cent of Canadians believe a doctor should be able to assist someone who is terminally ill to end their life.

[*English*]

Eighty-four per cent of Canadians believe a doctor should be able to assist someone who is terminally ill and suffering unbearably to end their life.

[*Translation*]

That is important to point out. There have been others. The expert panel conducted a very thorough survey. Just 24 per cent of a cross-section of Canadians said that they agree or strongly agree with the statement that they "should be able to receive a physician's assistance to die in the case of a life-altering, but not life-threatening condition." The majority of respondents disagreed, but agreed in cases in which the condition becomes terminal.

For now at least, the majority of Canadians would not find it socially acceptable to go further. I do not think it is the Senate's job to go further than what the public would deem socially acceptable. We have a role as legislators, and we can introduce bills. However, is it really our job to go further, as a complementary chamber to the House of Commons? I'm not sure. We can perhaps debate this question, but I think it's the role of the government and the other place to move attitudes forward. Although we do have a role to play, is this our role when we are making amendments to a bill from the other place?

Second, I must say that I support Bill C-14 because its principle supports the Province of Quebec in its legislation on end-of-life care. The Quebec law is not perfect, however. It is a provincial health care act that was drafted before the *Carter* decision was handed down. Nevertheless, that legislation is interesting because it focuses on end-of-life care. When you actually read the legislation and look at how it's enforced, you could almost say that it is about the ultimate palliative care. However, that legislation has not always yielded positive results. It does have some shortcomings, as documented recently in the media. In particular, some physicians still aren't entirely in favour of administering medical assistance in dying, and as a result, even in a large city like Montreal, apparently it is harder to obtain medical assistance in dying than in a city like Quebec City, for instance.

• (0950)

We have also heard about many people who are dying and are forced to add to their own suffering in order to receive medical assistance in dying. There was the heartbreaking case of a man who wanted to say good-bye to his loved ones with a smile and gentle words for them. He was on his hospital bed and was forced to stop his pain medication so as to be able to consent in the end to medical assistance in dying. That was a special case, but there are also other cases involving hunger strikes, and so on.

I'd like to take a moment to compare eligibility under the Quebec legislation and eligibility under Bill C-14. The Quebec legislation is quite clear. There are six criteria that are quite similar to Bill C-14. The Quebec act states, and I quote:

> 26. Only a patient who meets **all** the following criteria may obtain medical aid in dying:
>
> (1) be an insured person within the meaning of the Health Insurance Act (chapter A-29);
>
> (2) be of full age and capable of giving consent to care;
>
> (3) be at the end of life;

— That is important because end of life is really defined as the terminal phase of a condition or illness —

> (4) suffer from a serious and incurable illness;

— This is also in Bill C-14 —

> (5) be in an advanced state of irreversible decline in capability; and

This is in Bill C-14 as well.

> (6) experience constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable.

The following criterion is also in Bill C-14. I quote:

> The patient must request medical aid in dying themselves, in a free and informed manner, by means of the form

> prescribed by the Minister. The form must be dated and signed . . . in the presence of . . . a health . . . professional . . . .

Quebec's law on medical assistance in dying is very clear about diagnosis and end-of-life prognosis, and it applies to people who are dying while under the care of health professionals.

My view is that Bill C-14, particularly at paragraph 241.2(2)(*d*), broadens the scope of medical assistance in dying because it is an option when death is reasonably foreseeable. However, reasonably foreseeable death is not necessarily directly associated with an illness. It relates to the general status of the condition that enables us to say death is foreseeable, without necessarily having a prognosis. Bill C-14 makes a definite distinction between diagnosis and prognosis. Prognosis is about life expectancy.

From Quebec's point of view, Bill C-14 provides doctors with the assurance that they can administer medical assistance in dying and not be charged with a crime. It also provides Quebecers with reassurance that Quebec's law may evolve, most likely for people who have a terminal illness diagnosis but whose end of life is not imminent.

I think that, for Quebecers, that addresses the criticisms that have been voiced in recent weeks.

Lastly, I support this bill because the Supreme Court has asked us to correct the sections of the Criminal Code that make the total prohibition on medical assistance in dying unconstitutional. The Supreme Court was very clear. It stated that it is Parliament's responsibility to correct the unconstitutionality of the legislation, specifically, the absolute prohibition of medical assistance in dying. As stated by the Supreme Court, and I quote:

> Complex regulatory regimes are better created by Parliament than by the courts.

Bill C-14 is therefore intended as a legislative response to the *Carter* decision. Without a doubt, many would agree that it's not perfect, but it deserves a chance to evolve, and that is what matters, I think. It gives us an opportunity to study issues such as those pertinent to people suffering from mental illness. It gives us an opportunity to study the situation of mature minors and to study advance consent.

I think that without Bill C-14, we would be depriving many Canadians of their constitutional rights as set out in the *Carter* decision.

However, speaking of constitutionality, I'm not an expert on the subject, but I think that we have had some very rich debates about it here, and I have a great deal of respect for the opinions of my colleagues who spoke on the matter. Nevertheless, I do have doubts about whether the *Carter* decision actually defines the right to receive medical assistance in dying as a constitutional right in the case of individuals who are not dying. For me, this isn't clear. It isn't crystal clear, in any case, that all Canadians who are suffering from an incurable but non-life-threatening condition have a constitutional right to receive medical assistance in dying. That is not clear.

In the last sentence of paragraph 127 of the *Carter* decision, which comes after the three criteria that everyone agrees give persons who are not at the end of life the right to receive medical assistance in dying when the illness is incurable, intolerable, and so forth, the Supreme Court says the following:

> The scope of this declaration is intended to respond to the factual circumstances in this case. We make no pronouncement on other situations where physician-assisted dying may be sought.

In other words, the Supreme Court of Canada is basing its criteria on cases of terminally ill people whose death is foreseeable. Are we to take these elements proposed by the Supreme Court as meaning that there is a constitutional right? I am not sure that if the Supreme Court that drafted the *Carter* decision were to receive Bill C-14, it would necessarily deem it unconstitutional. In that sense, I agree with Professor Benoît Pelletier, a professor of constitutional law at the University of Ottawa and a member of the external panel that studied the issue of medical assistance in dying, who, in my opinion, best summed up the situation, and I quote:

[*English*]

> Might there be litigation? Yes. Will this litigation eventually win before the Supreme Court of Canada? It might be so. On the other hand, it might be said that the current bill is reasonable and justifiable in a free and democratic society because of the balance that it finds among all the elements that are at issue.

[*Translation*]

In light of the testimony that the Standing Senate Committee on Legal and Constitutional Affairs heard during the pre-study, it is hard to say that Bill C-14 is unconstitutional and fails to comply with the Canadian Charter of Rights and Freedoms, just as it is hard to say with certainty that it is completely constitutional. But is it up to us to judge? I am not sure.

How can we therefore fulfill our constitutional duty? Amendments are certainly possible, but I don't think we should change the nature of the bill or prevent this bill from passing. I don't think it is reasonable to let the parameters of the *Carter* decision apply on their own, without any legislative guidelines. The *Carter* decision does not propose any safeguards, but Bill C-14 proposes that we add a number of important safeguards in subsection 241.2(3) of the Criminal Code.

For example, Bill C-14 would require that a request for medical assistance in dying be signed before two independent doctors, and that another doctor ensure that the request is in compliance. The bill also sets out regulations regarding the collection of information relating to requests for, and the provision of, medical assistance in dying. Bill C-14 consolidates the criminal sanctions imposed for failing to comply with the parameters surrounding medical assistance in dying.

• (1000)

The Hon. the Speaker: Senator Bellemare, your time is up. Would you like five more minutes?

Senator Bellemare: Yes please, Your Honour.

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

Hon. Senators: Agreed.

Senator Bellemare: In short, I am not convinced that it is preferable to not pass the bill and simply allow *Carter* to apply. Without legislation in this regard, Canadians will not have improved access to medical assistance in dying. Without *Carter*, I do not believe that Quebecers and Canadians will have access to the services they are entitled to.

What is more, without a concrete legal guarantee that they will not be prosecuted, I doubt that doctors and pharmacists would take the risk of providing medical assistance in dying or the necessary materials. I think that without a bill, there would be a lack of important safeguards surrounding medical assistance in dying.

In Quebec, in particular, the law indicates that medical assistance in dying is available only to Canadians with health coverage. The Quebec law covers the private clinics that provide medical assistance in dying and those that may open one day. These clinics must sign agreements with the local network because there is an oversight mechanism in place.

Under Bill C-14, medical assistance in dying would be available to Canadians with health coverage, but if Bill C-14 is not passed, there is nothing in *Carter* to that effect. There is also nothing in *Carter* about private clinics.

If there is a real demand, these services may become available even without a provincial law to govern them. That is what we are seeing in Switzerland, where people are seeking this type of service through for-profit and non-profit organizations alike. And who knows what will happen then?

In the spirit of changing attitudes, and in a context in which the role of the Senate complements that of the House of Commons, I believe we should offer guarantees, through Bill C-14, to those seeking medical assistance in dying.

Such guarantees will enable us to adapt these services because the bill provides for studies and a review in five years.

[*English*]

Hon. James S. Cowan (Leader of the Senate Liberals): Senator Bellemare, my question arises out of your comments today and also your questions to me yesterday.

You refer repeatedly to public opinion polling. I'm astounded to think that you would believe that when we're evaluating, particularly as senators, how we protect the rights under the Charter of Rights and Freedoms, the constitutional rights of Canadians as confirmed by the unanimous decision of the Supreme Court of Canada, we should somehow be guided by public opinion polls as to there being more support for this category of rights and less support for that category.

You've said today, and you said yesterday, that there was obviously a higher degree of public support for medical assistance in dying for those who were close to death and less support for those who were not terminally ill.

Surely we can't discriminate amongst Canadians who have been granted their constitutional rights. We can't be guided by public opinion in determining which rights we support and for which Canadians. We clearly have a responsibility to support the constitutional rights of all Canadians, and particularly for us in this chamber, the rights of the minority.

If it is the majority, and if we're going to be guided by opinion polls and opinion polls are going to say only those who have the majority support will have their constitutional rights protected, surely that's not a position for us.

Senator Bellemare: Thank you for the question. I agree with you. We don't have to be guided exclusively by the criteria of social acceptability, but for this matter of life and death, for the matter of those who want to die and for those who have to provide the services, I think we have to consider social acceptability in this particular matter of importance.

I don't think I'm alone in saying that the Supreme Court of Canada gave a clear constitutional right to all Canadians who suffer to have the right to be assisted to die if there is no reasonable death that is announced.

I'm not certain about that, even though I heard you and Honourable Senator Joyal yesterday. It was very compelling, but is it our right, as senators, to recognize that right? Why not leave it to the tribunals and let the law evolve? As a start, I think Bill C-14 at least answers the flaw of the Quebec law. This is my point of view.

The Hon. the Speaker: Your extended time has expired as well. If Senator Cowan wishes to ask another question, it's up to the chamber to agree.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Cowan: I won't repeat what was said yesterday, but we've had judgments, most recently, most clearly, from the Court of Appeal in Alberta. We had the exchange that took place that Senator Joyal and I referred to between the justices of the Supreme Court and lawyers for Canada on the application for the extension, and they very clearly said that terminality is not the test.

I don't see how we can say "notwithstanding the judicial interpretations" from the tribunals that you speak about. That's what the tribunals have said. They've already spoken. They said the Supreme Court of Canada is clear.

If the Supreme Court of Canada had wanted to use language that restricted access to those who were terminally ill, they would have done so. They didn't, and courts have repeatedly referred to it.

I suggest to you, senator, that there's absolutely no doubt about that. Surely you would agree with me that we can't disregard those very clear judicial statements and say, "Well, based upon some public opinion polling, there's more support for this and less support for that, and because there's not the same level of support for non-terminally ill patients, we should deny the constitutional rights of those persons to seek medical aid in dying." Surely you're not suggesting that.

Senator Bellemare: No, but I'm suggesting that the Supreme Court of Canada, in these last two sentences of paragraph 127, opens doubt about a recognition that is clear that the Charter of Rights recognizes the right to die as a universal right for those who suffer and those who have an incurable situation. The court said:

[*Translation*]

> We make no pronouncement on other situations where physician-assisted dying may be sought.

[*English*]

In my interpretation, the criterion of age was irrelevant in that decision. They were not looking at a specific illness but at a broad situation that opens the door so that you can have euthanasia for individuals who are not terminally ill, who do not have a prognosis of terminally ill, while in Quebec this is the definition of a terminal situation. The terminal situation is very difficult to apply. That's why in Quebec there's some flaw.

It probably will be enlarged through time, but after six years of deliberation, the National Assembly of Quebec arrived at that kind of law.

I agree with you. It was in the context where *Carter* was not there; yet people accept that, and we'll see for the future. Because subjectivity is there when a patient is suffering but is not terminally ill and he suffers and there's no cure for the moment, that there's an absolute right to that.

• (1010)

That's why I think our role as senators is not to confirm but maybe to affirm that there is doubt, that there's no clarity. Maybe that has been the intent of the Supreme Court and the legislators, so that we have flexibility to get laws processed to evolve through time. That's my opinion.

Hon. Donald Neil Plett: Honourable senators, this is a difficult topic for many of us. I want to state at the outset that I promote the sanctity of human life, and I am opposed to assisted suicide; however, we have been put into a situation by the Supreme Court of Canada and we have to make a decision.

We can work toward passing piece of legislation that has stringent safeguards and, where safeguards are absent, make amendments to ensure they are in place, or we will have a gaping hole as we have had with other controversial bills in the past.

This is a life-and-death situation, and for that reason we need to have proper safeguards in place. Parliament needs to respond to the Supreme Court's decision and pass legislation in one form or another.

While I am opposed to euthanasia and assisted suicide, that is not to suggest in any way that I do not have profound sympathy for those who are suffering intolerable pain, whether that stems from physical or mental illness.

For example, I recently met a woman from Manitoba who, since moving to Winnipeg at the age of 10, suffered severe bullying to the point of trauma and as a result struggled with a mental illness and depression. She began self-harming, taking pills to the extent that she was on life-support. At the age of 18, she attempted suicide for the first time. In 2007, at the age of 23, she jumped off of a bridge in Winnipeg in another suicide attempt. She broke her back, feet, and spent six months in the hospital. Her medical team did not believe she would ever walk again. While she may or may not have been able to qualify for the criteria set out in Bill C-14, she told me that if assisted suicide had been an option, she certainly would have taken it. This lady just finished a two-year college program, working in child and youth care, and is taking on a new responsibility as a community housing support mentor. Colleagues, she lives a full and healthy life.

We know that in the Netherlands, studies show that patients are four times more likely to request assisted suicide if they are depressed. There is nothing in this legislation that prevents a severely depressed or mentally ill individual from accessing suicide. In light of the situation we are in, we should be ensuring that assisted suicide is used in narrow circumstances after psychological assessments have been conducted and truly as a last resort.

Legalizing assisted suicide crosses more ethical and legal divides than any legislation most or maybe all of us will ever work with. It is certainly the largest shift in medicine that has happened in our country's history. As Andrew Coyne put it, the legalization of assisted suicide, and I quote:

> . . . embraced the idea of suicide, not as a tragedy we should seek to prevent, but a right we are obliged to uphold . . . .

The ministers responsible had an extraordinarily difficult task in crafting the legislation. However, they responded to the Supreme Court's decision in a reasonably responsible way. There are some stringent safeguards in the legislation, and provisions in the bill, in my opinion, are significantly more acceptable than the recommendations of the joint committee.

With that said, there are some safeguards absent from this legislation that are absolutely crucial to ensure that the vulnerable are protected in a situation where the chance of abuse of power to inflict death is too great.

The government asked the Senate to conduct a pre-study, where we made a number of recommendations so that in an attempt to pass an acceptable bill in a timely manner, they could consider the recommendations before it was ever sent to the Senate. Our committee did an outstanding job in its deliberation of such a passionately divisive issue, and in a respectful manner. In our committee, the chairman, Senator Runciman, commended the committee on the conciliatory manner with which we approached this great task.

After hearing from 66 witnesses, and sitting through over 20 hours of meetings, we worked hard to arrive at rational, reasonable amendments, many of which were adopted by the committee unanimously. Again, as Senator Batters pointed out to the minister earlier this week, recommendations were passed unanimously by a committee made up of Liberals, independents and Conservatives.

However, unfortunately, the House of Commons did not accept even a single one of the committee's recommendations.

While I supported many of the recommendations proposed by members of the committee, I will largely focus on the recommended amendments that I proposed, specifically, the recommendations that were adopted by the committee, and I'll allow other senators to elaborate on their recommendations.

Colleagues, Bill C-14 includes a safeguard which stipulates that a medical practitioner must reaffirm a patient's consent, which includes assessing competency to consent immediately prior to administering the drug.

There is no such safeguard when the drug is given as a prescription. After the prescription is given, the patient can take the substance years down the road, potentially with a mental illness progressing. There is no safeguard in place to ensure that the individual has the capacity to consent at the time of taking the prescription or that the individual is not being coerced.

When the physician administers the drug, it is stipulated that a witness who is not the beneficiary of the patient must be present. However, virtually any individual can administer the drug to the patient after it is given as a prescription. What is most concerning is that there is no provision barring the person from being a direct beneficiary.

We put in a recommendation for an amendment to this effect which was adopted unanimously by our committee. No jurisdiction in the world, colleagues, has a legalized assisted suicide for any person other than the patient or the physician to administer the drug, yet this legislation allows anyone to administer the drug.

At the very least, the government should make a reasonable compromise to exclude beneficiaries to reduce the potential for abuse. The minister told me that patients want their loved ones around at this very difficult and emotional time. Nothing about this amendment would preclude family members from surrounding the patient. This is simply a necessary safeguard in a problematic situation. The fact that the government has excluded beneficiaries in the witness provision means they acknowledge a problem with a beneficiary being directly involved in the decision to administer death to the respective patient. We need to remain consistent in our approach in acknowledging this risk.

Another recommendation I made — and perhaps the one I am the most passionate about — is with respect to conscientious objection. Colleagues, it is absolutely imperative that medical practitioners are protected every step of the way when it comes to declining to participate in assisted suicide.

This is not a standard medical procedure and should not be regarded as such. Keep in mind, colleagues, many physicians feel that this major paradigm shift has been imposed upon them.

• (1020)

Members in the other place worked hard in an attempt to get an amendment passed to protect the conscientious rights of physicians. The government, instead, put in an amendment that does not have any practical significance.

The government has repeatedly stated that such regulations regarding the extent to which practitioners will be protected will be left up to the provincial college of physicians and surgeons. The Ontario College of Physicians and Surgeons appeared at our committee and made it adamantly clear that they will not support conscientious objection when it comes to providing what they call "effective referral."

We heard from physicians at the committee that it is imperative that a person must be able to conscientiously object to providing a referral for a number of reasons.

Dr. Dawn Davies, the Chair of Bioethics Committee at the Canadian Paediatric Society, when asked by Senator Lankin about why conscience protection should be enshrined in the Criminal Code exemption rather than left up to the provinces, she stated:

> I'm responding as a clinician. You've been speaking to lots of heads of colleges of physicians who represent their membership to a large degree. Unlike almost anything else I can think of in medicine, this has been imposed on us. I know it's about the patients, but I completely reject the language along the lines of we just need to suck it up. It's not why most of us went into medicine.

Dr. Davies continues:

> I would argue that in almost every other case there is a duty to refer or a duty to transfer care. I think that at a provincial level they're collecting lists of physicians willing to perform this procedure and that patients will navigate their own way.
>
> To say there is a duty to refer makes people that may not be comfortable with this in any way, shape or form feel complicit in part of it. There's enough of a groundswell of change that people will be able to navigate themselves.

Dr. Blackmer, President of the Canadian Medical Association, when responding to a similar question stated:

> There's a very complex question around the referral issue, though. For physicians, that has a special importance because it's a legislated act. A referral from one physician to another means that I'm sending you a patient because I think you can provide a specialized service that I cannot, and I'm endorsing that service to the patient. You can see how in the context of assisted dying that would be extremely morally problematic, because essentially if I'm forced to refer a patient for you for assisted dying, for a lot of physicians that would be morally equivalent.

Dr. Blackmer later spoke for the Canadian Medical Association when he said: "For those members who choose not to participate in assisted dying, we have been vehement about their rights to conscientious objection."

Yet, colleagues, several provinces have indicated they will contradict the CMA's position on this.

The most compelling testimony we heard on conscientious objection was from Dr. Sephora Tang, a psychiatrist who works daily with patients who have either tried to commit suicide or are chronically suicidal, some of whom have physical conditions that would likely qualify for assisted dying under this legislation. Dr. Tang said that these patients come to her in a safe place. She has seen time and time again patients come out of a suicidal state. She told our committee that if she was forced to refer her depressed or suicidal patient to a willing practitioner upon a patient's request, she would be completely stripped of her professional judgment.

She said at committee:

> How do I feel about sending my patient, somebody I know that I could work with if they would be willing to work with me, to somebody that I know may be also the person that would cause the death of this patient?

She continued:

> I wish to be able to do my work, which I honestly love. It is the most rewarding thing to be able to work with my patients and journey with them and to see them come out of a very dark place. I need time to be able to do that with my patients.
>
> If we do not have legislation that allows me to practise according to my conscience, this time that I have with my patients to work with them will be truncated . . . to their detriment and to the detriment of the families and friends . . . that are left behind . . . .

Colleagues, some opposing a conscientious objection protection have claimed there will be issues in terms of access. However, Carolyn Pullen, of the Canadian Nurses Association, said at committee:

> In both the case of abortion and in medical assistance in dying, these are not emergency situations. There is time, even in remote or rural circumstances, where if a provider needs to recuse themselves from the process, there would be policies and practices in place to bring in a substitute provider to provide that care.

Another claim that the government has made against enshrining this protection is that we would be infringing on provincial jurisdiction.

The Hon. the Speaker: Senator Plett, your time is expired. Are you asking for five more minutes?

Senator Plett: Please.

The Hon. the Speaker: Granted, colleagues?

Hon. Senators: Agreed.

Senator Plett: Thank you, colleagues.

Another claim that the government has made against enshrining this protection is that we would be infringing on provincial jurisdiction. We, as the federal Parliament, are setting out exemptions to the Criminal Code. We are stating that in "these" circumstances, or within "these" parameters, assisting a person in death is legal. The provinces have absolutely no legal say in such parameters.

Colleagues, this protection is imperative if we are going to pass this legislation. It is a protection that needs to be consistent across the country and that is guaranteed to any medical practitioner who feels that their professional judgment is being stripped from them or that they have to choose between career and conscience.

Colleagues, we will have more time to debate individual amendments when they are introduced. I know that some honourable senators, in good conscience, cannot bring themselves to vote in favour of this bill. However, I am of the opinion that we must find a way of strengthening and passing this legislation.

Colleagues, I would encourage you, when I bring these amendments forward, that you support them. If this bill does pass, these safeguards will be crucial for both consistency and for protection of the vulnerable, and I hope I can count on your support.

Thank you.

Hon. Grant Mitchell: Colleagues, I want to echo the sentiments of senators who have spoken already in congratulating our colleagues for their participation and work in the joint committee, in the Committee of the Whole with the ministers, in the pre-study and in this debate. There are times, many times, more than I think Canadians understand, that the Senate soars and this is one of those times. It has been enormously impressive and I would like to applaud the decision for having it televised. I would like to have seen more of it televised, but at least the Canadian public got a chance to see our Senate for a period of time at its very best.

I think we have all been moved by the very personal stories that we have heard in here. This is a deeply emotional issue, and I expect that every one of us has had an experience with a close family member, close friends, in an end-of-life situation.

I am struck by the fact that a good deal of this debate has been focused on expanding the scope of the legislative regime defined in this bill. In the course of that argument, as you might expect, the arguers, the presenters, have certainly emphasized what isn't in this bill. I'd like to take a moment to emphasize what this bill actually contains and what it actually does, because this bill is not nothing. This bill is profoundly significant. It takes a culture and a society that has not addressed state medically assisted suicide and implements that deeply within our legislative and cultural social structure.

It brings into effect medically assisted dying that has never been in effect before. This has been legislated by only six national governments in the world, only one of which has advance directives, with which they are struggling to this very day. This is a significant change in the social and cultural mores and norms that define our society and will result in multiple medical professions having to alter fundamentally their culture of care and sustaining life.

• (1030)

I should note that while I respect greatly what Senator Plett has said, I believe that it will not require this of medical professionals, whose right to conscientious objection is protected in this bill.

There is nothing in this bill that says there cannot or will not be more, that this legislative regime cannot or will not be expanded. In fact, it provides specifically for next steps to deal with those matters that senators have argued are required to complete the legislative framework around assisted death. I would expect that the force of this debate will encourage the government to expedite these next steps. The tenor, the power and the force of this debate will not be lost in the months to come.

The process of developing the legislative regime I believe reflects the demands of day-to-day governance in the practical world. In fact, I think it can be said that Bill C-14 has been forged by debate and consideration, but it has also been forged by the practical challenges of governance, of establishing a regime to deal with the many complications and dangers of properly and prudently implementing medically assisted death.

There are 14 federal, provincial and territorial jurisdictions in this field that have to be coordinated and consistent. There are multiple medical professions with the requirements of their professional governing bodies that also have to be coordinated and consistent in their efforts across the country. This is not simple work.

There is the imperative that all vulnerable people on both sides of this issue need to be protected, and that is work that requires deep prudence and consideration.

The bill takes one very significant step dealing with foreseeable death. In resting on foreseeable death, this bill moves beyond but directly reflects — and this is important to me — the experience in our medical system with end-of-life practices, largely involving decisions to stop treatment. This bill is about end of life, about foreseeable death — less complicated than the expansions being called for in this debate. But then it initiates specific legislated measures for structured study, debate and preparation for next steps, which are even more difficult and more complicated.

Constitutionally, I'm not convinced that the Supreme Court would reject this bill in its current form. There are certainly learned scholars on both sides in Canadian debate and in this debate in the Senate. There is doubt about the assertion that it isn't constitutional. While I'm not a lawyer, clearly, I can see that much has changed since the Supreme Court ruling, and I can see that the demands made by the Supreme Court have been met in many ways by this bill.

The bill, I reiterate, accepts assisted death. The point has been in debate that, somehow, the government argued its case three times, lost it three times and then just implemented these elements into the bill. That's not the case. The government argued against assisted death, and now assisted death is in this bill. That is a result of the significant response to the Supreme Court ruling. In addition, as I've said before, the bill requires further study of critical areas of expansion. That's a significant response to the Supreme Court ruling.

The bill also implements, as referred to the in the ruling specifically, a "complex regulatory structure" to address assisted death. That raises the question, outlined in the statement made by the court, that the courts must accord the legislature a measure of deference and that a high degree of deference is owed to Parliament's decision to impose an absolute prohibition on assisted death. They're talking about deference, so these are significant differences between what the situation was on February 5, 2015, just before that case was ruled on, and what the situation is today.

Arguments have been made about the sky not falling if there is no bill. I accept that it may not fall, but I'm pretty sure that it will become very, very cloudy.

For those particularly concerned about conscientious objection, so well argued by Senator Plett, it should be noted that this is not protected at all in the guidelines developed by professional governance groups across the country — not in a single place. In fact, it is quite the contrary. Physicians in these guidelines are directed at the very least to refer.

For those wanting more, wanting expansion, these same guidelines to a jurisdiction forbid advance directive. For those concerned about safeguards, safeguards in the guidelines are inconsistent and not backed by the force of legislation. Moreover, for those wanting more in this legislative regime, whatever form such a bill would take, it would surely include the elements of this bill. This bill is not inconsistent with what can become and what can in fact follow.

In essence, I would argue that voting against this bill or delaying it because it does not protect conscientious objection will result in an inconsistent series of professional association regimes that do not protect conscientious objection. Risking this bill's passage because it does not go far enough will result in the same regimes that are limited in any event by ruling out advance directives. They don't go further either. Or, delaying or defeating

this bill risks losing elements we have now while working on further additions that any bill that goes further would surely include anyway.

I believe Bill C-14 has captured a critical balance between the pressures brought by the court to do something quickly and the prudence required to go further carefully.

Senator Cowan: I commend my friend Senator Mitchell for crafting what must have been a very difficult speech for him to make.

The language of *Carter* has been considered in 20 to 25 applications across the country under these interim procedures in place until June 6. Comments have been made about what *Carter* means and does not mean.

The basic underlying premise of this legislation, as the minister acknowledged the other day, is that it makes available to persons who are close to death, who are dying —terminally ill — medical assistance in dying.

Can you point to any judicial statement by any judge who has considered the *Carter* decision since the decision came down, who has supported your position, your government's position, that the constitutional right to medical assistance in dying is restricted to those who are terminally ill?

Senator Mitchell: I appreciate Senator Cowan's concern for my difficulty in writing this speech. I actually found this challenging and invigorating. I enjoyed his debate, and I appreciate his question.

First, what I know as a layperson is, for example, that the Alberta court ruled in a way that seems consistent with *Carter*, but they explicitly said they were not ruling on the constitutionality of this issue.

Second, I know that they also said in their ruling that the parameters of their ruling remain within the facts of this case, and "this case" is not the *Carter* case. "This case" is the Gloria Taylor case. Gloria Taylor was absolutely in a condition of foreseeable death.

• (1040)

I'm not accepting this definitive, unwavering position of those who say that this is not constitutional. I'm simply not accepting that. I think there is some ambivalence in the *Carter* ruling in a number of places that at least opens up to the government the chance to have the courts defer to what they have done, I believe, extremely effectively in finding a balance that meets various demands, is foraged in the practicality of day-to-day governance and is extremely well done, leaving the chance to get to where senators, like Senator Cowan and others, want to get in the future by dealing with important issues that they feel remain to be established to achieve constitutionality.

Senator Cowan: Paragraph 41 of the unanimous decision of the Alberta Court of Appeal states.

> In summary, the declaration of invalidity in *Carter 2015* does not require that the applicant be terminally ill to qualify for the authorization. The decision is clear. No words in it suggest otherwise. If the court had wanted it to be thus, they would have said so clearly and unequivocally. They did not. The interpretation urged on us by Canada —

— that is, that the application, the *Carter* decision, the rights are only for those who are terminally ill —

> — is not sustainable having regard to the fundamental premise of *Carter* itself as expressed in its opening paragraph, and does not accord with the trial judgment, the breadth of the record at trial, and the recommended safeguards that were ultimately upheld by the Supreme Court of Canada.

Surely, Senator Mitchell, you cannot urge us to go somewhere along the way to complying and protecting rights — entrenching in legislation the rights that have been unanimously granted by the Supreme Court of Canada to a clear category of Canadians. You cannot urge us that "This is good enough; let's get this in and we'll continue discussion somewhere down the line." Surely that's not a sustainable position.

Senator Mitchell: With respect to timing, Senator Cowan, you may have argued this. I don't want to put words in your mouth, but others certainly have argued that we need to take the time to get this right, and these are people arguing your case.

The fact that the government is taking the time and putting into legislation the next steps to get it right is consistent in part with the argument that you have made.

If everything the court said was definitive, irrefutable and irreplaceable, then this case never would have been decided in the way it was decided because *Rodriguez* would have finished it. In fact, the *Carter* ruling says that many things have changed since *Rodriguez*. There is new information, legal concepts, legislation, social development and cultural perspectives. All of that changed the view of *Rodriguez* and that's why we're here today.

The point I'm making is much has changed and there is new information, this bill being a huge part of it since February 6, 2015. If this went before a court today, they would consider the fact that assisted dying is now part of our legislative regime and our social structure. It's in this bill.

Five more minutes?

The Hon. the Speaker: Senator Mitchell, are you asking for more time?

Senator Mitchell: Yes, please.

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

Hon. Senators: Agreed.

Senator Mitchell: They would be confronted by the fact that this bill was not definitive in saying foreseeable death only, that it is set out in legislation. It has amended the legislation to put it right in the body of the legislation. It has set out in legislation strong next steps.

It hasn't said that it precludes any of that at all. That is new information. It has also said that there needs to be a complex regulatory regime and they will defer to that, and that's new information, because whatever you want to say about this bill, you have got to admit that it's a complex regulatory regime.

Hon. George Baker: Would the honourable senator agree that the decisions of the provincial superior courts, including that of the Court of Appeal of Alberta, concerned the application of only one paragraph in the Supreme Court of Canada decision called *Carter v. Canada*, and that that is paragraph 127? The entire procedure of the superior court was simply to act as a gatekeeper to make sure that each person applying would come within those three sentences. The entire decision of the Supreme Court of Canada was in fact not under a microscope by these courts and the Court of Appeal of Alberta, and they were not tasked with determining the constitutionality of what the Supreme Court of Canada had already done.

Senator Mitchell: I absolutely agree with that. Again, I'm not speaking as a lawyer, but I understand the maxim that you don't just make laws on individual specific cases, that that is fraught with danger.

In fact, what the next steps allow us to do is to consider these very difficult questions, life and death decisions, in the more complicated realm of assisted dying in a structured way that doesn't have to take a long time. I would argue that thanks to the kind of elevated, forceful debate in this Senate, it will be expedited because it will not be lost on that government.

Hon. Mobina S. B. Jaffer: Senator Mitchell, I listened to you very carefully. First of all you talked about *Rodriguez*. I don't think you were here when I was speaking. In my remarks, I said that we've evolved since *Rodriguez*. Things have changed. The culture has changed and therefore the Supreme Court changed.

I want you to clarify. Did I hear you correctly when you said that we have come so far and the government has heard us, so let us take this today and it will evolve later? Is that what you were saying?

Senator Mitchell: I'm saying that this bill is not nothing. This bill is very significant. It is a very significant change to our social and cultural mores. It is consistent with the practice that our medical system has had with the precedent of end of life issues to this point. It goes slightly beyond that. It goes from simply stopping treatment to an active, proactive initiative. That's significant and not nothing.

So I think it's very consistent. It has found a fine and important balance.

It could have said that's it, but it didn't say that's it. It said here are the structured ways we're going to pursue further issues. As I said, the perspectives that you argued, you argued well, as you always do. I am not saying you said this, but people have said let's take the time to do this right.

The government has found the perfect balance. It has done what it can do during the period of pressures of day-to-day governance and it has given us the chance to further that progress in ways that you're arguing.

I don't think these positions are inconsistent. I think what this does is it helps this country and this legislative process come to a consensus point at which we can continue to work. There is a good balance and good consensus.

Senator Jaffer: If I hear you clearly, Senator Mitchell, this worries me in the sense that you're saying the government has gone so far, it has heard us and it will do more.

We are legislators. We are the ones who have to do the law, not the government. We are the legislators here who need to take leadership. You're saying, "Let's go this far, and then the government has heard us and then they will do more." Is that not our job?

The Hon. the Speaker: Honourable senators, Senator Mitchell's extended time has expired, but with your indulgence can he answer that question?

Hon. Senators: Agreed.

Senator Mitchell: I'm saying, yes, I think the job has been done extremely well. We've exposed all sides, all elements and avenues of this debate, and I am sure that more will be exposed by Senator Harder and maybe other speakers.

I think there is a divide between debate and the pressures of governance. That's all I'm saying. There is a divide.

If you look at the timelines, they have been very tight. February 6, eight months preceding an election, three of which were an election and the government was formed. Five, six months later they present a bill, and that's a pretty big step in this direction. All they're saying is let's lay out the pattern to take the next steps in an organized fashion. That's not inconsistent with good debate and the work of the Senate and it's not inconsistent with good governance. It is a perfect blend.

[*Translation*]

Hon. Ghislain Maltais: Honourable senators, I know that, for most of us, this will be the most important bill we consider as senators. This bill will provide Canadians with good governance over this issue for decades.

• (1050)

I can say from the outset that I have rarely, if ever, seen such unanimity in the Senate. I am not going to wade into the legal or constitutional aspects, since Senators Carignan, Ogilvie, Runciman, Joyal, and Baker and especially Senator Cowan

have appropriately illustrated the constitutionality of the matter and the rights of Canadians. I sincerely thank them for that. I am not a lawyer. I was an MP of the people and I am a senator of the people. As a parliamentarian, I have learned a lot from these eminent senators who have an exceptional understanding of the law. I will therefore leave well enough alone. I will be myself. I was an MP of the people and I am a senator of the people.

Today, it is that voice I want to make heard in the Senate, that of everyday Canadians, those who work in hospitals, those who work in seniors homes. In referring to Quebec's "dying with dignity" legislation, someone asked me at what point we lose our dignity. We lose our dignity when we shirk our responsibilities as legislators in every province of Canada. From the Maritime provinces to British Columbia, through Quebec, are we doing enough to allow people to preserve their dignity? That is the question we need to ask ourselves. In the expressions "dying with dignity" and "medical assistance in dying," there is one word too many: "dying." My surgeon once told me that there are no good deaths, just death.

We realize how precious life is when we are faced with losing it. As legislators, we have a duty to ensure that Canadians all have an equal opportunity to leave this life and die with dignity. However, I much prefer the term "human compassion."

Let me give you an example. We are fortunate to have Aboriginal colleagues from the First Nations. I'm from northern Quebec. I've lived among them. Did you know that I have learned a lot about the end of life from our First Nations brothers? They prepare for death, for the time when the spirit leaves the body. They prepare very carefully. People who are dying are surrounded by family to ensure that they leave this life in a calm, dignified and peaceful manner and that their spirit feels free to leave their body.

I see Senator Watt, who is also from northern Quebec. Senator Watt, you know what happens. I have seen it dozens and dozens of times in the Montagnais communities in my district, and I have learned a lot about compassion. Are we prepared to offer that same compassion to all Canadians who need it?

The bill before us today excludes certain people. When faced with death, we are all equal and we cannot allow anyone to be excluded. One thing really surprised me. Anyone with the slightest amount of experience in Parliament knows very well that legislation cannot be based on surveys. That would be outrageous because conducting a survey is like testing the temperature of water. At 8:30 a.m., the water is 30 degrees and at 4:00 p.m. it is 12 degrees. The temperature changes quickly, much like survey results. I cannot accept being told to legislate based on a survey.

We are doing our duty as senators here. Reread the oath you took when you were sworn in as a senator. Reread it, and you will see and understand that we are here for the good of Canadians from all walks of life. People's situation at the end of their life is one of the most important situations for everyone.

All senators have had different experiences with death in their families. Eight weeks ago, I had my own experience, when I stared Death in the face. I fortunately had excellent surgeons who kept it at bay a little longer. We've all had loved ones go through difficult situations. As human beings, we've all felt a lot of compassion for them. If we have compassion for our own family and friends, we should also have compassion for those who are alone and who are abandoned in long-term care facilities, in palliative care facilities. We must think about them today and remember that one day we will be in the same position. When that time comes, how would we like to be treated? That's the question we must ask ourselves as legislators.

We must not rush through approving a bill as important as this one. Countries that have passed such legislation spent years studying the topic. Quebec legislators took five years before they could agree. They acknowledge that it is not perfect, but it is a step forward.

I know that at third reading, some colleagues will propose amendments. I urge the Canadian government to consider the wishes of senators. We are not legislating for ourselves; we are legislating for the good of all Canadians. That is our duty. That is why we were appointed. That is what we must do, and we must not feel rushed. No one should infringe on a parliamentary right by rushing the process. Parliamentarians have a right to a free vote, as guaranteed by the Constitution, and we must enforce that right. Everyone in this chamber must have their say on a bill of this magnitude. That is the important thing.

We will rely a great deal on our colleagues who are legal experts to guide us in drafting amendments at third reading that will reflect human compassion. That is very important to each and every one of us, and it can be very emotional.

As many constitutional experts have said, the world will not stop spinning on June 6. We will continue working for the good of all Canadians. We will do our duty, without succumbing to pressure. Thank you.

Hon. Senators: Hear, hear!

Hon. Chantal Petitclerc: Honourable senators, it is with a great deal of emotion that I speak in the chamber today for the first time.

Hon. Senators: Hear, hear!

Senator Petitclerc: What an incredible privilege it is to be here. In fact, it is more than a privilege. As I was writing this speech early this morning, my heart was full of emotion as well as a great deal of pride in being part of this group.

I want to say a huge thank you to each and every one of you. Yesterday's debates were inspiring, and the questions were relevant.

• (1100)

[*English*]

Let me be really honest with you. I did not plan — in fact, I did not want to talk today. I feel nowhere close to being ready to speak in this impressive chamber. Remembering my former life as

an athlete, this morning I feel like my coach has put me in the final event of the Paralympics among the best in the world, with no training, and I don't like it.

But this morning, for one of the very first times in my life, it's not about performing; it's about bringing my personal perspective to a discussion that I believe is crucial and will define the country that we love so much.

[*Translation*]

Of course, I know that I still have a lot to learn, so please bear with me. People can learn the law and procedure, and I will learn those things, but beliefs and fundamental values come from life experience. That is what I have to offer the Senate this morning.

[*English*]

I will be brief, and I will blame that on the fact that I used to be a sprinter. But mostly it is because so much has been said already and in such a way that there is not too much to add. I will not talk about the Constitution, the wording of the bill or even advance planning. I feel that my questions, worries and doubts have been brought to attention in this chamber by so many of you and in such a way that I honestly could not do. So I want to thank you for this.

[*Translation*]

I have something to contribute to this rich dialogue as a senator and as a person with a disability.

[*English*]

Bill C-14, you will understand, affects me in a profound, personal way on three different levels. Let me say before I share them with you, in all candour, that I want to be able to support this bill with all of my heart. For as long as I can remember, I have supported the right to medical assistance in dying. Since we have received the bill, I genuinely want to be able to support it, but the truth is, it is not quite the bill that I was personally waiting for, and it is my hope that we can contribute to making it the best it can be.

[*Translation*]

I would like to share a personal story with you.

It is true that I am here as a senator, but as I said, and as you can see, I am a person with a disability. As such, it is impossible for me to be completely neutral on this issue. I have three things I want to tell you.

[*English*]

I do want to talk about unbearable pain, because in the end that's what this is all about. I heard some comments that seemed to suggest that pain is always manageable and that there is no such thing as too much pain to justify dying. Well, let me assure you, this is not true. I know first-hand what unbearable pain is. Not that I want anybody to feel sorry for me; that's not who I am. But as some may know, I did have an accident that made me paraplegic at the age of 12. A barn door fell on me, and for the next four months I was in the hospital. I've never told this story.

The first 19 days were torture, nothing less. Not to get too medical, but I had a broken spine and broken ribs. They could not fix the fractured bones until the swelling went down, and that took 19 days. Even though I was very young, I will never forget those 19 days of unbearable pain. In fact, I was so heavily medicated that I think I forgot pretty much everything except the pain of lying in bed with broken bones.

I will never forget, while lying in my bed, the big white hospital clock on the wall in front of me. Every hour on the clock, the nurses came in and had to turn me from side to side to avoid pressure. I swear to you, I was staring non-stop at that clock and started to cry every time the hour was approaching, as I knew the pain that I was going to feel when they would turn me. That was followed by screaming when it would happen and begging my mom to help me, every hour for 19 days.

[*Translation*]

I knew that my pain was temporary and that I would soon be back on my feet, or my wheels, but I can't help thinking of the people who live with intolerable suffering and have no hope of ever getting better. It is really for them, and them alone, that this law has to be the very best it can be. Let me be clear: I have tremendous respect for life. People who know me know that I cherish every moment of my life. I know all too well that life comes with great joy and tough challenges. I am also in a position to understand the importance of being free to choose.

[*English*]

That brings me to my second point, the right to make your own choices. Ever since we received Bill C-14, I'm new here, so I'm trying to get my head around the concept of what foreseeable death is. I have read, studied and thought about it, trying to understand what exactly it means. I will be honest with you: It still does not make sense to me. I was certain that with the debates and listening to all of you experts speak it would suddenly all become clear to me. But again, let me be honest: I still have no clue. To me, this is a problem.

An even bigger problem — and Senator Pratte and others mentioned this — not allowing the right to access medical assistance in dying to someone who is in unbearable pain but not dying denies a whole group of individuals the right to choose how they want to live and how they want to end their lives.

[*Translation*]

We certainly can all agree on that.

[*English*]

They are the most vulnerable, and we have an obligation to protect them. I agree with that, but not this way. This affects me mostly because even if most days I like to think of myself as invincible, I know that because I am a person with a disability, I belong to what we call "the vulnerable."

[*Translation*]

A person who is vulnerable is not without rights and deserves to have those rights respected. Let us find safeguards, guarantees to protect the vulnerable. That is our job.

[*English*]

It's our job to protect, that's for sure.

[*Translation*]

However, it is not our place to give ourselves the right to make such a decision for a person who is lucid and suffering intolerably and who wants access to medical assistance in dying, even though their death is not reasonably foreseeable under the terms of this legislation. It is disrespectful to those individuals. I understand that it is a natural human reaction to want to help, protect and sometimes even over-protect people who are disabled, severely disabled or seriously ill. We all do that. Such empathy and good intentions come from the heart.

[*English*]

But let me tell you, there is nothing more frustrating, when you are a person with a disability and vulnerable, than to feel as if you have no control over your own life. When you have a disability, the worst part is feeling as if you have no control over your own life and your own body. It happens to all people with disabilities, I can promise you that. It happens to me from time to time. This winter there will be a few times when, despite my strength and great autonomy, I will be physically unable to get from my car to the door of the Senate after a snowstorm, and I will hate it, and I will need help. This is normal. It does feel like your own body is betraying you. The more severe the disability, the more vulnerable you are, the bigger this betrayal feels. I can only imagine how someone would feel if they were vulnerable, in great pain and unable to have control over their own choice. That, to me, would be betrayal not only of the body but also from our country.

• (1110)

There is a fine line between protecting the vulnerable and patronizing them. It is my personal belief that this bill is crossing that line. That is not acceptable.

Lastly, I had to speak today because Bill C-14 is not just a number; it is people I know. I have two friends who, years ago, chose to end their own lives — one Canadian, one Swiss — one with a severe disability, one with an incurable disease. They were both in great pain, with no hopes of getting better and not expected to die for years.

[*Translation*]

They were both bright, clear-minded men in their 40s who were not at the end of life. Even today, I still feel a sense of peace in knowing that they left this world in the way they wanted to. I have always respected their choice and their right to make that choice.

Reading Bill C-14, I know that our country wouldn't have allowed them to exercise that right, which really troubles me. At the same time, thinking of those two individuals makes me smile, because they were both strong, stubborn guys, and I know they would have fought tooth and nail for their rights, regardless of the law. In closing, honourable senators, I will be thinking of them when I show my full support for the amendments that will be proposed in that regard, in the hopes that all Canadians will have access to the law that they deserve.

[*English*]

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Let me begin by offering my very humble thanks to Senator Petitclerc. No one here today will ever forget hearing you this morning. Thank you so much.

Hon. Senators: Hear, hear!

Senator Fraser: Colleagues, this is the most wrenching debate that I have ever participated in. I had not intended to speak until third reading, but I did want to address a small school of assertions that have been made in this debate. The quality of this debate has been tremendous and humbling.

There is one small stream of thought that I would like to object to, for the record. That is the assertion that we have heard a few times, one way or another, that the Senate owes deference to the elected representatives of the people in the House of Commons on this matter. I beg to differ.

Some Hon. Senators: Hear, hear.

Senator Fraser: The Senate does defer to the House of Commons, and rightly so on many matters, starting with legislation that comes before us that reflects specific elements of the program upon which a government has been elected. That is only proper. But there are other areas where the Senate has a real, important and vital history of standing against the expressed will of a majority of the members of the House of Commons. Nowhere is this more important than in matters concerning the Charter of Rights.

Surely we have a duty, given the privilege of our positions in Parliament, to exercise our best sober, independent second thought. That is never truer than when we are discussing matters related to the Charter of Rights. The most fundamental elements of the Charter, in most cases, involve minority rights and affect minorities. By definition, that means protecting them against mistakes or malice on the part of majorities. But I will confine myself here to the question of mistakes. I see no malice anywhere in this country on this issue, but I do see what I believe to be mistakes.

In this chamber we have always, in my experience, stood for respect for the Charter and for minority rights. On occasion, we have actually defeated legislation. On occasion, we have amended it. On occasion, we have worked behind the scenes to have the government of the day withdraw or amend its legislation, but we have taken this responsibility extremely seriously, even when we knew that it would not make us popular for at least the time being.

We owe that to the people of Canada, it seems to me. We do not owe automatic deference to the House of Commons. In my view, we do owe not automatic but very strong deference to the Supreme Court of Canada, in particular, when we are considering matters of the Charter of Rights.

The Supreme Court of Canada is what it says. It is the Supreme Court of Canada. It is the final authority to inform us what the Charter means. If Parliament, in its wisdom, decides to invoke the

"notwithstanding" clause where it can, or to try to craft legislation that satisfies the tests of section 1, which provides for reasonable exceptions, Parliament is free to do that. But if the Supreme Court tells us that something is or is not constitutionally permissible, until we test the proposition again before the Supreme Court, which is not something we should do too frequently, what the Supreme Court tells us is, in my view, what we must respect.

The Supreme Court stated the matter of medically assisted dying is a Charter matter under section 7. We have to take that seriously. We may then, in our analysis, come to different conclusions about what the *Carter* decision means. That's why one has eminent lawyers, to discuss what we think the Supreme Court means. In the end, whatever decision we make about legislation must be based upon our understanding of our constitutional obligations as the Supreme Court has explained them to us.

• (1120)

I'm not a lawyer; I'm a senator, and I do take very seriously the advice of all the learned lawyers in this chamber, and what a surprise that they may not necessarily agree.

I myself so far, with reluctance, have come to the view that grievous and irremediable does not mean terminal and that we should proceed on the basis of that understanding. But we're not through yet. We have committee hearings and a third reading debate, and I will listen with great deference to the arguments advanced then.

But what I do believe with my whole heart is that we are bound to respect not only the Charter but the interpretation of it that the Supreme Court has given us.

Colleagues have pointed out that the law evolves, society evolves, and the Supreme Court has evolved on this terrible question, but *Carter* is where matters stand now, and *Carter* is what we must adhere to.

I was distressed the other day to hear the Minister of Justice, when asked explicitly if Bill C-14 was in conformity with *Carter*, hesitate and then say, repeatedly, "It's in conformity with the Charter." That may be her view, but that is not sufficient for us, in my opinion.

So no automatic deference to the House of Commons; serious deference to the Supreme Court of Canada. I believe if we follow those two principles, we will come out, at the end, where we should be.

Senator Jaffer: May I ask a question? Senator Fraser, I consider you my mentor, my teacher. When I came to the Senate, I learned a lot from you, and I still continue to learn from you.

One of the things that you have taught me over the years, especially as we work on the Rules Committee together, is that the job of a senator is to protect minorities and to protect the Charter.

When it comes to money bills, we normally agree with the House of Commons, or so I learned from you. Maybe I was a poor student, but we would agree with them or try to accept what the Commons said, but on other matters we were an independent body.

Could you expand on that, please?

Senator Fraser: Yes. I suppose colleagues are familiar with the fundamental principle that we cannot initiate money bills, and we cannot raise taxes. We can pass legislation for levies, but that's a wrinkled path I won't go down here.

Learned persons, like former Senator Lowell Murray, have argued strongly that we can amend money bills and budget bills because we are not a confidence chamber. But we have, traditionally, only done so on rare occasions, because the matter of money, for centuries, was at the heart of the Commons' gradual assertion of authority over the King and now over the executive.

Let me say in passing that I strongly support Senator Moore's bill on borrowing, and I'm glad the government has listened to it.

Other than that, though, yes, we are here to represent regions and their provinces. From the beginning, when the linguistic protections were built into senatorial representation, it has been clear that a fundamental element of what we are here for is to protect minorities. Since patriation of the Constitution, the great instrument for the protection of minorities all across this country has been the Charter of Rights. If we do not stand as guardians of the Charter of Rights, who will?

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

Just before I ask my question, I want to thank you, Senator Petitclerc, for what you've just said. You've helped me in my thinking, and I've been here, as Mr. Chrétien would say, since a long time. It was very helpful. I do intend to speak at third reading.

Senator Fraser, not to get ahead of ourselves, but we've heard so much of the debate, and I believe you can feel a consensus here on advance directives, and there will be amendments coming out of Legal and Constitutional Affairs.

We are at second reading. We have to get to the part of third reading, and then we send the amendments.

I know this is a hypothetical, but if this bill goes to the other side, supported, with an amendment or two, and it sits on the other side, a lot of new and older senators are asking what happens between punting it back and forth. Who will have the final say on this?

We're going to have a say, and we're going to have amendments, and they're going to go to the other side. There's no question about that in my mind, but what's going to happen at the end of the day?

Senator Fraser: When I was a journalist and I would put a question like that to a politician, the politician would always say, "I never answer a hypothetical question."

Senator Mercer: But here you go.

Senator Fraser: I don't have any more of a crystal ball than anybody else has, but procedurally, we don't really have a mechanism to break a deadlock between the Senate and the House of Commons. In the rules there is provision for a conference, but the Clerk of the Senate told me once that the last time that was done was in 1940 or something. We're out of practice with Senate-Commons conferences, so I don't know if we could look to that.

In Westminster, they do have repeated volleys of parliamentary ping-pong, where bills go back and forth multiple times between the two chambers to achieve agreement. We don't have that tradition, but there's nothing in the rules to prevent it.

Senator Munson: Just a further point of clarification. It will be a good thing, if this government believes in the idea that we do have something to say and something to add.

If I were in government and thinking strategically, I would have had this bill, and I would have set things up for amendments to be accepted. Everybody would take a look and say, "Parliament does work." That may happen.

If they don't accept the amendments when we send it there, what happens?

The Hon. the Speaker: Your time is up. Are you asking for five more minutes? Is leave granted?

Hon. Senators: Agreed.

Senator Fraser: Just to answer one question, colleagues, to the extent that I can.

What happens? They send the message back, saying, "We don't accept your amendments." Then we either yield or don't. We can send a message back saying, "We insist on our amendments."

There was a bill involving animal cruelty a few years ago, Bill C-10, where we stuck to our guns for several rounds, as I recall. In the end, the bill was severed. That solved that particular problem, because it was just one portion of the bill that we were objecting to.

There's no guarantee of anything at any stage at this point. I think it would be wonderful and solve everybody's difficulties if the government accepted our amendments.

Senator Baker: I think what the question was trying to get at was to inform the senators in the chamber what the procedure is.

Would the senator not admit that the procedure is that if the bill is amended here, a message goes back with the bill to the House of Commons, and the message is then dealt with in the House of Commons, and the message is debatable? Since it's debatable, it is amendable. Whether the House of Commons accepts the amendment, at the conclusion of that process the bill then comes back to the Senate, regardless.

• (1130)

If the Senate accepts it, then that's the end of the process. But if the Senate decides not accept it disagrees with that message and offers further suggestions to the House of Commons, the bill goes back again, and again it's debatable and amendable. Would the honourable senator verify that that is, as she sees it, the procedure in place?

Senator Fraser: I admit nothing, nor do I profess to be an expert on the procedures of the House of Commons.

We send a bill to them with amendments, a message saying that we propose these amendments. I do know that they must confine themselves to those amendments, basically accept or reject; and then they will send a message back to us saying that they reject them, accept some but not others, or accept them. I have already explained where my preference would lie. And then we get into the battle of competing messages, which in Westminster they call ping-pong.

I bow to your long knowledge of the house as to how they actually organize things within their own green walls.

Hon. Serge Joyal: The Honourable Senator Fraser has sat on the subcommittee of the Rules Committee. You will remember Senator Carignan was also on that subcommittee, and so was the Speaker, as he then was.

When we had to consider revamping, modernizing the Rules, you will remember that we discussed this issue, because there is no such thing as a legal void. I want to reassure senators. I especially invite the new senators to look into it. It is in the *Rules of the Senate* that you have in your desk and can be found at rule 16-2 and following, at page 107, entitled "Messages Between the Houses and Conferences." There is a clear procedure and any one of us can refresh his or her memory.

You will remember that when we discussed that, we asked ourselves the question: Should we drop that? Because as you stated, it has not been used for a long time, but it didn't fall into *désuétude*, as we say in the French civil law. In other words, the law is there for us to use. In that context we have a process that could bring the two houses together to try to find a common consensus on what should be included in the bill.

The Hon. the Speaker: The Honourable Senator Fraser's time has expired, but I would ask leave for her to take a few moments to answer that question.

Hon. Senators: Agreed.

Senator Fraser: Thank you, colleagues. The rule is there, as I said a few moments ago, but we are out of practice.

Once you get into a conference, I think the advantage lies with the House of Commons because of its numbers, and I'm not sure that it would end up being the best possible place for reasonable discussion. It might be, and we might find ourselves resurrecting

this procedure and it might work very well. But as I say, it has been so long that I would hate to be seen as guaranteeing that that was a wonderful way to go.

The Hon. the Speaker: On debate, Senator Martin.

Hon. Yonah Martin (Deputy Leader of the Opposition): Thank you, Your Honour.

I had removed myself several times from the list over the course of this debate yesterday and today, but I feel quite inspired and compelled to say a few things and put my thoughts on record because of the importance of this debate. I ask all honourable senators to exercise even greater patience as I try to contain my comments to a few minutes.

Senator Petitclerc, I want to say that hearing your voice has been important for us because we can talk about our experiences in caring for family members who have gone through this incomprehensible pain. Some in this chamber may have experienced their own, but for you to share such personal experiences at an age where the world is before you was absolutely necessary and important for this debate.

I want to express how much more respect I have for all honourable colleagues, and especially for this chamber, that allows us to exercise our amazing privileges to serve in this place and represent minority perspectives and/or bring our personal experiences to the floor. Just like this debate, where there is an entire spectrum of positions, at times I felt the gap was widening rather than narrowing, as I'm wrestling with my own decisions as to what I will do when it comes time to stand and exercise my vote.

I, like Senator Petitclerc, awoke with many words swirling in my mind, and I want to say that my notes are not so prepared, which is a reflection of my mind, my heart, my emotions and everything in between. I proceed with great caution, because I learned in my first weeks and months of being a senator that I must be impeccable with my words because a "yes" that does not mean "yes." I remember chasing that answer for two weeks trying to catch up to it.

I remember asking a question in committee, unprepared, and having someone call me who had watched the broadcast at 2 a.m. asking why I said what I said. So I say what I am saying today with all honesty and with great commitment to the task that we have been given as legislators in this upper chamber to listen to one another with absolute openness and to deliberate when it is time in the best interests of the Canadians we serve.

I am not a constitutional expert. I am not a lawyer, and it was very humbling for me as an English major to sit at committee looking at my first piece of legislation and not understanding the first paragraph, until I read it about 10 times, because every word and punctuation mark means something.

So as an English teacher who used to teach about euphemisms and oxymorons, I find medical assistance in dying to be both, which is why I am struggling as a Christian, a woman of faith, where in every breath that I take I feel God's presence, where I was taught that suicide is a sin. But as I listen to Senator Petitclerc, I think about ending one's life as being a right; so it really challenges me at every turn.

• (1140)

My brother suffers from mental illness. When we were doing a study in the Social Affairs Committee on prescription drugs and clinical trials, he was taking one of the drugs, which I don't think had been fully tested because adverse effects are not properly and accurately monitored in this country. He was a prisoner in his room for one year. Afterwards we were able to get him on the proper medication and get him on the road to recovery, he shared with me that he had contemplated suicide many times and that the reason he didn't was because he believes that suicide is a sin.

I have been informed by these life experiences and by my core beliefs. As I rise in this chamber today, I wish to say to all honourable senators that these debates have expanded my understanding of this issue. I am reminded of Victor Hugo's words that there is nothing more powerful than an idea whose time has come, yet I am still wrestling with whether it is that time.

Time is of the essence. And, for a person suffering from dementia — which also is a spectrum; it's a spectrum disorder — every case is unique. My mother, who suffers from dementia, was deemed medically incompetent. Let me tell you that the first time we took her to a specialist to be assessed, she outwitted him and had him yelling at her. Our family realized that we could not rely on the medical services that were available at that time, and we took it into our own hands. When she was deemed medically incompetent and had to be institutionalized for her own safety because she did have a stroke, I am so amazed to share that while in care she has learned another language. While I am in front of her and she forgets that I am there, when a care person comes in who speaks as her first language Japanese, my mother will speak in Japanese. She can distinguish to whom she should speak English, Japanese, Korean and now Tagalog a little bit.

We have to understand that the people who will be directly impacted by this legislation are the patients who are in the moment of potentially making such a decision. We have to ensure that whatever regulations, whatever systems, we have in place must indeed serve them and the families involved and Canadians in the best way possible.

I was in the room when my father took his last breath, similar to our leader's father. Ironically, I did not know until this debate that we were both present and that our fathers died in the same way.

My father suffered for almost two years, and there was no cure. He suffered unimaginably, but throughout it all he was absolutely lucid and did not say very much. He was mostly silent throughout it all, but his silence spoke volumes. We stayed with him in Mount St. Joseph Hospital care facility, which is run by the Catholic Church, where the care workers sang hymns to him to comfort him. But his silence taught me about incredible strength and, in a way, this strange gift of suffering. I say that with absolute respect to all those who will choose to do otherwise.

So, honourable senators, I rise to say this for the record: The moment of determining competence is not a moment but an entire process, and it is along a wide spectrum.

I trust that once this bill is referred to the committee and it comes back to us at third reading, we will hear even more compelling and focused speeches as part of our third reading debate.

I want to acknowledge the work of all the senators who served on the special joint committee, as well as those serving on the Legal Committee, because they are at that table doing additional work on our behalf so that we can then have the kind of debate that we want to have at third reading.

I want to thank all honourable senators for indulging me these few minutes to share my thoughts that are still somewhat mixed up, yet through this debate I feel as though I can see a path forward. I hope that we will all make our decisions wisely, honestly and in the best interests of all Canadians.

Hon. Daniel Lang: Colleagues, I rise to speak today because of what I have heard over the last two days. It was not my intention to speak until third reading.

I want to begin by first commending the Special Joint Committee on Assisted-Dying for their report, which in part provided the basis for this discussion today. It's unfortunate that so little of the direction that was brought forward in that report was incorporated into the legislation in Bill C-14 that we're discussing today. I think it has been a serious mistake by the government. I think their intentions were good but, at the same time, I think that they, for whatever reasons, went in a direction that obviously most Canadians don't agree with.

I say that not because I listen to polls, not because of the tenor of the debate in the House of Commons, but because the fact is that most Canadians are ahead of us. When you listen to the debate in this house, you hear from colleagues like Senator Wallin, who gave a very personal story yesterday about her family, about how her family had to deal with the question of dying. The fact is that like Senator Wallin, we all have a story. Everyone in this Senate has a story, and all 36 million Canadians have a story.

The question that has to be put to us, and is being put to us, is whether we're going to allow Canadians, to the best of our ability, to die with dignity when that time comes.

I would highly recommend, for those who would like to do some further reading on the subject, a book called *A Good Death* by the author Sandra Martin. It gives a total history of where we started from and where we are today, and it also gives the background of why decisions were taken and why the Supreme Court made the decision they made.

I want to say at the outset as well that I welcome this debate. I'm not disappointed that we're having this debate because I think it's long overdue. For political reasons on all sides of the political spectrum, we have ignored the responsibility of dealing with a very real issue that faces us in Canada. We have to realize the demographics of our society, and the fact is we are all living longer, and the way death was seen 40 years ago is far different from what it is today.

Now, I've listened to the debate for the last day and a half, and only in a few cases have we touched on the constitutional responsibility of the provinces, the territories and the Government of Canada.

• (1150)

We talked about minority rights; we talked about the Charter. Having been a provincial-territorial minister, an MLA, I understand fully who is responsible for health care in this country. I understand fully who delivers that health care day-to-day. And I understand fully who takes the responsibilities day-to-day and the political responsibilities in servicing the regions of this country. I'm going to tell you right now: It's not the federal government. It's the provincial and territorial governments that carry the can day-to-day.

What concerns me from what I have learned today, not being part of that committee, is that Bill C-14 is restrictive. It does not answer the question of the *Carter* decision.

I want to go back to a personal experience, if I could. I had a friend, an individual with whom I worked for many years, who was a bright, intelligent, hard-working Canadian. At the end of his life, he found that he had brain cancer. Because of the lack of medical directives that could be put in place in this country — and, he was fortunate enough that he had the financial wherewithal — he made the decision to go Switzerland and design his own departure, knowing it was imminent. The bill before us, Bill C-14 — unless somebody can tell me otherwise — tells me that my departed friend would still have to go to Switzerland when that day comes.

I ask you this: What's the purpose of the legislation if it's not to meet as best we can those situations in which Canadians find themselves? No Canadian is the same as the other when it's time to say goodbye. Some are more fortunate because they may have a stroke and then it's over. What we're talking about here is whether or not you, me and 36 million Canadians want to have the right to be able to say goodbye when that time comes.

I also want to say this to the committee that's going to be having witnesses this coming Monday on the question of the province and the federal government: I am not convinced that if we don't amend the legislation and we don't pass the legislation, the world is going to fall apart that day or the following day. In fact, I would argue the converse. Looking at the provinces and territories, and reviewing their medical guidelines for the purposes of medical assisted dying protocols, I would say that it is less restrictive and does meet the test that the *Carter* case provides us.

That being said, why would we pass a bill that would be more restrictive if the argument is being put here on the floor of the Senate that we want to meet the questions asked by *Carter*?

I relate that to the question of abortion, which was debated in this Senate many years ago. The reason the process has been put into place for the purpose of that medical procedure is because of a decision made by this Senate. They said we will not pass a law. We will leave it for the provinces.

Now, we talked about patchworks. If you read the medical directives that have been put in place by the provinces and the territories, it's not really a patchwork. Yes, there's some difference in the language, but there is a commonality throughout the directives that have been put in place in order to be able to meet the question of *Carter*.

I want to direct this question to the committee as they prepare to study the bill. I want to ask about the protection for those medical practitioners that are involved and would be involved in the situation that each Canadian will find themselves at some given point as their life comes to an end. I am satisfied that, because of the procedures that have been put in place by the regulators, those medical practitioners would be protected from prosecution. I would like that to be confirmed. Then I put it to you: Do we need a bill? Do we need legislation?

The quandary I find myself in is this: Am I going to vote for a bill that is more restrictive than if we do nothing or am I going to stand in my place and say, "I believe in my territory. I believe in my province. I know that they can do the job. They have done it in every other aspect of my health needs." I'm putting on the floor of the Senate another option that should be seriously considered by all members as we come to a conclusion on this next week.

That being said, I have not made up my own mind about how I'm going to vote. I listened carefully to everything that has been said. The tenor of the debate here has been respectful. It has been well thought out. We all know that we're dealing with an issue that affects all Canadians.

With that, honourable senators, I'm looking forward to the reflections of the committee and I look forward to their recommendations as we go along further in this debate.

Hon. Senators: Hear, hear.

Hon. Nancy Greene Raine: Honourable senators, it has been very interesting to listen to the debate on Bill C-14, on medical assistance in dying. It is very important that the Senate get it right.

I certainly agree that we do not need to rush to meet the June 6 deadline. It was good to hear that the Colleges of Physicians and Surgeons in most jurisdictions have introduced guidelines for medical assistance in dying at least in the interim, although I note that the guidelines for British Columbia are due to expire on June 6. However, I feel confident they will extend them until a new law receives Royal Assent no matter how long it takes.

I know almost everyone in this chamber would like to see amendments made to Bill C-14 and we heard the two ministers assure us that they would welcome thoughtful amendments. It's just too bad that the drafters of the bill seemed to ignore most of the recommendations from the joint committee who heard from so many Canadians, including most groups that will be impacted by the legislation.

Of course, I'm not a constitutional lawyer, but I do know that the Supreme Court of Canada ruled unanimously that the prohibition on physician assisted death violates the Charter rights of competent adults. Though they did limit it to those suffering intolerably from grievous and irremediable conditions and seek assistance in their own death, obviously denying medical assistance in death is unconstitutional.

What I do not understand is why Bill C-14 limited eligibility, further limiting it to only those whose natural death has become reasonably foreseeable. Also, I now understand that since this legislation amends the Criminal Code, the language must be clear and unambiguous. Many of us feel that this flaw should be addressed by an amendment in the bill.

The challenge in all of this, of course, is to balance the Charter rights of Canadians with a need for safeguards for vulnerable people. We need to respect the wishes of those people who want to end their lives, people who are suffering intolerable pain.

I thank Senator Petitclerc for enlightening us on exactly what that means, though. Fortunately, you knew it was not forever. If you can imagine somebody suffering that pain without any hope of relief, I would argue that it's just wrong.

• (1200)

We need to protect vulnerable people who may be encouraged to end their lives. While it looks like Bill C-14 does offer good protection, we have to be very careful, because, as stated by another senator, this is a decision that can't be reversed. This debate has been very interesting and informative. We have heard many different viewpoints and many of you shared personal experiences that have shaped your views. It is obvious that the honourable senators in this chamber are taking their work on Bill C-14 very seriously.

Most of us have experienced being with loved ones at the end of their lives, and I'm sure we've all thought deeply about what we would want for ourselves. There's no doubt that if we have seen people suffer in extreme pain that we understand and it doesn't have to be that way. I want to be in control of my own path at the end of life, if I can, and the *Carter* decision recognizes that. If I meet the criteria and am fully capable of asking for medical assistance in dying, I want my wishes to be respected.

I also understand and respect — and Senator Martin's experience with her father really emphasized that — that there are many people whose religious beliefs and their faith allow them to accept that suffering extreme pain at the end of life is to be endured, maybe even to be embraced. I respect their right to their belief. I find that families with faith and congregations are very supportive and really wonderful in helping people during these times of crisis, and I respect them all for that.

Honourable senators, like many of you, I worry that society could put subtle pressure on people to feel that they should not wait for a natural death but take medical assistance in dying as a way not to be a burden for their families or to free up a bed in a care facility. It will be very important to monitor the new end-of-life regime and to be clear that safeguards for vulnerable people are being followed.

I want to add that I have nothing but respect for those people who work in care facilities and serve people who are coming to the end of their lives. I've never met so many compassionate people,

and people who are really part of this system, and we must never forget what they do.

At this point in my life, I have a clear idea of what I would want, and so it will be interesting to see how the issue of advanced directives will be studied. It will be very good to clarify the issue, as it has been disappointing to see conflicts where advanced directives have been overruled by care homes. Advanced directives by people who go on to develop dementia can be respected. We need to find a way so that this can happen. Consultation with as many Canadians as possible during this study must be done.

Honourable senators, in closing, I support a person's right to make their own decisions at the end of their life, but I also want to ensure that they can make their own choices. We need to respect our differences and our legislation on medical assistance in dying needs to find the right balance. Thank you.

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, it's with a good deal of humility and similar pride in this institution that I rise to participate in this debate. It's been an incredible week for me in this chamber, as it has been for many of you who have spoken about that experience.

In the course of the debate, we've experienced the power of reason and argument; we've experienced also the equal power of emotion and our own personal stories. And, as legislators, it is our task now to integrate the reason and logic, stories and emotion, and ultimately come to an individual and, through the process of legislating, a collective view

It is in that context that I rise and participate in this debate, a debate which we all know was commenced with the ruling of the Supreme Court in the *Carter* case, in which the Supreme Court called upon the government, Parliament, to respond in a year to the ruling. And for reasons that Senator Patterson rightly described, because of the unique circumstances of that year and a change in Parliament, Parliament itself has had a less than fulsome period in which to deal with the Supreme Court's demand. I would argue that Parliament, the government, have, within the context of that timing, had a broad process of engaging parliamentarians and other stakeholders, provincial and territorial governments, affected communities, the disabled, certainly legal advice. And Parliament, in terms of the other chamber, dealt in the way in which the House of Commons works, with a series of positions and amendments and ultimately on a partisan basis passed a bill which is now before us, for us now to take our responsibilities.

I cannot see how we end this process for us other than having support for a particular position embraced by non-traditional and cross-bench, if I can use that term, voices in this chamber. The task for us over the next number of days is to find the mechanisms that allow us to achieve that.

I want to let you know that I feel that as part of my obligation as well, and I commit to you to work as best I can within the role that I play to continue to make this an opportunity in which the Senate can be seen to be and is acting in accordance with the highest standards of our mandate.

Some Hon. Senators: Hear, hear.

Senator Harder: While the parliamentary consideration, one could argue, has been rushed, the debate has been long; 23 years ago, in the *Rodriguez* case, it launched the debate, and there have been a number of references in place to the work of Senate committees, and in particular Senators Nancy Ruth and Larry Campbell, and work done in public policy fora by institutes and professional groups on the whole area of medical assistance in dying and how societies ought to cope with this changing view, not necessarily driven in the courts in the first instance, obviously, but in society itself.

I would argue that the bill before us is a democratic bill in that it has a balanced approach and reflects the diverse views of stakeholders and Canadians across the country. I believe this bill, and at this historic moment, is a bill that is the right approach for our country at this time.

For the first time in Canadian history, our criminal law would permit physicians and nurse practitioners to provide medical assistance in dying so that patients suffering intolerably on a path towards death could have a peaceful passing and not be forced to endure a slow or painful dying process. Bill C-14 would also codify in the criminal law stringent national safeguards which the court in *Carter* considered essential to protect the most vulnerable.

The bill would also establish the framework for a pan-Canadian monitoring regime so that we may collect the required data to properly assess the implementation of medical assistance in dying.

The bill is the product of careful consideration of the need for personal autonomy, access to health care services, protection of vulnerable persons and also conscience rights of providers.

• (1210)

With Bill C-14, the government seeks to exempt certain health care providers from the Criminal Code offences of assisted suicide and homicide to allow them to provide or assist in providing medical assistance in dying, as stipulated by the Supreme Court of Canada.

This legislation defines the criteria that must be met for individuals to be eligible. There are safeguards that must be followed to ensure that these criteria are met and that the request is truly voluntary. This is critically important to protecting vulnerable populations. As the Minister of Health presented during Committee of the Whole, the legislation establishes the requirement to monitor medical assistance in dying so that we can see how it is working in Canada.

With this bill, we can be confident in it supporting the autonomy of patients who are approaching the end of their lives while protecting the most vulnerable in our society. It is fair to say that while on the one hand many say this bill goes too far, others say it has not gone far enough. Specific questions have been raised in this chamber with respect to the meaning of "reasonable foreseeability of natural death."

It must be remembered that this one criterion needs to be considered in conjunction with all the others, including the requirement that the person have a serious and incurable illness, disease or disability; and that the person be in an "advanced state of irreversible decline in capacity"; and that she or he be suffering intolerably in a manner that cannot be relieved under conditions that they consider acceptable.

"Reasonable foreseeability of natural death" means that, given all the factors contributing to a person's medical condition, it has become fairly clear that she or he is on an irreversible trajectory to death, even if there's no clear or specific diagnosis as to the course of their illness or how much time they have left. This criterion sends a clear message about the intended purpose of the legislation: to give competent adults who are on an irreversible path towards death the option of medical assistance in dying if they so choose.

For some, death may be foreseeable as a result of a single fatal medical condition, but death may also become foreseeable due to a combination of circumstances and conditions, none of which alone is fatal or could cause death.

The Minister of Health articulated to honourable senators that medical professionals have the professional knowledge, training and experience to assess the overall circumstances that lead to a trajectory towards the patient's natural death. The criteria, in their totality, were crafted in order to provide guidance to help medical providers in their assessment of eligibility, while allowing them flexibility in terms of clinical judgment.

However, making this kind of assessment is not an exact science. So the bill puts in place other safeguards, such as requiring that providers must exercise reasonable knowledge, care and skill, and act in accordance with provincial laws, rules or standards, and that the patient must be assessed by two physicians or nurse practitioners.

With respect to conscience rights, the government has committed to work with the provinces and territories to develop an end-of-life care coordination system that would effectively and practically balance the conscience rights of medical practitioners with the interests of Canadians seeking access. I would also note that the Justice and Human Rights Committee amended Bill C-14 to include a clearer statement in the preamble around conscience, as well as a clause in the Criminal Code that would affirm the importance of religious and conscience rights as guaranteed by the Charter, and would further clarify in the body of the bill itself that nothing in Bill C-14 compels an individual against their deeply held beliefs.

Canada's framework on medical assistance in dying needs to take into account a number of factors, including our constitutional framework, of course, but also the fact that Canadians live in such a vast country, including in remote and rural areas, as they construct the implementation of a constitutionally valid approach.

From coast to coast to coast, nurse practitioners provide a full range of high-quality health services, especially in remote and rural parts of Canada, given the lack of physicians in these regions. According to the Canadian Nurses Association, there has been a long tradition of serving the primary health care needs of 9 million people living in remote and rural communities with advanced practice nurses. This number, 9 million, represents a quarter of the Canadian population. This is one of the reasons why Bill C-14 provides exemptions for both physicians and nurse practitioners to be able to provide medical assistance in dying. Nurse practitioners or nurses with equivalent designation are those who are authorized in many provinces to perform medical functions necessary for medical assistance in dying. Similar to their physician colleagues, nurse practitioners have a broad scope of practice and the autonomy and independence to determine the appropriate assessment, diagnosis and required treatments to meet their patients' needs, including a patient requesting medical assistance in dying.

Exempting nurse practitioners from criminal liability, as the bill does, provides provinces and territories with an additional option to facilitate access to medical assistance in dying in unserved areas.

Regarding the issue of advance requests, it is useful to look at the experience and evidence from foreign jurisdictions. In the three European countries where individuals are allowed to make advance requests for medical assistance in dying, only the Netherlands permits such requests in the case of conscious patients who are unable to express their wishes, such as patients with dementia or Alzheimer's. In Belgium and Luxembourg, advance requests can only be carried out where the person is "in a state of irreversible consciousness."

To be clear, this is not what those who would like to see advance requests permitted in Canada are talking about. Evidence from the Netherlands suggests that in the case of individuals suffering from dementia, physicians are generally unwilling to administer medical assistance in dying after the patient has lost the ability to express their wishes. This evidence raises serious questions about the prospect of permitting a practice that Canadian physicians and nurse practitioners may be unwilling to carry out.

The Canadian Medical Association, who represents, as you know, 83,000 physicians across this country, echoed these concerns. They explained that currently in practice, even in the best of situations, physicians have a lot of difficulty acting on advance directives. Add the newness of medical assistance in dying on top of that, and the CMA stressed the potential difficulties in actualizing advance requests under such a complex set of circumstances, especially in the early years when medical providers are getting used to providing assistance in dying. They warned that it would likely prove more difficult for many physicians to participate in this process.

This is why the government has committed to studying this multi-faceted issue. I would like to commend also the members of the Justice and Human Rights Committee in the other place who amended the bill to require that the ministers initiate such an independent study on this issue no later than 180 days after the bill receives Royal Assent.

Finally, I'd like to stress how critical it is for this federal legislative response to be in place as soon as possible. On June 7, there will be no federal statutory framework on medical assistance

in dying across this country. Outside of Quebec, there will, therefore, be a lack of safeguards that carry the force of clarity of the Criminal Code and no monitoring system for gathering data, both of which the Supreme Court said were necessary to reduce the risks of abuse or errors.

Uncertainty as to who would be eligible to obtain medical assistance in dying would also continue as legal experts, academics and courts continue to disagree about the meaning of the court's parameters in *Carter*. This would result in an inconsistent implementation of medical assistance in dying across the country, and this lack of legal clarity about the scope of the criminal exemption created by the *Carter* ruling could cause otherwise willing medical practitioners to refuse to provide assistance in dying to their patients.

As we heard from the Minister of Health just the other day in this chamber, this could cause very real access concerns for those Canadians who are waiting to obtain medical assistance in dying. In this way, providing legal certainty for medical professionals is inextricably tied to the rights of those Canadians who are suffering.

It has been said by several individuals, both inside and outside this chamber, that because there are provincial guidelines, we ought not to take into account the Supreme Court deadline. While I do agree that the sky will not fall, it is our responsibility to recognize and understand the highly variable standards and protections between our provinces and territories.

• (1220)

For example, Bill C-14 has explicit exemptions for nurse practitioners, other providers and people aiding at the express request of the patient. Medical regulatory guidelines address physicians only.

In New Brunswick, Nova Scotia and Newfoundland, individuals with a mental illness could be eligible for assisted death. Ten provinces and territories do not have residency requirements to be eligible for assisted death. In Ontario and British Columbia, guidelines do not specify age, which suggests the consideration of mature minors is possible. There is no specific waiting period in Quebec, P.E.I., Nova Scotia and Newfoundland and only two jurisdictions, Alberta and Yukon, require two witnesses. Most require only one or none at all.

With the utmost respect for the legal debate that we have before us, we should also be cognizant of the needs of patients and health care providers. It has been made clear by many, including the Canadian Nurses Association, the Canadian Medical Association, the Canadian Medical Protective Association and HealthCareCAN that it is highly unlikely health care providers will provide assisted death without federal legislation, creating access issues, which is of course the very thing the Supreme Court, many Canadians and all honourable colleagues wish to see a reality. At some point, there is a very real concern that, without appropriate safeguards in place, vulnerable populations may very well be at risk.

Medical associations, medical authorities, provinces and territories are requesting federal leadership on this highly complex issue, and that is exactly what Bill C-14 provides. It sets out a strong national framework and strikes the necessary balance between the autonomy of people suffering intolerably who seek to obtain a peaceful passing and the protection of those who may be vulnerable due to age, illness, handicap or other factors, such as loneliness.

Honourable colleagues, I share Senator Sinclair's view that this bill is both constitutional and compliant. It is consistent with the Charter but uses language that is broader in scope and rooted in practical language that patients and providers can understand. The government and the other place recognize that this this is just the start. They are not waiting for the mandated review to begin the process of very specific, independent studies referenced in the legislation.

The bill before us meets, in my view, the test of a democratic bill. It undertook significant consultations, which is not rushed in the space of just a few months but in the broader context of the debate that we've been having in Canada over the last several decades.

Our obligation is that we must honour the commitment made, the bill that has been passed with bipartisan support, and we must begin to implement, as quickly as possible, a legislative regime consistent with the Supreme Court ruling and an immediate process of data collection and independent studies.

Over the past several decades, baby boomers — and that includes some of us still — have defined every public policy issue throughout our age cycle. I fully expect that we will continue to do so, and therefore, this issue and other issues of end of life and senior treatment will continue to be before this Parliament and this chamber as we evolve our thinking and societal considerations, as we learn from the research that is being collected, the data being collected, the basis of future policy choices through the consultations that will be launched. And the experience before us and this house over the period of the next number of months and years will indeed cause this issue to be returning to us for further examination and implementation.

Senator Cowan: Would Senator Harder entertain a question?

Senator Harder: Yes.

Senator Cowan: First of all, thank you for your thoughtful address. I think all of us would agree there is much in this bill that is deserving of support; there's a lot of good in the bill.

But I think the concern that many of us have is what is not there. I think perhaps it was Senator Lankin earlier who mentioned one that struck me. The concern I certainly have is that the bill on its face, as it stands now, discriminates between Canadians who have the same suffering. She mentioned the situation where two people — one elderly, one of younger years — have exactly the same disability, exactly the same condition, exactly the same intolerable suffering, and both of them wish to take advantage of medical assistance in dying. And one, because of advanced age and obviously being closer to death, is able to access this and the other one must be forced to endure that suffering for months, years or some indeterminate length of time. That is, I think, discriminatory. I suggest we would all find that to be unfair or, at least, uncomfortable.

We've heard the ministers affirm here that the choice the government has made is that medical assistance in dying will be available only to those who are near death, who are on a path to death, and we're to provide a peaceful exit. But we must be equally concerned about those people who qualify under the eligibility criteria set forth in paragraph 127 of the *Carter* decision.

So if the government is concerned, as it should be, about those persons and their Charter rights, then wouldn't a better way to deal with this, rather than exclude them from access, as this bill does, be to talk about additional safeguards of some type to ensure that there is no undue influence and that there is clear and competent consent in those circumstances? Why not provide, by way of additional safeguards, if that's necessary and I'm not sure it is. But if it is, rather than deprive those Canadians of their constitutional rights, why not allow them to exercise their rights and provide protection by way of additional safeguards?

Senator Harder: I thank the honourable senator for his question. In responding, I want to recognize that I am not a member of the ministry and therefore I cannot speak for the debate that undoubtedly the ministry has had. But I do know from discussions with ministers — and, indeed, questions that were asked in Committee of the Whole — that ministers referenced and encouraged us to look at the eligibility criteria as an interacting whole that would be part of the assessment, first of all.

Second, there is a sense in the architecture of the bill itself that, given the significant change implied by the introduction of medical assistance in dying, we ought to respond in this bill with a regime that doesn't address all of the issues that public policy has yet to inform us on.

Having said that, the bill does commit to those public policy issues being informed by data, being informed by consultation, and indeed within a time frame that is articulated in law itself.

I would conclude that this is a starting place, which in my judgment and in the judgment of the Attorney General of Canada and other learned individuals who have been referenced — and that obviously doesn't include those who have a different view — conforms with the requirements of the Charter. So let's start implementing it, recognizing that implementation itself will be a challenge, and begin to provide the right that the Supreme Court has articulated as quickly as possible.

• (1230)

Senator Cowan: I can appreciate that there is a process involved. I appreciate the acceptance by the government that further study is necessary in some areas. Certainly, on the joint committee we had some real concerns about mature minors, advance consent and the implications of competence with respect to those who have mental illness.

The Minister of Justice said here the other day that the government's intention is to limit access to those who are approaching death. Nowhere in the decision in *Carter* or in the decision of the Alberta Court of Appeal, which we've touched on many times, or in any of the decisions of various courts across the country is that distinction made. The government is asking us to recognize the rights of some Canadians suffering intolerably and to leave for another day the equal rights of those who are not approaching death. That seems to me to be unfair and unnecessary.

A simple recognition and acceptance of the criteria which are set forth in the paragraph, to which we've all referred so many times, in *Carter* would alleviate that. Why wouldn't we simply say the Supreme Court of Canada has defined that the Canadians who meet these criteria are eligible, subject to all the kinds of safeguards in the bill that we could add to the bill for protection of the vulnerable? Why wouldn't we say that is very clear? And let's use those words, and then we are not discriminating between and amongst Canadians who have had constitutional rights confirmed. That's the real sticking point for me, Senator Harder.

Senator Harder: Thank you again for your question. We spent a good deal of the Committee of the Whole discussing this issue with the Attorney General and the Minister of Health. I would simply reiterate that the Government of Canada, in developing its public policy framework, believes it is consistent with the Charter and is providing an eligibility regime which is better understood and more inclusive of circumstance. It is one which they have confidence will find acceptance in the practising community.

Senator Plett: Would the senator take another question?

Senator Harder: Yes.

Senator Plett: Senator Harder, you spoke briefly about conscientious objection in your comments. I think you referred to "nothing in this legislation."

The fact of the matter is the clarification is "For greater certainty, nothing in this section . . . ." It's not even the legislation. Section 241.2(9) says:

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

In my opinion not a single lawyer, even those who support this amendment, would believe that this will have any practical significance, this particular phrase.

There may be nothing in this section which compels an individual to provide or assist in providing assisted suicide, but more importantly, there is nothing that prevents the province from compelling someone to assist in suicide.

Ontario will force physicians to refer unless it is stipulated clearly in this legislation. As a federal government, can we not make health care regulations for the provinces? I am not

suggesting that we should interfere in provincial jurisdiction, but we are putting an exemption into the Criminal Code that it is not murder if assisted suicide occurs within these parameters.

So I have two questions: How is it not the role of the federal government to determine those parameters? As legislators, should we not protect the witnesses who appeared at committee and asked us specifically to work conscientious objection into the exemption from the Criminal Code so that they are not forced to refer and in essence endorse assisted suicide?

Senator Harder: I thank the honourable senator for his question and his ongoing interest in conscientious rights. I do respect the work that you have done with a broad community in Canada on this issue. I met with them to discuss this issue.

The view of the government and the constitutional and other legal advice is such that the reference in the bill was for added clarity because we believe that conscience rights are protected elsewhere in the bill. But for added clarity, it was inserted or added.

It is the legal advice from the constitutional lawyers that the protections being provided go as far as the federal government could without intruding on provincial jurisdiction. The example that you cite with respect to the Criminal Code is of course federal jurisdiction.

I would also, though, reference the commitment made. The Minister of Health indicated before us in Committee of the Whole that it is her ongoing engagement with her provincial colleagues, recognizing that this is not in her jurisdiction, but there is an interest in the Government of Canada in ensuring as broad a degree of harmonization on provincial implementation as possible to ensure or to discuss at least conscience rights in that context.

Senator Plett: To quote the Honourable Senator Sinclair yesterday, he said 50 per cent of all lawyers are wrong. That would be the same for constitutional lawyers. They argue both sides, so 50 per cent of them are wrong. I will take the 50 per cent that say this is constitutional and work with them.

Both ministers in committee and Committee of the Whole were clear that we want to strike legislation that is consistent across the country. It is a Criminal Code situation. They want to strike something consistent across the country. The minister said that she wants to work with her provincial counterparts, but that could allow us to have anywhere from five to ten or eleven different laws across the country. If we want something consistent, then the federal government has to be involved, and they have the jurisdiction when this is something that deals with the Criminal Code.

Senator Harder: We live in a federation, and implementing public policy and administrative practices in a federation in which both jurisdictions have various roles is a challenge and a respectful engagement between levels of jurisdiction to ensure that citizens are appropriately served by their governments.

The Criminal Code is a federal jurisdiction. Health care is a provincial jurisdiction. The regulation of the organizations involved is within a provincial jurisdiction.

I can appreciate, and the minister and the government appreciate, the desire for commonality as much as possible. This federation has evolved in recognition of a jurisdiction, and we do the best we can within a federal system to have a degree of coherence and predictability.

• (1240)

The balance that the bill provides between protection of the conscience rights of service providers and access to this right by citizens from coast to coast to coast is a fine balancing act, and I believe it has been struck properly.

Senator Joyal: Would the honourable senator entertain another question?

Senator Harder, you have heard the deep and genuine concern of many senators about the impact of Bill C-14 as it is drafted in relation to Canadians who are suffering intolerably, as Senator Petitclerc has described this morning better than any of us could, and that those people feel they are being discriminated against by the government. The deep feeling that you saw is pervasive in this chamber.

Would it not be better for the government to go back to the Supreme Court on Monday, since the court gave Parliament a very stringent deadline, and say to the Supreme Court, "Could you pronounce on the constitutionality of this bill to be sure that the decision the government takes is not a discriminatory decision"?

I think we have to learn, Honourable Senator Harder, from what the former government did in relation to Senate reform. Senate reform was part of the electoral platform of the Tory party when it was elected more than 10 years ago. They got a mandate from Canadians to reform the Senate. The first thing was to introduce a bill to restructure the Senate.

Some of us, myself included, stood up and questioned the constitutionality of that initiative. The debate took place back and forth, from the other place to this place and to the Legal and Constitutional Affairs Committee. At a point in time, even though the government was under the advice of the Justice Department — the same lawyers that advised the present government on the constitutionality of its initiative — the former government, in my opinion, made the right decision and referred the case to the Supreme Court.

We got a decision from the court that, in my opinion, is probably the most helpful decision to try to shape the nature of this institution and its evolution.

On a matter as sensitive as life and death, would it not be really the wise and proper thing to do next Monday to go to the Supreme Court and say, "We have made our best effort, and we want to be sure that this is what Canadians expect, and it is sound and constitutional"?

I think it would bring to the level of acceptance of this bill the kind of certainty that Canadians are expecting from a government that is, as you know, going into uncharted territory. I don't think the government would be negatively criticized, because what we are dealing with here is the most cherished gift we have, life and how we manage our own lives.

Senator Harder: I thank the honourable senator for his question and, frankly, for his advice.

It is, of course, not for me to commit the government in a way to respond to your question, but I can assure you that the question that you posed and the suggestion that you made will be brought to the government.

I think from the government's perspective of today, it would be best that on Monday the Senate continues to do its good work and seeks to form a view in the Senate, but that is for the Senate to decide and, ultimately, your suggestion for the government to determine. I hope we can proceed with our business, and I will ensure that the suggestion you made is brought forward.

Hon. Art Eggleton: The issue of advance directives has been discussed a lot in this debate, and the response through the bill is to do further study on that, to gather more information.

The house did amend the bill to allow for the 180-day provision to start it, and I note that Senator Lankin, in her remarks, suggested that maybe we need a deadline as well, so the time parameter seems to be taken care of in that regard.

That doesn't necessarily mean that legislation will follow. A lot of good reports end up collecting dust on the shelf, whereas now we have Bill C-14 in front of us. How can we be sure that amending legislation would be brought forward to bring advance directives into effect?

Senator Harder: I can't give that assurance. What I can give the assurance on is what the bill provides, and should it become law, what the law would provide, and that is that there would be an independent study within a particular time frame, which would have broad consultations. Presumably, those consultations would be to inform public discussion which could lead to a particular legal amendment to the practice.

You referenced the advance directives. In my comment, I spoke about the experience in the Netherlands. I had occasion to read the report on the experience of advance directives in the Netherlands in the geriatric society journal, which I am sure would be part of the material that an independent review would want to look at. It does raise issues of complexity and circumstances that we would want to have more work on.

As I tried to say in my closing remarks, the issues around medical assistance in dying and other issues attendant to the quality of life of seniors is not an issue that will diminish. It's an issue that will increase in complexity and subject matter, perhaps some of which we are unaware of today. I cannot imagine, Senator Eggleton, that there are not circumstances where, if good advice leads to good recommendations and broad public engagement, politics would not run its course appropriately.

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

Senator Raine: Could I ask that you, as the Government Representative in the Senate, put forth a request that a study be done by the Senate on the question of advance directives?

Senator Harder: That could be done either through an amendment or by me in my role. I would be happy to do either, frankly, and would leave it to the chamber in its deliberations.

Senator Lang: I want to go back to the question of the directives established by the provinces and territories. As you recall, during the course of the debate, I pointed out that I felt that the bill was going to be more restrictive as opposed to the situation that would exist without the bill and the directives that have been established by the provinces and the territories.

In your study of the medical directives in the provinces and territories, will the provinces and territories have to revise their directives to meet what's contained in Bill C-14 if it is passed?

Senator Harder: I cannot speak for the provinces, of course, but it would be my view, subject to advice, that the regimes in place will seek to include, but on a quite inconsistent basis, advance directives.

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

Some Hon. Senators: Question!

The Hon. the Speaker:

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

An Hon. Senator: On division.

(Motion agreed to and bill read second time, on division.)

REFERRED TO COMMITTEE

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

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

COMMITTEE OF SELECTION

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Donald Neil Plett: Honourable senators, with leave of the Senate and not withstanding rule 5-5(a), I move:

> That the Committee of Selection have power to sit on Tuesday, June 7, 2016, even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1250)

[*Translation*]

ADJOURNMENT

MOTION ADOPTED

Leave having been given to revert to Government Notices of Motions:

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(g), I move:

> That, when the Senate adjourns today, it do stand adjourned until Tuesday, June 7, 2016, at 2 p.m.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Tuesday, June 7, 2016, at 2 p.m.)

CONTENTS

Friday, June 3, 2016

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