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(HANSARD)

Wednesday, June 8, 2016

The Honourable GEORGE J. FUREY
Speaker

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THE SENATE

Wednesday, June 8, 2016

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

Prayers.

THE LATE HONOURABLE ROD A. A. ZIMMER

SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, we were saddened to hear of the passing of our former recent colleague the Honourable Rod A. A. Zimmer. I would invite all honourable senators to rise and observe a moment of silence in memory of our late colleague.

Honourable senators then stood in silent tribute.

SENATORS' STATEMENTS

WORLD OCEANS DAY

Hon. Wilfred P. Moore: Honourable senators, on this World Oceans Day, I rise to speak about the Sargasso Sea, which gets its name from the distinctive mats of floating *Sargassum* algae; it's the so-called "golden rainforest of the ocean."

The Sargasso Sea is the world's only non-landlocked body of water, located within the North Atlantic subtropical gyre, bounded on the west by the Gulf Stream, on the north by the North Atlantic Drift, on the east by the Canary Current and on the south by the North Equatorial Current. It's an area of more than 4 million square kilometres.

It's a sanctuary of biodiversity which supports a range of endemic species and plays a critical role in supporting the life cycle of a number of threatened and endangered species, such as the porbeagle shark, billfish, several species of turtle, migratory birds and cetaceans. The *Sargassum* algae mats provide a protective "nursery" for juvenile fish and loggerhead sea turtles. Wahoo, tuna and other pelagic fish also forage in and migrate through this sea, as do a number of whale species, notably the sperm whale and the humpback.

It's also the spawning area for all American and European eels, which then spend their lives in fresh water and migrate thousands of miles back to the Sargasso Sea to spawn. I would advise that these eels, including their elver stage, are a valuable regulated fishery in the Maritime provinces, providing jobs and enhancing our economies.

The Sargasso Sea is under increasing pressure by countless human uses that threaten the habitat and the species it supports. It is faced with several stressors that threaten the long-term viability and health of its ecosystem, such as oil, bilge and ballast water discharge from ships, and concentrations of non-biodegradable plastic waste from ships and land-based sources.

Honourable senators may have heard of the Sargasso Sea Commission, which is a partnership led by the Government of Bermuda in collaboration with other countries, scientists, international marine conservation agencies, marine institutions and private donors. Its members share a mission to protect and manage this unique and vulnerable ocean ecosystem, and to have it established as a Marine Protected Area by way of a declaration signed by supporting countries and international organizations. This Hamilton Declaration was initially signed in Hamilton, Bermuda, on March 11, 2014, by a number of countries, including Bermuda, the United Kingdom and the United States. The commission has a full-time secretariat in Hamilton, Bermuda, and an adjunct office in Washington, D.C.

In closing, honourable senators, it is my hope that Canada will join in this effort to protect the Sargasso Sea and that Canada will be a signatory to the Hamilton Declaration. I humbly ask all honourable senators to canvass friends and colleagues to ensure that Canada, a tri-ocean-bound country, supports the Sargasso Sea protection initiative and becomes a signatory to the Hamilton Declaration.

I invite all honourable senators to visit the website of the commission at www.sargassoalliance.org to learn the importance of protecting this precious and unique open-ocean ecosystem.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, because of the number of senators who wish to make senators' statements today, I will be adhering to the strict three-minute time limit. Thank you.

PARKS AND RECREATION MONTH

Hon. Nancy Greene Raine: Honourable senators, today it gives me great pleasure to recognize June as Parks and Recreation Month in Canada, and especially to give credit to the Canadian Parks and Recreation Association and to all their members for the great work they do.

Canadians recognize the tremendous mental and physical benefits for their health when they visit parks and when they take part in recreation activities that most municipalities provide. Canadians know that the number one thing they can do to improve their health is to be physically active, and going to play in a park is also a great way to socialize and connect with your neighbours. Active play for everyone is a great way to meet our national physical activity guidelines.

Throughout the month of June, municipalities across the country are hosting events in a campaign to promote their activities. I call upon all honourable senators and all Canadians to

celebrate Parks and Recreation Month and to be physically active, not only in June but all year long.

I encourage you also to visit our fantastic parks wherever your summer travels take you. In every corner of Canada you will find gems of parks and trails. We are truly blessed to have them, so let's take advantage of them.

NEW BRUNSWICK

COMMEMORATION OF TRAGEDY IN MONCTON

Hon. Joseph A. Day: Honourable senators, on the occasion of the second anniversary of the tragic events that unfolded in Moncton, New Brunswick, on June 4, 2014, I would like to take a moment to pay tribute to the members of the Royal Canadian Mounted Police. We must not forget the sacrifice of the men and women in uniform and in law enforcement who, day after day, put their lives on the line to protect Canadians.

• (1410)

A public ceremony and unveiling of a bronze monument that features statues of the three members of the RCMP who were killed in the line of duty during the Moncton shooting in 2014 took place last Saturday in the small park near the Petitcodiac River in Moncton, New Brunswick. Like many Canadians did during this ceremony last weekend, I also paid homage to our fallen heroes.

While RCMP members were the specific target of the shooter, an entire community's sense of security was shaken by his actions. During the Moncton shooting, Constables Eric Dubois and Darlene Goguen were wounded and Constables Doug Larche, Dave Ross and Fabrice Gevaudan were murdered. Their deaths shook the community and the entire country.

Being a peace officer is indeed a dangerous job, honourable senators. According to RCMP statistics, 236 RCMP members have been killed in the line of duty since 1873. Every day, brave men and women of the force respond to dangerous situations with incredible courage, inspired by their life commitment to protecting their fellow citizens.

These officers sacrificed their lives in the call of duty, and on the anniversary of their deaths, we join with family members and friends, citizens of the community of Moncton and indeed all Canadians in pledging that we will never forget their acts of sacrifice that will forever mark our history.

Long may this poignant memorial stand as a reminder of those great sacrifices that our police officers make on a daily basis to keep us safe. We will remember them.

Hon. Senators: Hear, hear!

[Senator Raine]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of His Excellency Pavlos Anastasiades, High Commissioner of Cyprus to Canada; accompanied by his wife Maria. They are the guests of the Honourable Senator Merchant and the Honourable Senator Housakos.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

CYPRUS

HIGH COMMISSIONER OF CYPRUS

Hon. Pana Merchant: Honourable senators, His Excellency Pavlos Anastasiades, the first High Commissioner of Cyprus to be resident in Ottawa, and his wife Maria are with us, and I take this opportunity to extend our warmest greetings to them.

The establishment of a new diplomatic mission in our national capital is a demonstration of the importance attached by Cyprus to Canada. It marks a new phase in the relations between our two countries.

At the crossroads of three continents, Cyprus is — and will remain — a strategically safe base of operations and support just off the turbulent but hugely important Middle East. Honourable senators will remember how thousands of Canadians were speedily and safely evacuated to Cyprus during the Lebanon crisis of 2006.

In 2010-11, as we were about to start the withdrawal of our forces from Afghanistan, Cyprus came to our assistance in the withdrawal of our troops and military hardware.

These instances demonstrate the value of our cooperation in the diplomatic, political and security fields. But above all, the long history of 30 years of Canadian peacekeeping has given Cyprus a special place in our hearts.

The Canadian contingent was the first to arrive on the island in 1964. Tens of thousands served in Cyprus while every unit of the Canadian Armed Forces rotated through. Twenty-eight Canadian peacekeepers lost their lives on the island. Their sacrifice is gratefully remembered and honoured by the Cypriots, as is the whole peacekeeping contribution of Canada.

Unfortunately, our Canadian peacekeepers were not in a position to save the whole island of Cyprus from the illegal Turkish military invasion and the subsequent occupation of a large part of its territory. Should, by common agreement, a reunited Cyprus form a new federation, Canada can share our own important experience and expertise in federalism.

In a different but significant undertaking of collaboration in the academic domain, institutions from Cyprus and Canada are working together on establishing a first-rate university hospital and regional learning centre in Nicosia that will involve Canadian construction and know-how and dissemination of Canadian technology and expertise to Cyprus and the region.

Honourable colleagues, with the establishment of the high commission and the arrival of the first resident high commissioner in Ottawa, I would very much be interested in joining with you and the members of the Commons in reactivating the Canada-Cyprus Parliamentary Friendship Group.

High Commissioner, we welcome you.

Hon. Senators: Hear, hear!

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a former colleague, the Honourable Vim Kochhar.

On behalf of all honourable senators, I welcome you back to the Senate of Canada.

Hon. Senators: Hear, hear!

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of guests from the Canadian Helen Keller Centre, Deaf-Blind Association of Toronto, Canadian Deafblind Association - Ontario, DeafBlind Ontario Services and the Association of Usher Syndrome of Quebec to celebrate June Deaf Blind Awareness Month. They are the guests of the Honourable Senator Martin and the Honourable Senator Munson.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

GUN VIOLENCE

Hon. Don Meredith: Honourable senators, I rise to bring to your attention the increasing rates of gun violence in our major cities this year.

Since the start of 2016, more than 225 citizens in Toronto have died or been injured by gun violence. This marks a near 40 per cent increase from last year in Toronto, and the numbers are getting worse as the year goes on. West Coast cities like Surrey, B.C., and provinces like Nova Scotia, specifically Halifax, have also experienced an increase in gun violence.

I rise today because we must act to change this disturbing trend. Gun crimes affect us all, and the next bullet could be for one of us or someone that we love.

We remember the sad cases like that of Amon Beckles, who in November 2005 was shot and killed while mourning a friend outside of a church near Finch and Albion.

And who could forget 15-year-old Jane Creba, who made international headlines on Boxing Day 2005 when she was killed by a stray bullet from a gang shootout close to the Eaton Centre.

More recently, many of you followed the tragic story of Candice Rochelle Bobb, the pregnant mother who was killed in a drive-by shooting while dropping off friends after a basketball game in the Jamestown Crescent area. Her 24-week old baby had to be delivered by emergency C-section. We all prayed, honourable senators, that the baby would survive, but on Sunday night we learned that the baby passed as well.

I had a brief discussion on the phone with the great grandmother of this child and her family members, and they were quite distraught. I offered them my condolences and did my best to offer words of comfort. I assured them that this child would not die in vain and that we would work hard to bring the perpetrator to justice.

The crimes remain unsolved, honourable senators, because the community is afraid to come forward. Why shouldn't they be afraid when armed individuals roam their neighbourhoods?

It was only a few days and just steps away from where Candice was killed that another young man, Nathan Leigh, was shot in plain daylight, caught on camera at 9:30 a.m. on June 1. He is still recovering.

Then there was the case of a 10-year-old boy who was shot on June 3 through the walls of his Blake Street apartment in the east end of Toronto. He is still recovering.

These stories disproportionately affect neighbourhoods like Rexdale, Malvern, Jane and Finch and Regent Park, communities where I have worked for many years to decrease crime and provide opportunities for young people. The brutality of these attacks has these communities reeling and in shock.

Why is this happening? Where are these guns coming from? Why do many criminals have newfound access to them?

Guns have always been around. Toronto especially has seen years where gun violence rises significantly, such as in 2005, but this new trend seems to be fuelled by an increase in illegal weapons entering our country. The Canada Border Services Agency seized more than 265 firearms from April 2015 to January 2016 and more than 172 for the same time last year. How do we know many more guns are not making their way into the hands of criminals?

• (1420)

Honourable senators, there are concerns that many of these individuals are recently released inmates trying to gain or regain their turfs by using weapons to intimidate and oppress residents.

Thank you, honourable senators. I bring this to your attention.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. Fred Carmichael, a northern pilot, in Ottawa to be inducted into the Canadian Aviation Hall of Fame. He is accompanied by his wife Mika. They are the guests of the Honourable Senator Sibbeston.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

FRED CARMICHAEL

CONGRATULATIONS ON INDUCTION INTO CANADIAN AVIATION HALL OF FAME

Hon. Nick G. Sibbeston: Honourable senators, I am pleased today to recognize the many accomplishments of Mr. Fred Carmichael, who was originally from Aklavik and, more recently, Inuvik, Northwest Territories. He is here in Ottawa to be inducted into the Canadian Aviation Hall of Fame.

Fred began his flying career in 1955, when he was the first Aboriginal person in the North to obtain a pilot's licence. This was the achievement of his boyhood dreams, a dream he continued to live for the next 60 years.

In 1960, he established his own airline company, Reindeer Air, which flew throughout the Beaufort Delta region for the next 20 years. Later, he created a successor company, Antler Aviation.

In building his business, Fred was always determined to hire locally and became a mentor to many young pilots, some of whom are now flying jets for large commercial airlines throughout the world.

For six decades, Fred was a pilot, an entrepreneur and a dedicated search and rescue volunteer, but these are not the limits of his accomplishments.

Seeing a need in his community for strong leadership, Fred became the President of the Gwich'in Tribal Council, helping to administer their land claim and advance their political and business interests.

He also became Chair of the Aboriginal Pipeline Group, which negotiated a one-third ownership of the proposed Mackenzie Valley pipeline if it were to be built. This is a wise model to follow for other Aboriginal peoples in our country.

This week's induction is not the first honour Mr. Carmichael has received. In 2010, he was made a member of the Order of Canada; and in 2013, he received an honorary Doctor of Laws degree from the University of Saskatchewan.

I am honoured to recognize Fred Carmichael.

ROUTINE PROCEEDINGS

COMMITTEE OF SELECTION

FOURTH REPORT OF COMMITTEE PRESENTED— DEBATE ADJOURNED

Hon. Donald Neil Plett, Chair of the Committee of Selection, presented the following report:

Wednesday, June 8, 2016

The Committee of Selection has the honour to present its

FOURTH REPORT

1. Pursuant to rule 12-2(4)(b) of the *Rules of the Senate*, your committee recommends a change of membership to the following committees:

Standing Senate Committee on Aboriginal Peoples

That the Honourable Senator Sinclair replace the Honourable Senator Sibbeston as a member of the committee and that the Honourable Senator Meredith be added as a member of the committee.

Standing Senate Committee on Agriculture and Forestry

That the Honourable Senators Gagné and Pratte be added as members of the committee.

Standing Senate Committee on Banking, Trade and Commerce

That the Honourable Senator Cowan be added as a member of the committee.

Standing Senate Committee on Energy, the Environment and Natural Resources

That the Honourable Senator Fraser be added as a member of the committee.

Standing Senate Committee on Fisheries and Oceans

That the Honourable Senators Sinclair and Wallace be added as members of the committee.

Standing Senate Committee on Foreign Affairs and International Trade

That the Honourable Senator Cools be added as a member of the committee.

Standing Senate Committee on Human Rights

That the Honourable Senators Gagné and Omidvar be added as members of the committee.

Standing Committee on Internal Economy, Budgets and Administration

That the Honourable Senator Wallace be added as a member of the committee.

Standing Senate Committee on Legal and Constitutional Affairs

That the Honourable Senator Sinclair be added as a member of the committee.

Standing Senate Committee on National Finance

That the Honourable Senators Cools and Pratte be added as members of the committee.

Standing Senate Committee on National Security and Defence

That the Honourable Senators Meredith and McCoy be added as members of the committee.

Standing Senate Committee on Official Languages

That the Honourable Senator Gagné be added as a member of the committee.

Standing Committee on Rules, Procedures and the Rights of Parliament

That the Honourable Senator Wallace replace the Honourable Senator Cools as a member of the committee and that the Honourable Senator Lankin, P.C., be added as a member of the committee.

Standing Joint Committee for the Scrutiny of Regulations

That the Honourable Senator Omidvar replace the Honourable Senator McCoy as a member of the committee.

Standing Senate Committee on Social Affairs, Science and Technology

That the Honourable Senator Petitclerc be added as a member of the committee.

Standing Senate Committee on Transport and Communications

That the Honourable Senator McCoy be added as a member of the committee.

2. Pursuant to the motion adopted by the Senate on December 11, 2015, and rule 12-2(4)(b) of the *Rules of the Senate*, that the Honourable Senator Tkachuk replace the Honourable Senator Bellemare as a member of the Special Committee on Senate Modernization.

Respectfully submitted,

DONALD NEIL PLETT

Chair

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

Senator Plett: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(f), I move that the report be considered now.

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

Hon. Senators: Agreed.

The Hon. the Speaker: On debate.

Hon. Elaine McCoy: I defer to Senator Bellemare.

[*Translation*]

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I am pleased to consent to the adoption of this report, and I am particularly pleased for the independent senators whose role in committees is now officially confirmed after more than two months of working so hard on a number of committees where they had no voting rights.

It's a good thing, an important thing for us to be doing now.

Nevertheless, honourable senators, I want to emphasize that I think the way I was replaced on the Special Committee on Senate Modernization by Senator Tkachuk was unfair and unjust compared to the treatment of senators whose participation in other committees was confirmed and who were informed that they would be part of those committees. When I went to see what was going on in the committee, I saw my name there. I was very surprised, unpleasantly so. Nevertheless, I am pleased that independent senators can be members of committees.

In conclusion, I would say that the way I was treated leads me to believe that the official opposition is assuming more power than its relative weight justifies. Thirty-six committee seats have been allocated to independents even though they account for 22 per cent of senators.

• (1430)

They were given 16 per cent of the seats. Meanwhile, the official opposition, which represents 40 per cent of the 105 seats in the Senate, should have been given 48 committee seats, but instead it was given 119 or 54 per cent of committee seats. I do not think that a minority official opposition should do that.

[*English*]

The Hon. the Speaker: Before further debate, Senator McCoy, I'm going to ask, since leave was granted, for Senator Plett to actually move the motion.

Senator Plett?

Senator Plett: I think I moved the motion. I'll move it again.

The Hon. the Speaker: No, you asked for leave, Senator Plett. So you can move the motion.

Senator Plett: I move the motion standing in my name.

The Hon. the Speaker: It was moved by the Honourable Senator Plett, seconded by the Honourable Senator Carignan, that this report be adopted now.

On debate. Senator Carignan?

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): I would like to ask Senator Bellemare, the new Deputy Leader of the Government, a question. Senator Bellemare used to have a Conservative seat. She became an independent senator with no party affiliation, and was then appointed as an independent senator on the government side. We asked the various groups to identify people or make suggestions as to who should sit in the seats reserved for independent senators. People were appointed, and unfortunately, she was not among them.

I would like to ask the Deputy Leader of the Government, who is sitting across the aisle from me, how many independent Liberal MPs have seats in the other place.

Senator Bellemare: I would just like to tell the Leader of the Official Opposition, who is here in the chamber, that 36 of the seats for independent senators, or 16 per cent, are already filled. When we received the letter, as independent senators — and I am still an independent senator with no party affiliation — the Senate Modernization Committee was not on the list of possible committees. It was subject to other considerations. That is why I did not respond by letter to that effect, except to resign from the three committees that I was a member of because I was no longer able to properly fulfill those responsibilities as a result of my current duties.

Senator Carignan: Could the Deputy Leader of the Government across the way confirm that, under the rules, her title allows her to automatically sit on every committee?

Senator Bellemare: I am aware of that and I plan on taking advantage of that opportunity. However, I realize that my counterpart in the opposition is a regular member of certain committees as well. Therefore, I thought it was valid to raise this point, even though I'm allowed to sit on all committees. I wanted to point out specifically how that was done. Thank you.

[*English*]

Senator McCoy: Thank you, Your Honour.

Let me say first that the independent senators have been attending the committees diligently and doing their homework and participating to the extent that they can, even without a formal assignment to those committees, in the interests of doing the work that all Canadians expect us all to do, and they have been awaiting the formal assignment so that they can have a vote and put motions at these committees as well.

Notwithstanding that they don't have the authority, they have been undertaking their responsibilities to their fullest. I will say we are participating in this process with the Selection Committee, in the language of a lawyer, without prejudice. And I will say that we recognize, and I want it on the record, as I put it in a letter on our behalf, which was addressed to the Selection Committee: ". . . know that these appointments do not satisfy the principles of equality, proportionality and fair share of the work that govern the conduct of business in the Senate of Canada . . . . Although we will not contest the issue of full compliance with the principles at this time, please note that we reserve our right to pursue this issue when we return after the summer break."

That's point number one.

Point number two. I attended as an observer at the Selection Committee meeting yesterday, as did Senator Omidvar and Senator Bellemare, and to my surprise this item addressing the membership of the Modernization Committee was raised. It is true that in every other case where there were three independents either being proposed or already sitting on a committee, every one of those three senators received a letter from Senator Plett asking those three senators to sort out amongst themselves which two would proceed to have two seats.

That did not happen with the Modernization Committee. I can attest to that because I am a member of the Modernization Committee. I did not receive a letter to that effect. I asked Senator Bellemare if she had received a letter to that effect, and she said no.

It was sprung on her at the committee yesterday. It was sprung on everyone at the committee yesterday, to my knowledge. Furthermore, she was there in her ex officio capacity, and she was denied a vote. And that also does not speak well for the fair and equal treatment of senators in this institution.

So I will add my voice to hers in objecting to that treatment. It is not the way we anticipate that we will go forward in modernizing this Senate.

Thank you, Your Honour.

Senator Plett: Thank you, Your Honour.

Let me start off, honourable senators, by saying I want to personally welcome each independent senator that has been through this report nominated or named to a committee, and I'm certainly looking forward to working with most of you for sure.

As has been pointed out very clearly, a number of you have, in fact, been on committees for quite some time, and then you chose to remove yourselves from those committees by going and sitting as independents. That, of course, is not the fault of either the independent Liberals or the Conservatives.

I would suggest that if Senator Bellemare wants to put blame and point fingers at somebody, she should look to her right, because that's where our instructions came from. Our instructions came clearly from a group of independent senators, when Senator Cowan and our leader sent out a letter asking for nominations for independents on committees. And Senator McCoy is quite correct when she said there were a few senators that got letters because three people had been named to the same committee. So we asked them to sort it out.

The fact of the matter is on modernization we didn't get three names, we got two names, and I think the person that sent us the letter knew Senator Bellemare was an independent and they only had two seats on that. So I'm not sure why that was so difficult to understand, that Senator Bellemare probably wouldn't be on that committee as an independent.

When Senator Bellemare points at the opposition, at us here, as being at fault, the fact of the matter is that Senator Munson and I worked closely together in making many of these decisions. Therefore I would suggest, if some members of the independent Liberals want to start pointing fingers, yes, Senator Mercer, point to the left and not just over here because this was done collaboratively. I would also like our committees to work collaboratively, and this is not the way to start, with pointing fingers and having hurt feelings because you weren't named to a committee.

• (1440)

I'm also not on some of the committees that I would like to be on. Nevertheless, I'm going to try to work hard on the ones I am on, and I would suggest everybody opposite do the same thing. Stop pointing fingers, and yes, if we want to revisit this in September, let's revisit it in September. I'm sure by then the Prime Minister will have appointed another 17 unbiased, impartial, independent senators who will support everything he wants them to support. So let's at that point revisit, but let's stop complaining and stop fighting and stop bickering because somebody has not been appointed to a committee. Thank you.

Some Hon. Senators: Hear, hear.

Hon. André Pratte: This is not just whining or complaining for nothing. Just look at the numbers, for instance. The numbers are pretty clear.

Senator Carignan: Well, vote against.

Senator Pratte: The numbers are pretty clear, right?

Senator Carignan: Vote against the report.

Senator Pratte: So if you just look at the numbers, it's clear that two independents on each committee is unfair.

Senator Carignan: Then vote against the report.

Senator Pratte: But we welcome it as a first step.

Senator Plett: Thank you.

Senator Pratte: Okay, so it's a first step, but then there's the manner. Last week we were all very proud that the media and the Canadians who watched us thought that we worked very intelligently and with respect for each other, and we were all polite and respectful of each other's opinions.

What happened yesterday was the opposite of that. It was mean; it was the opposite of being polite and respectful of each other. That was not the Senate as we would want Canadians to see it. And that's a big part of the problem. It was not respectful of another senator, and that was a big part of the problem.

Senator Carignan: I think we don't have the consensus. I think we need to work with consensus, so I move the adjournment of the debate in my name.

The Hon. the Speaker: It is moved by the Honourable Senator Carignan, seconded by the Honourable Senator Martin, that further debate be adjourned until the next sitting of the Senate.

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

An Hon. Senator: No! On division.

Some Hon. Senators: Agreed.

The Hon. the Speaker: Carried, on division.

(On motion of Senator Carignan, debate adjourned, on division.)

STUDY ON ISSUES RELATING TO FOREIGN RELATIONS AND INTERNATIONAL TRADE GENERALLY

FIFTH REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE TABLED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to table, in both official languages, the fifth report, interim, of the Standing Senate Committee on Foreign Affairs and International Trade, entitled: *Perspectives on the Situation in Venezuela*.

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

CRIMINAL CODE

BILL TO AMEND—NOTICE OF MOTION REGARDING THE TERMS OF THIRD READING DEBATE

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, with leave of the Senate, and notwithstanding rule 5-5(j), I give notice that, later this day, I shall move:

That, with respect to debate on third reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), given its importance and complexity; given the identifiable themes including eligibility, safeguards, advance requests, regulations and guidelines; and given that many Senators have already prepared and voluntarily shared their amendments; the following process be followed, notwithstanding any rule or usual practice:

That debate be organized generally around the themes;

That Senators be allowed to speak any number of times during debate and to move more than one amendment or sub-amendment;

That Senators be allowed to move amendments or sub-amendments within a particular theme;

That Senators be allowed to move amendments or sub-amendments to any part of the bill outside a particular theme;

That, until the final general debate provided for later in this motion, all senators have a maximum of 15 minutes to speak in any debate relating to the bill, except for the sponsor, who shall have 45 minutes for his initial speech;

That multiple amendments prepared within a theme be arranged in an order that reflects their breadth and scope;

That the amendment with the most evident breadth and scope be moved first to begin the debate on the relevant theme;

That only one amendment or sub-amendment be debated at a time;

That at the end of the debate on the first amendment within a theme, modified or not by a sub-amendment, a vote be taken and, depending on the outcome, other amendments and relevant sub-amendments be proposed or not until all of the amendments within the particular theme be moved, voted or otherwise disposed of;

That, at the conclusion of debate on the bill and its clauses and on any of the amendments and sub-amendments, debate proceed to the preamble of Bill C-14;

That any amendments moved to the preamble accord with decisions already taken;

That at any time, the Speaker be allowed to suspend the sitting in order to have time to establish the proper text of the bill resulting from the adoption of an amendment and its consequential effects;

That any standing vote requested before the final general debate on the bill take place according to normal procedures, except that it shall not be deferred;

That, once no more senators wish to move amendments, a final general debate on third reading occur, without senators being able to move any further amendment or to adjourn the debate;

That the usual rules for speaking in debate apply during this final general debate, provided that one critic from the independent senators also have the 45 minutes provided for the critics of this bill; and

That, at the joint request of the Government and Opposition Whips, any final standing vote requested following the final general debate be deferred to a time indicated by the whips, but shall not otherwise be deferred.

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

Hon. Senators: Agreed.

QUESTION PERIOD

PUBLIC SAFETY

DUAL CITIZENSHIP—RADICALIZED TERRORISTS

Hon. Daniel Lang: Colleagues, I'd like to address a question to the government leader, and it has to do with the question of terrorism.

As all members know, over the past number of years we have witnessed a large number of Canadians who have been radicalized and have become involved in terrorist activities in this country — well over 300 — and that number has apparently been increasing over the past year. This has to be of significant concern to all of us.

Last evening we learned that a Canadian, a dual citizen, has been identified in Bangladesh to be leading one of the most extreme terrorist groups in the world. Can the government leader

answer to this house, is it confirmed that individual does have Canadian citizenship?

Hon. Peter Harder (Government Representative in the Senate): I'd like to thank the honourable senator for his question, and I will take notice of his specific question.

I would, though, like to underscore and assure all senators that the Government of Canada takes the global terrorism threat and security issues very seriously. Our law enforcement agencies and our intelligence agencies are working closely with our international partners, particularly on this emerging issue, and while it is not the practice of government to comment on individual investigations, I want to assure the house that the government is taking all necessary steps possible to work within Canada and in collaboration with others to deal with this most important matter.

• (1450)

Senator Lang: Honourable senators, I'm very pleased to hear that. I and most Canadians would expect no less, especially on such an important file and given the realities that the world faces today.

To follow up on the question of the individual involved and the fact that he's a Canadian citizen, it was also reported that he had lived in southwestern Ontario, and that he had been identified by the authorities prior to him leaving Canada. Can you please tell us why the authorities allowed him to leave Canada?

Senator Harder: As I said earlier, it is not the practice of the government to discuss individual cases. I will bring the question before the appropriate governmental authorities.

Senator Lang: When you go back to the necessary authorities, can you find out if this individual was also involved in radicalizing other Canadians prior to departing Canada?

Senator Harder: I will take note of his question and will do so.

FINANCE

WAITING PERIOD FOR CHILD TAX BENEFIT— REFUGEES

Hon. Salma Ataullahjan: My question is to the Leader of the Government in the Senate. Last week, the Human Rights Committee completed its study on the resettlement of Syrian refugees in Canada. We heard from many refugee service organizations and Syrian refugees themselves at hearings, fact-finding meetings and site visits in Toronto and Montreal. Over and over, the committee heard about financial hardship that Syrian refugees face upon arrival in Canada, and that those hardships are only made worse by having to wait three months before receiving child tax benefits. The committee was told that the waiting period is one of the main reasons why so many Syrian refugees have had to turn to food banks in order to feed their families.

This is not a cultural issue, as the Minister McCallum had suggested. The situation causes unjustifiable stress and anxiety at a time when refugee families should and want to be focused on issues such as housing, language training, employment and enrolling their children in school — not on how they're going to feed their families.

The committee was told many times and in no uncertain terms that refugee families need the assistance of the Child Tax Benefit from the moment they arrive in Canada. One single mother of two children testified that once she pays her rent of $1,200, she has only $200 left per month for all her other expenses, including food. We know that economic insecurity is a contributing factor to mental health issues, which can seriously impede the process of integration. We also know that the Child Tax Benefit makes a huge difference for refugee families once they start receiving it.

Will the Liberal government remove the three-month waiting period as soon as possible so that the refugee families can receive the Child Tax Benefit from the moment they arrive?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question, and I thank all the senators involved in this committee report for the diligent work that they have performed on behalf of not just this institution but the very subject that they are dealing with: the new Syrian refugees who have arrived in Canada and their sponsors, both individually and collectively.

The report and the senator's question raise a number of important issues, which I know the government will want to take into consideration. I will reflect the impetus of direction that the senator spoke of and the committee report suggests to the government and look forward to the appropriate minister's response.

HEALTH

MENTAL HEALTH SUPPORT FOR REFUGEES

Hon. Jim Munson: As Chair of the Standing Senate Committee on Human Rights, I share the same sentiments as Senator Ataullahjan. When you make your representations to government, we believe that a focus should be on more help for those who have mental health issues. It seems to be an overlooked issue. With post-traumatic stress disorder, the stress of leaving a refugee zone, leaving a war zone, living in a new country, not knowing the language, mental health is extremely important.

Since we have taken leadership on that issue in the Senate, where the idea of a Mental Health Commission came into play, we'd like to ask you to please make the representation of having more professionals involved at the federal level with all of these families.

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for his question and for his leadership in this study. I would be happy to undertake to convey the specific points he makes, as well as the overall report and the recommendations that senators have made in their important work.

[*Translation*]

OFFICIAL LANGUAGES

AIR CANADA—BILINGUAL SERVICES

Hon. Claudette Tardif: My question is for the Leader of the Government in the Senate.

For years now, Air Canada's customers have been criticizing the lack of service provided by its employees in both official languages. A good number of complaints have been filed since the early 1970s, and some people have even launched lawsuits against the Crown corporation. There have also been a number of investigations and recommendations.

The Commissioner of Official Languages published his special report yesterday. I would like to point out that only two special reports have been published since the act was passed in 1979. The commissioner deplored that after 45 years, the same problems persist. In light of this report from the Commissioner of Official Languages, how does the government plan to follow up to ensure that Air Canada meets its language obligations towards its employees and customers?

Hon. Peter Harder (Government Representative in the Senate): Thank you for the question. The government commends the special report from the Commissioner of Official Languages regarding Air Canada, which is currently under review. The government is fully committed to protecting and promoting both official languages. We expect Air Canada to continue to take measures to meet its bilingualism obligations under the Official Languages Act.

Senator Tardif: The Commissioner of Official Languages is calling for changes to the *Air Canada Public Participation Act*. What does the government plan to do to fill the legal void? Furthermore, does the government plan to amend the act in order to clarify some of that corporation's language obligations and strengthen the enforcement mechanisms?

Senator Harder: As I already said, the government is determined to protect official languages and is currently reviewing the commissioner's report. I'll transmit your recommendations to the government.

Senator Tardif: Thank you, leader. However, for the past 45 years, we've been receiving reports, studies and recommendations. Now is the time to take action. In response to the comments from my honourable colleague, Senator Joyal, about the report from the Commissioner of Official Languages and Bill C-10, does the government plan to strengthen Air Canada's official languages obligations during its discussions with the airline on this bill?

Senator Harder: The government has confirmed Air Canada's official languages obligations. I will ask the minister to follow up on your recommendations, in the spirit of this chamber. You are no doubt aware that Senator Pratt raised the issue of strengthening respect for official languages yesterday, and the government and this chamber are calling for this as well.

[*English*]

NATURAL RESOURCES

PIPELINES

Hon. Betty Unger: My question is for the Leader of the Government.

A few weeks ago, you stated twice in this house that no pipelines have been built in Canada in the last 10 years. This information is not only incorrect but it was misleading to this house and to all Canadians.

The fact is that between 2006 and 2012, 23 pipelines were approved, consisting of 3,595 kilometres of new pipeline. The National Energy Board oversaw the construction of 17 of the 23 approved pipelines.

• (1500)

Leader, will you tell the Senate the source of your erroneous information, and will you commit to providing that source with this corrected information?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her comments. I was, of course, referring to pipelines to sea water.

JUSTICE

JUDICIAL VACANCIES

Hon. Douglas Black: My question is for the Government Representative in the Senate.

I am revisiting the concern raised by my colleague Senator Fraser some weeks ago, as the issue she addressed of unfilled judicial appointments in Alberta is now reaching a crisis point.

Just two weeks ago, several sexual assault cases in Alberta were delayed for a year due to the lack of judges in the Alberta Court of Queen's Bench. Justice delayed is justice denied. This is not the first and certainly won't be the last time that cases have been delayed in Alberta due to our current shortage of justices.

Alberta today has seven vacancies on our Court of Queen's Bench and four vacancies out of fourteen positions on the Alberta Court of Appeal. Colleagues, if we look beyond the large number of vacant positions, Alberta also has fewer judges per capita than any other province. These problems, together, are putting a tremendous strain on the Alberta court system and are calling into question the administration of justice in my province.

Can the Government Representative please tell us how — and, importantly, when — the government is going to alleviate this crisis in Alberta to ensure our legal system begins working smoothly again?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question, he himself being a distinguished lawyer from the province of Alberta.

I had the opportunity earlier today to speak with the Minister of Justice on this matter — indeed, your specific question. I want to assure him — and, through this answer, the chamber — that the minister is expecting to make some appointments in the very near future.

As the member will be aware, and other senators will be aware from previous questions and answers, the government has committed to review the entire judicial appointments process based on the principles of openness, transparency, merit and diversity. The Minister of Justice is working with interested stakeholders, including the judiciary and Canadians generally, on these appointments, seeking to ensure that the process of appointing members of the court is transparent, inclusive and accountable to Canadians.

Hon. Mobina S. B. Jaffer: Leader, I also have a question on this issue.

Every Monday morning, many cases in Vancouver and in British Columbia are adjourned. Cases that have been prepared, cases that have been in the pipeline for months, are being adjourned simply because of lack of judges.

I heard your answer to Senator Black and I am happy to hear that answer. I know that the minister and the Prime Minister are trying to have an open process, but I would also appreciate it if you would kindly convey to both of them that, in the meantime, there are many people who are not getting their cases heard, for a year or two years, while this process is being done.

I respectfully ask that, yes, set up a diverse process, but in the meantime make some urgent appointments so that people who want their cases heard can be heard.

Senator Harder: I thank the honourable senator for her question, and I would be happy to convey the sentiments of her question to the minister concerned.

SMALL BUSINESS AND TOURISM

EMPLOYMENT INSURANCE

Hon. Tobias C. Enverga, Jr.: Honourable senators, my question is for the Leader of the Government, which I would like to be relayed to Minister Chagger. My question was supposed to be for yesterday.

My question for the minister concerns a promise made by the Liberal Party to small businesses during the election campaign that has since been broken.

The Liberal Party platform promised:

> And to encourage companies to hire young Canadians for permanent positions, we will also offer a 12-month break on Employment Insurance premiums. We will waive employer premiums for all those between the ages of 18 and 24 who are hired into a permanent position in 2016, 2017, or 2018.

Just like the case with the promise to reduce the small business tax rate to 9 per cent, this commitment is nowhere to be found in the Liberal government's recent budget.

Does the minister ever intend to follow through with this particular pledge, or is this a broken promise to our youth and the unemployed, or just another reason for the job-creating small businesses in this country to be profoundly disappointed in the Trudeau government?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question and of course wish that he had had the time to ask the minister, because he would get a more charming and vigorous answer than he is about to get.

I would be happy to take the question as presented to the minister and invite her response.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: Motion No. 22, followed by second reading of Bill C-11, followed by the motion related to the processes of study of Bill C-14, for which we have received leave to move, followed by all remaining items in the order that they appear on the Order Paper.

THE SENATE

MOTION TO ADOPT A RESOLUTION PERTAINING TO THE FAIR RAIL FOR GRAIN FARMERS ACT ADOPTED

Hon. Peter Harder (Government Representative in the Senate), pursuant to notice of June 7, 2016, moved:

> That the Senate adopt the following resolution, established by Order of the Governor General in Council on April 19, 2016, for the purposes of subsection 15(2) of the *Fair Rail for Grain Farmers Act*:
>
> "That, pursuant to subsection 15(1) of the *Fair Rail for Grain Farmers Act*, the coming into force of subsections 5.1(2), 6(2), 7(2), 8(2), 9(2), 10(2), 11(2) and 12(2) of that Act on August 1, 2016 be postponed for a period of one year."

He said: The honourable whip and I have a bet on who will be quicker.

I am pleased to rise and present brief remarks on the resolution to extend provisions contained in the Fair Rail for Grain Farmers Act.

As senators will know, Bill C-30, known as the Fair Rail for Grain Farmers Act, was implemented in 2014 in order to address unique circumstances that arose during the 2013-14 crop year due to poor seasonal conditions and grain transportation issues at the time. As such, a number of provisions of the bill were made temporary. Some of these provisions include the ability to prescribe different distances by region or by goods when making regulations on interswitching, as well as to prescribe a minimum amount of grain to be moved by the Canadian National Railway and the Canadian Pacific Railway during any period within a crop year, and authorize designated persons to impose administrative monetary penalties for failing to meet these requirements.

A mechanism was included as part of the bill to grant the government the ability to extend such provision through a resolution adopted by both houses of Parliament, as authorized through an order of the Governor-General-in-Council.

Given that the date for repeal of said provisions would be August 1, 2016, the government is moving expeditiously in order to maintain stability and predictability in the grain industry.

Therefore, the government, through the adoption of this resolution, is seeking to extend the coming into force of these provisions by one year in order to provide more properly examined recommendations made by the report of the Canadian Transportation Act Review. It will also allow the various participants in the grain-handling and transportation system to properly plan for the upcoming crop year under predictable conditions.

This resolution is currently before the House of Commons and was agreed upon by the Standing Committee on Transport, Infrastructure and Communities, and has received bipartisan support in the other chamber.

Honourable senators, I am hopeful that you will support this important resolution, and I am confident that in the future we will have the opportunity to further analyze and debate the operational workings of our grain and rail systems.

Hon. Donald Neil Plett: Leader, you will win this bet. I will be shorter than that.

I would like to speak for a moment in support of this motion. I was proud to have sponsored the Fair Rail for Grain Farmers Act in the Senate to address the major backlog in grain transportation.

• (1510)

When we put this legislation in place, the value of grain currently sitting in bins was estimated at between $14.5 billion and $20 billion. The implications of the backlog have been reduced cash flow and lost revenue for farmers and shippers, cash prices that are lower than the world standard, increased shortage costs for farmers and grain companies, as well as stiff penalties for demurrage and failure to consummate contracts. There is a risk of crop contamination and an overall risk of damage to Canada's global reputation as a reliable grain supplier.

Since the Marketing Freedom for Grain Farmers Act, or the Wheat Board bill, which I also had the pleasure of sponsoring, grain production has increased substantially, and this trend has continued every year since. With world demand growing, we need to ensure we are moving grain faster, with predictable and reliable rail service.

The minister has been permitted the power to order a mandatory minimum volume requirement for grain shipments. It is imperative that this continues for the coming year so that our grain farmers can be assured that the rest of the supply chain is doing its part to move the product efficiently to waiting markets around the world.

Colleagues, I urge you to support this motion.

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

Hon. Senators: Agreed.

(Motion agreed to.)

COPYRIGHT ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Bellemare, for the second reading of Bill C-11, An Act to amend the Copyright Act (access to copyrighted works or other subject-matter for persons with perceptual disabilities).

Hon. Tobias C. Enverga, Jr.: Honourable senators, I am delighted to rise today to speak to Bill C-11, An Act to amend the Copyright Act (access to copyrighted works or other subject-matter for persons with perceptual disabilities) and for the honour to be the opposition critic of this legislation. I want to thank Senator Harder, the Government Representative in the Senate, for his speech and for his efforts to usher the bill through the Senate.

Honourable senators, as you heard yesterday, this bill is Canada's legislative response to the World Intellectual Property Organization's Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, which was signed on June 27, 2013. I want to congratulate the current government for continuing the good work of our previous government and for upholding Canada's international obligations. Let us hope they will continue

to emulate and further decisions and commitments made under the previous Prime Minister — which was Prime Minister Harper — in other areas of international and domestic concern.

Honourable senators, as I have said in the past, I am deeply committed to the plight of those suffering from vision loss and other vision health problems. It was the first charitable cause I championed after coming to Canada as an immigrant, and it is a cause I have had the privilege of supporting here in our upper house. I want to add my surprise, when I read the debate on this bill in the other place, of how many parliamentarians have or have had an involvement with the Canadian National Institute for the Blind, or CNIB, at various levels in the organization. This should bode well for legislative support to future calls for action on vision health.

Honourable senators, this bill was passed by the other place with unanimous consent. Not only did all parties there agree on the need for this legislation, but they managed to set aside partisan interests and politicking related to other business on their Order Paper to ensure quick passage of Bill C-11. It may have been a little too hasty, as on a motion by the Honourable Pierre Poilievre, a member of Her Majesty's Loyal Opposition, all stages, including committee stage, were deemed to have passed. I am always a little concerned when this happens, even on a bill that seems to have the full support of all members. I trust that we in this house will ensure that no concern is left without study, a point to which I will return later.

Honourable senators, some of the details of the bill and its history have been laid out by the sponsor. The need for 20 countries to ratify or accede to the treaty before it comes into force is the prime reason this is an urgent issue. Unfortunately, Bill C-65, the Harper government's incarnation of this bill, did not reach our chamber for consideration in the previous session, and I think that senators should support a quick yet sturdy passage of the bill this time around. There are, as of today, 17 countries that have either ratified or acceded to the treaty, and Canada needs to be in the forefront and encourage other signatories to the Marrakesh treaty to follow suit. It is our duty to lead when it comes to those in need. It is what Canada has always stood for in the past and what we must stand for in the future.

Yesterday, Senator Moore raised the question of which countries are among the 17 that have already ratified or acceded to the Marrakesh treaty. With the advantage of hindsight, I am happy to provide the Senate with a list for the record in the order of ratification or accession. The countries are: India, El Salvador, United Arab Emirates, Uruguay, Mali, Paraguay, Singapore, Argentina, Mexico, Mongolia, the Republic of Korea, Australia, Brazil, Peru, the Democratic Republic of Korea, Israel and Chile.

Honourable senators, according to the report *The Global Economics of Disability*, more than 1.1 billion people in this world have a disability. According to estimates from the United States of America, it costs the government about $300 billion in services per year and a loss of $135 billion in tax revenue due to employment dislocations. Yes, honourable senators, that is billion with a "b."

The effects in the private sector are not easily quantified, but we see increasing numbers of private sector companies that have programs in place to tap into the talent that lies within the large segment of the labour market that people with disabilities represent. As the Honourable Minister of Sport and Persons with Disabilities, Carla Qualtrough, said in her speech at second reading in the other place, "over 800,000 Canadians live with partial sight" or blindness. It is of utmost importance to allow for this segment of the population to more easily and affordably access printed material, not only for their entertainment through works of fiction, but for them to have equal access to education, which in turn will allow for access to the job market. This is not merely a social service to those in need. It is good for our economy. It is good for our companies that will have a wider pool of talent to recruit from, and it will help our government to increase tax revenue and cut spending on unnecessary welfare payments.

• (1520)

Honourable senators, this legislation also gives Canada an opportunity to increase its role in our global village. The Marrakesh treaty allows for our copyright laws to ensure an international standard to permit charitable organizations here to make, distribute, import and export accessible books.

Considering Canada's wider reach in developing countries and the good international development cooperation Canada is renowned for globally, we stand ready to lead efforts not only in assisting Canadians with impaired vision but also in assisting those who live with vision loss in the developing world.

Ninety percent of visually impaired persons live in developing countries where infrastructure and financial and human resources are not available to ensure the same level of inclusion that we have here in Canada. This bill, once adopted, will allow for Canadian charitable organizations to provide partner organizations or individuals in developing countries, upon request, with material that has been adapted for visually impaired and blind persons.

Honourable senators, if we add the unique bilingual nature of our great country, we can see how much good Canada can do for those who are less fortunate around the world. Canada can be in the forefront of a social export of print material to areas such as francophone West-Africa, anglophone countries in sub-Saharan Africa and other countries in the developing world. We are indeed able to become a leader in an enterprise that is socially responsible, that is charitable in nature, and that will allow for greater access to cultural products for persons who suffer greatly from being excluded from labour markets that are challenging enough for those who are fully abled.

Honourable senators, I did raise a concern earlier regarding the rushed passage of this bill in the other place and how we should give Bill C-11 our full attention and study. Although I wholeheartedly support this bill, I have been made aware of two concerns from members of the public who are better informed of copyright laws than I am. The first is the limitation of commercially available products in clause 1. It is permissible under the treaty, but it is not necessary and may result in a stricter, more prohibitive regime in Canada than elsewhere.

The second concern raised, honourable senators, is the imposition of royalties for those non-profit organizations that take advantage of the exceptions from the copyright laws that the bill intends to allow for. The royalty would be in accordance with regulations set by the Governor-in-Council pursuant to section 32.01(7) of the Copyright Act. This seems to impose a financial disincentive on organizations like the CNIB to fully take advantage of the new law. It also provides a disincentive to publishers and copyright holders in making materials for those who are visually impaired readily available for commercial purposes.

Honourable senators, this being Canada's upper house, where we are expected to take a closer look at legislative proposals, I strongly encourage the committee to which the bill will be referred to allow for the stringent review that Canadians expect us to undertake and to fully investigate the effects of the bill by inviting the relevant witnesses to appear to share these concerns with the committee's members.

Thank you very much.

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

Hon. Senators: Question.

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

(Motion agreed to and bill read second time.)

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 Banking, Trade and Commerce).

CRIMINAL CODE

BILL TO AMEND—MOTION REGARDING THE TERMS OF THIRD READING DEBATE ADOPTED

Hon. Peter Harder (Government Representative in the Senate), pursuant to notice of earlier this day, moved:

> That, with respect to debate on third reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), given its importance and complexity; given the identifiable themes including eligibility, safeguards, advance requests, regulations and guidelines; and given that many Senators have already prepared and voluntarily shared their amendments; the following process be followed, notwithstanding any rule or usual practice:
>
> That debate be organized generally around the themes;
>
> That Senators be allowed to speak any number of times during debate and to move more than one amendment or sub-amendment;
>
> That Senators be allowed to move amendments or sub-amendments within a particular theme;
>
> That Senators be allowed to move amendments or sub-amendments to any part of the bill outside a particular theme;
>
> That, until the final general debate provided for later in this motion, all senators have a maximum of 15 minutes to speak in any debate relating to the bill, except for the sponsor, who shall have 45 minutes for his initial speech;
>
> That multiple amendments prepared within a theme be arranged in an order that reflects their breadth and scope;
>
> That the amendment with the most evident breadth and scope be moved first to begin the debate on the relevant theme;
>
> That only one amendment or sub-amendment be debated at a time;
>
> That at the end of the debate on the first amendment within a theme, modified or not by a sub-amendment, a vote be taken and, depending on the outcome, other amendments and relevant sub-amendments be proposed or not until all of the amendments within the particular theme be moved, voted or otherwise disposed of;
>
> That, at the conclusion of debate on the bill and its clauses and on any of the amendments and sub-amendments, debate proceed to the preamble of Bill C-14;
>
> That any amendments moved to the preamble accord with decisions already taken;
>
> That at any time, the Speaker be allowed to suspend the sitting in order to have time to establish the proper text of the bill resulting from the adoption of an amendment and its consequential effects;
>
> That any standing vote requested before the final general debate on the bill take place according to normal procedures, except that it shall not be deferred;
>
> That, once no more senators wish to move amendments, a final general debate on third reading occur, without senators being able to move any further amendment or to adjourn the debate;
>
> That the usual rules for speaking in debate apply during this final general debate, provided that one critic from the independent senators also have the 45 minutes provided for the critics of this bill; and
>
> That, at the joint request of the Government and Opposition Whips, any final standing vote requested

following the final general debate be deferred to a time indicated by the whips, but shall not otherwise be deferred.

He said: Honourable senators, there have been consultations through the usual channels and amongst a broader group of senators yesterday evening. The consensus of that debate is reflected in this motion, and I commend it to the house.

Hon. James S. Cowan (Leader of the Senate Liberals): On a point that I raised with Senator Harder when I first saw the text of the motion, I wonder if he would agree to modify the motion to allow not only the sponsor of the bill but also the critics of the bill to speak for 45 minutes, not more than once but at the time of their choosing, either at the beginning of the debate or at the conclusion of the debate, as they would choose.

Senator Harder: I would be happy to do so and reflect that in the motion, as amended. I am certain that can be accommodated in the wording of the motion as it references at the end. We could have a choice.

The Hon. the Speaker: Honourable senators, I suggest that we suspend for approximately 10 minutes to ensure that we have the proper wording to reflect the amendment to the motion, in both official languages.

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1550)

The Hon. the Speaker: Honourable senators, we now have a wording that's agreed upon. I call upon Senator Cowan to move the amendment.

MOTION IN AMENDMENT

Hon. James S. Cowan (Leader of the Senate Liberals): Honourable senators, in amendment, I move:

That the sixth paragraph of the motion, which starts with the words "That, until the final general debate", be amended to read as follows:

"That, until the final general debate provided for later in this motion, all senators have a maximum of 15 minutes to speak in any debate relating to the bill, except for the sponsor and the critics, including one critic from the independent senators, who shall have 45 minutes either for their initial speech or for their speech during the final general debate, at their choice;"; and

That the second last paragraph be amended to read as follows:

"That the usual rules for speaking in debate apply during this final general debate, subject to the provisions of this motion; and".

The Hon. the Speaker: It was moved by the Honourable Senator Cowan that — shall I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: On debate? Are senators ready for the question? We're voting on the amendment, first.

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

Hon. Senators: Agreed.

(Motion in amendment agreed to.)

The Hon. the Speaker: We're now back to the motion of Senator Harder, as amended.

Are you ready for the question, honourable senators?

Some Hon. Senators: Question!

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

Hon. Senators: Agreed.

(Motion as amended agreed to.)

• (1600)

CRIMINAL CODE

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

Hon. George Baker moved third reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying).

He said: I'll try to be very brief.

An Hon. Senator: Oh, oh!

Senator Baker: I recall once, before I spoke, I hoped the gentleman was not serious, but he said, "Mr. Baker, I don't have a watch but there's a calendar on the wall behind you."

I will try to be brief because I understand that everybody has 15 minutes for the amendments, and I'll certainly try to keep to that.

First, I'd like to agree with the statements of Senator Carignan. I listened to him being interviewed by one of the media, and he said that these are politically unpredictable times in the Senate as far as these votes are concerned and that we're into a new reality with many challenges. The difference is that we don't have a government caucus. In other words, what we had until recently was a government caucus and an opposition caucus, and you could predict the passage of legislation and you could predict, because of caucus meetings, what the numbers would be on particular votes. There was a system in place where matters could be regulated.

Well now, that is not the case. It's not the case because we have an increasing number of independent members and because those of us who were formerly in the Liberal caucus were evicted without notice. And it's the first time that I agreed with getting evicted without notice.

In this confusion and the challenges that face us, I personally would like to congratulate the Prime Minister because I truly believe that the Senate is a place that must be independent, and I further believe that the Senate, on the record, has been independent.

One looks at the record of the Senate. People have been comparing our situation today with this bill to the debate on the abortion bills, which has also been done by several senators. It has some similarities but it is not, as they say, on point.

I was a member of the House of Commons at the time, in 1988, and a bill was introduced because the Supreme Court of Canada had struck down the abortion laws. The government of the day, the Mulroney government, in a very fast manner introduced a bill to replace the provisions that were struck. As I recall, the motion on second reading was defeated. Then came the general election. The Conservatives were returned to power, and they introduced a bill which was more demanding and stricter in character.

That bill said that unless the life of a mother is threatened — now it did say "health" as well, but that was meant to mean that the life of the mother had to be threatened before an abortion could take place — the penalty was two years in jail for a violation.

I can remember when that vote took place and we went into our caucuses at the time, with the count in the opposition caucus — and of course we knew what the count was in the government caucus — we figured it would be between 5 and 10 votes. This is in the House of Commons. And then the vote took place — this was 1988 — and sure enough the bill passed by fewer than 10 votes.

Then it was sent to the Senate, but before the Senate had an opportunity to deal with the bill, there were two highly publicized and tragic circumstances of young women. One of them bled to death from trying to self-abort, and the evidence of her friends and family was that she was afraid of being charged with this offence that would cause two years in jail. And there was another tragic case, with high publicity at the time, which had everybody seized.

The vote took place in the Senate and it was a tie vote. A tie vote in the Senate means it was defeated. But no government after that attempted to reintroduce a bill to replace that one. So I think, on the facts of the matter, you can't say that this is similar to the abortion bill and the defeating of the abortion bill by the tied vote in the Senate.

Previously in the Senate we have stopped government legislation, but we had our own way of doing it, if you recall. I can give you instances since I was in the house in 1974 where the Senate has so acted, but let's just take the previous government. I can recall when the House of Commons passed an 800-page income tax bill with unanimous support. It came to the Senate and went to the Banking Committee. The Chair of the Banking Committee was a Conservative, with majority Conservative members, and this is a Conservative government we're talking about in Canada. What happened? They examined the bill and found that 9 pages of the 800-page bill were apparently not considered by the House of Commons in that there was a major tax change for the film industry in Canada. Do you remember that? The Senate brought in people to give testimony. Do you remember that the Trailer Park Boys were brought in? All of our great artists in Canada, our actors and film producers, were brought in to say how ridiculous that was.

The 800-page bill had passed unanimously in the House of Commons and it was a tax bill. You don't, by tradition, attack a tax bill, but what do you do? Well, the House of Commons members came rushing down the hall. Who were the first ones? The NDP members came down the hall to say, "You've got to do something about this. Senate, you've got to stop this bill." So what did the Senate do? The Senate stopped the bill by simply leaving it in committee.

I was reading a paper some time ago where a political scientist said, "Look at the Senate; they left an income tax bill stranded in committee for over a year and this is terrible." Well, that was intentional.

The most recent example of the Senate saying no to a Commons bill was in relation to the betting bill. What did we do? That was passed unanimously by the House of Commons — unanimously — and then it came to the Senate.

Senator Doyle is smiling over there. I had the archbishop stop me in an airport and tell me to pay attention to Senator Doyle on this particular bill because he was opposed to it.

And senators in this place gave very strong speeches in opposing that bill. This is under the previous government and these were Conservative senators who spoke out the loudest.

Senator Raine: Friday, how many people?

Senator Baker: And Senator Raine says it was Friday that they passed the bill in the Commons.

Senator Raine: Unannounced.

Senator Baker: Yes, the fix was in in the House of Commons. The fix was in with the three political parties in the House of Commons that put the bill through.

• (1610)

The Senate had a responsibility to stop that bill, and the Senate stopped it, but how did they stop it? I know there are some people in this chamber who agreed with the bill, but the Senate collectively stopped the bill in third reading by leaving it on the Order Paper. It ended.

So you can't say that the Senate has never stopped a bill. The Senate had its way of preventing legislation from going through that should not go through — right back through its history. You can't say, "Well, the last time the Senate stopped a government bill was back in 1988 with the abortion bill or, previous to that, 1947." There have been many instances.

We can't forget that the main role of the Senate, as we all realize is that the Senate is used three times more than the House of Commons is to determine the intent of legislation. Every now and then, somebody stands up and reads out the cases before the courts in which the Senate committees are cited for the marvellous work that they do. In fact, the Senate is quoted seven times more by our tribunals and quasi-judicial bodies and three times more by our provincial courts, our Superior Courts, our Courts of Appeal and the Supreme Court of Canada, fulfilling our proper role.

The present bill before us is a very important piece of legislation, and senators should be congratulated for their careful and deep commitment to examining this bill. Some of the areas of contention, however, are with regard to its constitutionality. We heard from experts before the committee who said it's constitutional. We heard from other experts who said it's unconstitutional — on one point, that of "reasonably foreseeable death."

Whereas we heard a lot of argument concerning that and the fact that it may violate the Charter rights of certain individuals, the problem with the bill, as I see it — and this is my personal information. I know I'm the sponsor of the bill. If you want to know the new reality of the sponsor of bills, you look to Senator Campbell in his second reading speech of Bill C-7; he made a marvellous speech, but that is the new reality of the Senate.

Getting back to the present bill that's before us, first let me say this: The constitutionality of a bill — of a portion of a bill — is constantly before the courts. That's a part of our process of justice: You have challenges as to the constitutionality of different portions. So it's not a bad thing that we have constitutional challenges.

But what happens in a case like this bill we have before us?

You have advocates who say it's unconstitutional because it deprives somebody of their rights because of this particular clause, and it's a section 7 and a section 15 argument. If you go too far down the road on permissible legislation, then you get a constitutional argument on the other end.

I highlight for senators the decision of the Supreme Court of Canada in 2012 on public interest litigation and the rewriting of the law, in my opinion, on public interest litigation. Cromwell J., speaking on behalf of a unanimous court, said the three elements to establish standing to challenge a constitutional issue for organizations were a "serious justiciable" reason, a real connection to the subject matter and a reasonable process before the court. These requirements were not on strict proof but in a relaxed proof.

If you make it too permissible, you would get a constitutional argument that it goes the other way, that you have any organization representing those people who are vulnerable, deprived in some way, disabled — any organization could apply for standing to bring a constitutional argument that this bill is unconstitutional because it violates the section 7 and section 15 rights of the people they represent in their organization.

We didn't have enough evidence on public interest litigation in our examination of the bill. We had some; the House of Commons didn't have any, but we had some.

But that's the weighing that one has to do. It's not just a matter of something being unconstitutional here, that if you correct it, then you are open to an unconstitutional challenge there, for sure.

One thing is certain: No matter what we pass in this bill, it's going to be challenged; it's going to be challenged in our courts for its constitutionality.

The other morning at 7 a.m. I was walking to work, and I came up to a street corner, and one of the senators in this place today — I'm not going to name the senator, because the senator may be embarrassed. But we stood on a street corner. At seven o'clock it started, and it went on for some time. We were arguing and discussing this bill in one respect, and that concerns the standard — the bar — that we should accept individually as senators for defeating a measure passed by the duly elected House of Commons. We stood there, and we discussed this for a long time. I was citing — not exactly; I found out that I was misquoting in a way — but I was citing the Supreme Court of Canada decision in the *Reference re Senate Reform* 2014 at paragraph 58. I would just like to recite this paragraph. I won't be too much longer, senators.

An Hon. Senator: Keep going.

Senator Baker: Paragraph 58:

> . . . the choice of executive appointment for Senators was also intended to ensure that the Senate would be a *complementary* legislative body, rather than a perennial rival of the House of Commons in the legislative process. Appointed Senators would not have a popular mandate — they would not have the expectations and legitimacy that stem from popular election. This would ensure that they would confine themselves to their role as a body mainly conducting legislative review, rather than as a coequal of the

> House of Commons. As John A. Macdonald put it during the Parliamentary debates regarding Confederation, "[t]here is . . . a greater danger of an irreconcilable difference of opinion between the two branches of the legislature, if the upper be elective, than if it holds its commission from the Crown."

And then it continues:

> An appointed Senate would be a body "calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill considered legislation which may come from that body, but it will never set itself in opposition against the deliberate and understood wishes of the people."

That was Sir John A. Macdonald, Father of Confederation, father of the Conservative Party.

Senator Mockler: A great prime minister.

Senator Baker: Yes.

Senator Cowan: You were there.

Senator Baker: And his words today, as we had our picture taken at the one hundred and fiftieth anniversary, it was exactly 150 years ago that he made this statement.

Senator Cowan: You were there, George.

Senator Baker: I was there, indeed, when he made that statement.

What was our argument about at seven o'clock in the morning with another senator on the street corner?

• (1620)

Well, this is what it was about: He said to me at the end, "Look, you talk about a bar that senators should have before they go against the wishes of the elected chamber." He said, "What do you think the bar is?" And I said, "I don't know. I guess it's in the Charter; I could find it in the Charter." He said, "Why don't you make your third reading speech on that? Why don't you conclude with that?" And I said, "Okay, I'll conclude with it."

Senators, here is where I think the bar is: Senators should not vote against a measure approved in the House of Commons if it is only their sort of inclination to do so, if it's their feeling that they don't like it or that their constituents are emailing them saying, "You should do that."

It's not a low bar. I think it's a high bar. How high is the bar? I think the bar can be found in our Canadian Charter of Rights and Freedoms.

Senator Moore: Exactly.

Senator Baker: It applies to the very sections of the Charter we have under consideration. If you read a lot of cases, you discover that if you start at section 7, that's fundamental justice. Section 7 is the umbrella that covers everything that's not covered in the other sections of the Charter under "Legal Rights."

Section 8, probably the most litigated, that's search. That is everything from a dog sniff to the police breaking into your home at three o'clock in the morning to find out if there's a grow op.

Section 9 is arbitrary detention, and that's if you're arbitrarily detained by a person of the state — fairly actively litigated.

Then comes section 10, the big litigation section. 10(*a*), you must be told why you're being detained, first, and then it's right to counsel. The Speaker has litigated these things many times.

Then comes section 11. We have a committee of the house, chaired by Senator Runciman, that's presently looking into why our courts take so long in their proceedings. Section 11, why it is that a hundred persons were released from custody in the province of Quebec when the evidence was outstanding, all because it was a violation of section 11. Why do we have, on a regular basis, people who are accused of sexual assault when the evidence is there, but they're released prior to their trial ending? Why? Because it took too long. That's section 11.

Then there's section 12, which is cruel and unusual punishment by the state, if you're experiencing that.

Here's the point, senators: Where's the bar for a judge, a justice, to throw out all of that information? Your Charter rights have been violated. Where's the bar?

Well, the bar is found under the remedy section, section 24. 24(1), a stay of proceedings, "if it shocks the conscience of the community." "If it shocks the conscience of the community," that's the bar. To throw out all the evidence, 24(2). That says you throw it out if it brings the administration of justice into disrepute if the evidence is maintained. That's the bar.

So we have in the Charter those two bars: shocks the conscience of the community, brings the administration of justice into disrepute. Into disrepute with whom? With the general public.

Then we have the standard, the bar, of section 1 of the Charter: Yes, your rights have been violated, but is it demonstrably justified in a free and democratic society? Those bars are high. And it is my opinion that the bar should be very high for us to reject legislation that's passed by the elected body. Thank you very much.

Hon. Paul E. McIntyre: Senator Baker, would you accept a question?

Senator Baker: Yes, yes.

Senator McIntyre: As usual, a very powerful and masterful presentation.

Senator Baker: Thank you.

Senator McIntyre: No question about that.

Senator, as you have indicated, constitutional challenges are not cut and dried. In the last 25 years, the Supreme Court of Canada has rendered two very important decisions on medical aid in dying: first, the *Rodriguez* case, in 1993; and *Carter*, in 2015. In *Rodriguez*, the court said no to medical aid in dying, and in *Carter* the court said yes.

The federal government's response to that was Bill C-14, as we know. You and I sit on the Legal and Constitutional Affairs Committee. That committee heard some 66 witnesses, including the Ministers of Justice and Health. We all understand that in the next week or so, or in the next few days, some senators will be bringing amendments.

So my question is this, senator, given the importance and complexity of this bill, some stakeholders and parliamentarians have suggested that the federal government should do one of two things, or should have done one of two things: first, invoke the notwithstanding clause; and second, refer this matter, Bill C-14, to the Supreme Court for a determination as to whether the bill is consistent with *Carter* and compliant with the Charter.

May I have your thoughts on that, please?

Senator Baker: Yes. First of all, let me say that it's an honour to have a question from Senator McIntyre. With 25 years, he's the longest-serving chair of the not criminally responsible board in Canada — and that's only occupied by a judge, a retired judge.

About six months ago I showed Senator McIntyre a case that he had done back in the early 1980s that was used as a precedent by the Ontario Court of Appeal very recently, so he has a great history in this.

Now, getting to your question. This doesn't mean I'm not going to answer your question.

The "notwithstanding" clause, honourable senators, I know this has come up. This is section 33 of our Charter. It has been used in provincial jurisdictions to override a Charter challenge. In other words, the legislature is supreme; the courts will not override by saying that this is unconstitutional. Provincially it has been used.

It has never been used, to my recollection, federally. I don't recall it, ever. I recall it being used in Quebec with the signage bill. I recall it being used in Yukon with land. I recall it being used in Alberta with the marriage bill, which was later determined to be a federal jurisdiction, but it was used there. It was also used in Saskatchewan, senator.

Senator Batters: I know.

Senator Baker: It was also used in Saskatchewan.

Why didn't the government use it? Well, it has a limited usage. It only applies for five years. It has to be renewed, but it's never been done before. I'm not speaking on behalf of the government, but my guess is that they said, "No, this is not an appropriate way to go."

As far as referring it to the Supreme Court of Canada is concerned — as many have suggested, as you say, senator — a reference to the Supreme Court of Canada, the Government of Canada, the Department of Justice, is firmly saying that this bill is constitutional. In response to that, before our committee they said, "There's no need to refer this because we feel that this is undoubtedly a constitutional piece of legislation."

Thank you.

Hon. Jane Cordy: Thank you very much, senator, for your speech. This is a bill that I think has touched the hearts and minds of everybody in the chamber.

• (1630)

I have to say, when I was listening to the speeches last week, I was very touched by the fact that they were not political; they were not partisan. They were people speaking from their hearts about how they felt about this bill.

Governments don't usually like dealing with issues like abortion or assisted dying unless they are forced to do so by the courts, because it is often challenging for any government to reach consensus. You explained clearly what happened when the Senate dealt with the abortion bill and that, in fact, it ended up with a tied vote, which meant there were no safeguards in place for the medical community or the provinces in dealing with abortions. So I guess one could say the floodgates opened in terms of abortion.

I have gotten letters from people expressing concern with this bill. It's a very challenging position for me. I am Catholic. I go to church on Sundays. My bishop gave us each a letter about Bill C-14 when we went to church. In fact, I had one person in my church say they had bet their wife I would not be at Mass that Sunday because of the bill before the Senate. I would never avoid a discussion on any bill in the Senate, regardless of what it is.

There were people who approached me and said, "You can't vote in favour of this bill. You can't vote in favour of an assisted dying bill." My response to them was that, much like the abortion debate, "If we don't pass a bill with safeguards and guidelines in it, then the floodgates would open again." That's my reading of the bill.

I do not sit on the Standing Senate Committee on Legal and Constitutional Affairs. I congratulate all the members in this chamber who do and for the vigour with which they studied this bill.

Were we to vote "no" to this legislation, would the floodgates open? Would we, in fact, have assisted dying in Canada with no guidelines or safeguards in place?

Senator Baker: Somebody just mentioned the provinces. I think that it's a criminal matter, number one. I think that the guidelines

and the safeguards are necessary. The bottom line is that we need legislation. We have to have legislation.

I would hope that we would not, as a majority, reject the bill. Yes, we do our job and amend a piece of legislation but certainly not defeat a piece of legislation that is necessary for the safeguards. The safeguards that people are so concerned about are that the sections of the Criminal Code still stand. The Supreme Court of Canada said that these sections are void "inasmuch as it applies to." In other words, the law is still there, but it is excused for physician-assisted death under certain requirements.

So that's why we need the bill. We need the safeguards. We need the protection that someone will not be charged with a criminal offence somewhere along the way. It could happen, and that's why we need the bill.

Hon. Jim Munson: Senator Baker, as you know, I work closely with those with intellectual disabilities in the community. It has been described here how emotional this debate has become in the last week or so. I have a lot of representation from those with autism.

You use the word "safeguards." I am back and forth on this bill. It's amazing. One day I want to see advance directives and so on; other days I look at the bill and say, "It's good as it stands right now with all of the amendments we are talking about here."

In the autism community and other communities, there are those who are older parents and they have older, adult children. These are non-verbal people. They can't express themselves in any way at all. The parents worry and are concerned that when they go, their children will become a ward of the state or be put in a home and so on.

Do you feel there are enough safeguards to protect them? They have no way of giving any advance consent. It's hard even to understand the pain and suffering of a person who has autism; they can't explain it. As they get older, they wouldn't be able to explain anything because now they have dementia with autism.

Are you satisfied that these thousands of Canadians will be protected in this bill?

Senator Baker: I think the determination of that question will be found in our courts. I firmly believe that we will have public interest litigation here.

In other words, the organizations who represent those who are disabled or those who are challenged, if those organizations feel that their membership or the people they represent are being adversely impacted by this legislation, they will go to court. They will go to court because the Supreme Court of Canada has relaxed the rules, and rightly so, for public interest litigation. I think, regardless, that is where this will go. It's a very difficult situation.

You mentioned that you were also concerned about advance directives. To be quite honest with you, for the life of me, I can't understand why we have provincial legislation right across this country, every province has advance directives law that allows a person to not only withdraw life-saving methods when they arrive at a certain point but also to give them palliative sedation.

What does palliative sedation do? The trial judge outlined in *Carter* what palliative sedation is. It puts you unconscious, and in her estimation, it was one of the death advancing mechanisms that were already in place in advance directives, which you can do in any province in Canada.

For the life of me, I can't understand why, if we have that in effect with no challenge from anywhere — because that is not a right given by any law to provincial authorities — why the same principle can't apply when this legislation passes to give legal effect to physician-assisted death.

I think this is something the provinces should really investigate because it's not just a simple matter of saying, as we heard the evidence, "Oh, no, this is provincial legislation where you can only take away something in order to bring on death." This is not something you can give. That's not correct. If you examine the suggested affidavits — I have seen them right across Canada. A portion of them state, "I give authority for palliative sedation to be given to me, if need be, at a certain point."

My point on the advance directives is I can't see a reason why that cannot be incorporated into provincial legislation.

Hon. Mobina S. B. Jaffer: Senator Baker, thank you very much for your speech. You and I have worked together for many years on the Legal Committee, and for many years we looked at issues of constitutionality in the previous government. I'm not even going that far back in my question to you.

I want a bill. I think it's important to have a bill. We heard from 66 witnesses, plus the extras this week, and many mentioned that natural death is foreseeable, there is no certainty, and the challenges medical practitioners will have around those words.

Do you think that we need to have a bill that gives certainty to medical practitioners so they are not fearful of criminal sanctions against them? What is your opinion about this part of the bill?

Senator Baker: "Reasonably foreseeable death," as I am sure you are aware, is a legal term used right in our Criminal Code, section 225. It's one of the essential elements of proof where somebody is being charged with the offence of not providing for somebody under their care.

• (1640)

The next section of the Criminal Code is regarding surgery. The essential element, "reasonably foreseeable death," has to be proven in the offence. So it is a legal term. I understand your point that it is not understood by the medical community.

I would say all of this should be taken into account by senators at the suggested bar, which is pretty high, in determining whether or not to defeat the legislation. It is another matter as far as amending the legislation goes. I'm not talking about that as far as the bar is concerned, although it shouldn't be a low bar there either.

I think it's up to every individual senator to make up their own mind, based on the evidence before them, whether are they convinced one way or the other. The evidence is contradictory,

but I must admit that your point is well taken in that most of the testimony is as you said, but senators should make up their own minds individually as to whether or not they should defeat this bill on a high bar of those three considerations that I outlined in my speech.

Senator Jaffer: Thank you for your answer. If I understood you well, when you talked about the high bar, you are talking about defeating the bill. From what I understood, you said there is a high bar for amending, but did I understand you to say that amending is okay; it is the defeating you are talking about?

Senator Baker: You can take it both ways, but I think the question before us, and the question that has been raised by many senators here, is that we either have no bill or the bill would be defeated. These are legitimate concerns of senators. I respect their opinion when they say that. They give examples of the abortion bill and so on. I think we should consider whether or not it would bring the administration of justice into disrepute, whether or not it is demonstrably justified in a free and democratic society. I think these are the standards we should use, certainly to defeat legislation.

To amend legislation and to give an interpretation to legislation that our courts use is the job of the Senate, namely, to give that interpretation and then to amend the legislation if we honestly feel that this provision or that provision should be amended.

Hon. Donald Neil Plett: Senator Baker, many of us find it extremely difficult because of our faith, our beliefs that we have had from early on.

Senator Munson said he was back and forth on this issue. I am back and forth on this issue as well. A week ago, I was going to vote against the bill. Today, I am not sure that I am going to vote against the bill. I am trying to find a way of bringing myself to vote for the bill. I really am trying that.

What do you say to people who say, "I fervently, in my heart of hearts, believe that helping someone kill themselves is murder"?

The abortion situation has been raised. We have no law. I find it abhorrent that we have no abortion law, but we don't. The reason for that is that clearly, at that time, people couldn't get together and reach a compromise. People said, "I will not support anything that involves abortion." Some said, "I will support it a little bit," and others said, "I want abortion on demand," or whatever — I wasn't part of the argument — and now we have nothing.

I am afraid that here, as well, we have nothing. Do we have nothing if we defeat this bill?

What do you say to people who simply, because of their fundamental beliefs, even knowing that this is probably better than having nothing, knowing that this is maybe better than *Carter*, whatever, because of their fundamental beliefs cannot vote in favour of this? What do you say to those people?

The Hon. the Speaker: Senator Baker, your time has expired. I will ask honourable senators if they would permit you to answer that question.

Senator Plett: Please.

The Hon. the Speaker: Senator Baker has to ask for more time.

Do you want to just answer the question, or are you requesting more time?

Senator Baker: I'll answer the question.

Let me put it this way: I think you have asked me what decision you would come to after listening to the views that you express so strongly about persons who are of faith.

Senator, section 118 of the Criminal Code — and the table will know exactly what I am about to say — defines this place, the Senate, as a judicial proceeding. It is the first judicial proceeding that's mentioned in the Criminal Code under that section. It is the highest court in the land.

In assuming the position of senator, I would say that we assume the position with responsibility to make our judgments, as defined in the Criminal Code, as a judicial proceeding.

Having it so defined in the Criminal Code, there are persons who commit offences if they give testimony before a committee of the Senate and that testimony is found to be intentionally false — up to 14 years in jail.

My answer to your question is that this is something that you and each individual senator are just going to have to make up your own minds on. I believe that the bar is very high. I believe that you should do it on the basis of will this shock the conscience of the community, not just bring the administration of justice into disrepute, not just that you have demonstrably justified it in a free and democratic society.

I think the strength of what is on the shoulders of senators here is that we are in a judicial proceeding, and we should operate in such a manner. I believe whatever conclusions we come to, that will be the right decision.

Hon. Serge Joyal: Honourable senators, this afternoon, I intend to address you on three specific grounds. The first one is, are we justified to use our legislative power to amend this bill, or are we compelled to adopt it as is? That's the first question I want to pose to you. Second, if we are to use our legislative power, what are the parameters that we have to respect in the context of our use of that power? Finally, if we amend this legislation, on which essential aspect should we concentrate our initiative of amendments?

The first question: Are we justified to use the legislative power of the Senate to amend this bill? Senator Baker, my esteemed colleague, has given some instances and some elements of reference by stating that the bar is high. There is no doubt also that there are political limits to our initiative that are well known to many of us who have been active politically, and the political limit, of course, is a clear electoral mandate from Canadian citizens that a government gets by proposing in its platform issues, programs and initiatives that that government commits itself to realize. We know that.

• (1650)

We have a veteran of the GST debate, our friend Senator Cools, of the free trade debates as well. That was an example whereby the government proposed a free trade agreement with our fellow citizens in the United States and Mexico. There was strong argument in this place that the government didn't have a mandate, and as long as the government didn't have a mandate, considering the fundamental changes that would be brought to Canada with that agreement, then the Senate would give way and adopt the free trade agreement. That's what happened.

There are not many senators who are from that era, besides Senator Cools, but I am sure she could speak to it extensively. She was one of the key senators in those years.

There are also legal situations whereby we are entitled and justified and we are called upon to use our legislative power. Which are those cases? Those cases, honourable senators, are mentioned in the usual bible that I keep with me and I like to quote. I will quote Professor Paul Thomas from the University of Manitoba. Professor Thomas is a professor emeritus of political science. He has testified on some occasions in front of Senate committees. He has testified recently in front of the Modernization Committee, and he is a highly respected expert. He has written a chapter in this book. I want to quote what he says about the Senate veto and legislative power. I see that the Government Representative is nodding because of the respect I think he has for Professor Thomas.

I quote from page 198:

> The circumstances when the Senate might invoke its veto to force governments to change their mind include:
>
> • highly controversial bills for which the governments lack an electoral mandate;

That is the circumstance I explained.

> • dangerous bills that could do unpredictable and irreparable damage to the national interest;
>
> • bills that violate the *Constitution*, including the *Charter of Rights and Freedoms*;

I underline this one. I think this is where we are at.

> • bills that violate the fundamental rights of linguistic and other minorities;

According to Professor Thomas, those are the four categories of subject for which the Senate is invited to use its legislative power, ultimately its veto.

This happened, honourable senators, not that long ago — 20 years ago. Just by me mentioning the name, you will remember: the Pearson Airport debate.

Senator Cools: Very well.

Senator Joyal: I see some people smiling when I mention that.

Professor Ned Franks — again in this famous book — reminds us what the Senate did in the Pearson Airport debate, which took place in 1996. Twenty years is not that long ago. Who is Professor Ned Franks? Probably the most emeritus professor of political science from Queen's University, one of the key experts called upon often to comment on any issue related to parliamentary institutions.

At page 167 he says:

> This Pearson Airport bill was unusual, not only in that it was introduced by the government to honour an election commitment —

It was an election commitment of the government to strike down the contract with the group that was revamping the Pearson Airport.

> — but also in that it was highly controversial and based on dubious legal and commercial principles.

Here is the key issue:

> In particular, many senators opposed the provisions that would have denied the company the right to sue for lost profits as being an abuse of governmental legislative power.

In other words, the Pearson bill was removing from the company the right to sue the government. Of course, I don't need to expand on the fact that this right is protected by the Charter of Rights and Freedoms, section 15, where every individual is equal and has the same right of the benefit of the law. So how can the government adopt legislation to prevent you from suing the government?

The Senate defeated the bill — again, I recall the memory of Senator Cools — by a vote of both sides of the house, especially the winning vote from a Liberal senator, the one that is on the minds of everyone: Herb Sparrow.

The same situation that happened with the abortion bill that Senator Baker mentioned earlier: The majority vote was given by a former senator from B.C.

Senator Downe: Pat Carney.

Senator Joyal: Exactly.

Honourable senators, we are in the position of considering the importance of this issue. I have been here for 18 years and have never been witness to a debate like the one that took place in this chamber last Thursday and Friday. It shows the importance and sensitivity of this issue. Listening to senators standing up to ask questions shows how much each one of us has called upon our personal principles, upon our own life experience and upon our own commitment to serve in this chamber beyond our bias, beyond our personal religion and personal conviction to serve the common good of Canadians.

In relation to that bill, the parameters have been defined by the Supreme Court of Canada, like it or not.

There is no doubt that had we not faced a unanimous decision of the Supreme Court in relation to medical assistance in dying, a government initiative or an initiative in Parliament might not have had any chance of success.

This is a debate that has been brought in Parliament because of a decision of the Supreme Court in relation to two patients who faced a dire situation, one of whom was close to being terminally ill and the other was subject to intolerable suffering.

The Supreme Court, in its unanimous wisdom, came to the conclusion that before a person or a patient has the right to have medical assistance in dying, that person would have to meet four essential criteria: first, to be an adult; that is, to be 18 or over. Second, to be a competent adult; that is, somebody who is mentally capable. Third, to have a grievous and irremediable condition due to illness, disease or handicap; and, finally, to be in such intolerable suffering that the person cannot continue to live without being compelled to resort to sedatives or additional medicines or treatment that could alleviate that suffering.

Those are the four conditions. The Supreme Court in its decision called upon Parliament to adopt safeguards.

• (1700)

It is at paragraph 126 that the court said the following:

> It is for Parliament and the provincial legislatures to respond, should they so choose, by enacting legislation consistent with the constitutional parameters set out in these reasons.

The question then for us is: Does this bill, in fact, meet the parameters that the Supreme Court established? Because if we decide to legislate, as the government has decided to legislate, then we have to respect the parameters that the Supreme Court established, otherwise it is left to the provinces to establish through the College of Physicians and Surgeons the guidelines that the medical profession will be called upon and will be regulated to serve or to respect in the dispensing of medical assistance in dying.

Each province, in its provincial regulations, has recognized the applicability and the limit of the four criteria recognized by the Supreme Court.

What is the problem raised by Bill C-14? The problem in Bill C-14 is essentially that it is an initiative to limit the class of people who have received the right according to the Supreme Court to resort to medical assistance in dying.

The court never qualified the four criteria as including that the person has to be at the end of life or terminally ill. The court was faced with that. The court, during the pleading of the parties that were in front of it, had to face that argument, that it should limit its pronouncement of those four criteria and to add a fifth one, which would be to be at the end of life or to be terminally ill. The court was faced with that and refused to include it.

If you think, honourable senators, that this is not so, read the intervention of the justices who heard the request from the Department of Justice to extend to six months the capacity for Parliament to legislate in terms of the answer to those parameters. There were five justices of the Supreme Court on the bench at that time: Madam Justice Abella, Mr. Justice Wagner, Mr. Justice Gascon, Madam Justice Côté, Madam Justice Karakatsanis and Mr. Justice Moldaver.

During the exchange between the government, the justice department lawyers and the justices on the bench, Justice Karakatsanis stated the following in answer to the government lawyers, and I quote:

> I'm thinking particularly about somebody has to be a la fin de vie whereas in *Carter* we rejected terminally ill.

In other words, on the bench Karakatsanis says, "We, the justices on the bench, rejected terminally ill."

It was quite clear that a year after the decision of *Carter*, the Supreme Court was restating the understanding of the criteria that they had established a year before.

When the five justices rendered their decision to limit the four months for Parliament to enact the legislation that they thought fit, the court said this in paragraph 6:

> In agreeing that more time is needed, we do not at the same time see any need to unfairly prolong the suffering of those who meet the clear criteria we set out in *Carter*.

In other words, the court stated if a person meets the four conditions that the court has established, that person immediately has the right to resort to medical assistance in dying. To protect the vulnerable, the court invited the persons who were seeking medical assistance in dying to get a judicial authorization. That's later on in the same paragraph:

> Requiring judicial authorization during that interim period ensures compliance with the rule of law and provides an effective safeguard against potential risks to vulnerable people.

In other words, the court was very concerned and didn't want to suspend the judgment for four months. They said the judgment is applicable immediately within the four criteria that they delineated, and to protect the vulnerable, before Parliament enacts its guidelines, then those persons can go to court and seek a judicial authorization.

Honourable senators, there were many such judicial authorizations from mid-January of this year, five months ago, up to today, June 8. There were 29 of them. Among those judicial authorizations, some of them gave very clear interpretation of those four criteria. Among those decisions, there are two that are

very recent, the one from the Court of Appeal of Alberta that took place two, three weeks ago; and one more recent from the Superior Court of Ontario less than two weeks ago.

Again, the unanimous decision of the Court of Appeal of Alberta, three judges stated quite clearly, and I quote paragraph 41:

> 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 itself 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.

So it's quite clear that the way that the court in Canada has interpreted *Carter*, the four criteria, is that "terminally ill" was not a limit to access to medical assistance in dying.

That same conclusion came from the Supreme Court of Ontario on May 24, in paragraph 18 of the decision of the Justice Perell. What did he conclude? In *A.B. v. Canada*:

> . . . while I said that it would be sufficient that a person's grievous medical condition was life-threatening or terminal, I did not say that a terminal illness was a necessary precondition for a constitutional exemption.

And listen to this, honourable senators:

> The gravamen of a grievous and irremediable medical condition is not whether the illness, disease, or disability is terminal but the grievousness is the threat the medical condition poses to a person's life and its interference with the quality of that person's life.

So it's the grievousness of the disease that is the important factor that the justice, in giving the authorization, has to look at to be compliant with *Carter*.

• (1710)

This is the essence of the jurisprudence in Canada for the last five months. As a matter of fact, the two patients who made requests to the Court of Appeal of Alberta and the Supreme Court of Ontario were both persons not at the end of their lives or terminally ill. They were both persons with very serious grievous conditions, but neither were persons facing the end of life in the case that we all know of a terminally ill person suffering from cancer or that sort of thing. They were suffering from very grievous conditions but it had nothing to do with the end of life, and that's why those four justices — three from Alberta, one from Ontario — came to the conclusion that they had to be granted the authorization to have medical assistance in dying.

I come back to my original second question: What are the parameters of our legislative initiative? Well, the problem with Bill C-14, as I mentioned earlier, is with the clause of the bill that in effect limits medical assistance in dying to only those who are at the end of their life or are terminally ill. Where in the bill? That is in subclause (2) of paragraph 241.2, where it's stated:

> **(b)** they are in an advanced state of irreversible decline in capability;

And (d), which contains the most contentious elements of the bill:

> **(d)** their natural death has become reasonably foreseeable, ...

In fact, the "reasonably foreseeable death" is where this bill is totally outside the parameters that the Supreme Court established in *Carter* in those four criteria that have nothing to do with the moment when the person is close to dying or in the process of dying or is suffering from a medical condition or a health condition that would cause the person to die soon.

The Supreme Court was clearly faced with that situation and didn't retain those criteria. It's quite clear from the way that the decision of the Supreme Court has been interpreted, the way the court spoke in *Carter* and the way that those who have looked into the *Carter* case have come to conclude.

Monday we heard Professor Hogg. Some of you might know Professor Hogg. He is the leading constitutional expert in Canada, as Senator Baker has mentioned, quoted more than a thousand times in all kinds of cases. If you think this is the bible in the Senate, he has written the textbook on the Constitution on this one.

Professor Hogg was invited to express his views. He was not under commission. He was not paid to come and explain his opinion on the constitutionality of the bill. This is important, honourable senators, because there are a lot of vested interests when we hear witnesses in committees because many groups come with their own professional interest. The doctors have their own professional interest. The patients have their interest defended by various groups and communities. It is up to us as senators, when we hear from an expert, to determine who he speaks for. He speaks on behalf of which particular group? It's totally admissible. It's a good thing to do. That's how the system functions.

On the other hand, one has to know exactly if what we receive as "expertise" is genuine expertise coming from the analysis that that expert has drawn as a conclusion, with no strings attached, as one would say in lay language. He will say the same before us as he would before any group because he speaks for himself.

The brief of Professor Hogg was very simple. It was two pages. But they are so telling of the weaknesses of Bill C-14, and I will read:

> It is incredible to me that the Court in *Carter*, when it called for legislation by Parliament "consistent with the constitutional parameters set out in these reasons" was envisaging legislation that would *narrow* the class of entitled persons.

And later:

> . . . for the legislation to narrow the class by *taking* away a right that had just been deliberately granted by the Supreme Court, seems to me to be inconsistent with the constitutional parameters set out in the Court's reasons.

What does he say in plain language? He says the court has just recognized that the right to have access to medical assistance in dying is not only reserved exclusively for people who are at the

end of their life, but also for a group of people who suffer any condition that is irremediable and as intolerable as the ones who are at the end of their lives. So the bill decided to cut sharply into the classes of people who should have access to medical assistance in dying by stating clearly, in those two paragraphs I just quoted, that in fact they will be barred from having access to medical assistance in dying.

As Senator Lankin has said, a blanket prohibition without any safeguards would be needed if the legislator comes to the conclusion that the people who are suffering intolerably but are not at the end of their lives should deserve additional safeguards. It's possible to make that decision because that's essentially what the court requested Parliament to do.

The court didn't give the authorization to Parliament to say, "Well, we have decided that that group of citizens will have access to medical assistance in dying, but you, Parliament, can decide to pick and choose among those people who will be entitled to have medical assistance in dying." That's not the role that the court said.

The court said, "Here are the groups of citizens who have the right to have access to medical assistance in dying. It's for you, Parliament, to decide what kind of safeguards are essential to protect the vulnerable." Essentially, that's our mandate. Our mandate is to determine those safeguards, and the safeguards that are in the bill are correct, in my humble opinion. They are the safeguards that the joint committee proposed under the chairmanship of Senator Ogilvie and MP Rob Oliphant in the other place. Those are essentially the safeguards.

So the bill in relation to the safeguards is sound, in my opinion, and proof. Where the bill fails is that it goes beyond the decision of the Supreme Court by choosing who will have access to medical assistance in dying.

If the government or Parliament comes to the conclusion that the people, the patients, the Canadians, who are exactly in the same health and disease conditions as those who are close to end of life need additional protection, it is up to us to determine. It's not for the government to say, "Well, those people, we're going to exclude them blankly because we think that they are more vulnerable." Well, the government made that very argument during the *Carter* hearings two years ago. That was exactly the argument that the Attorney General of Canada made in those days, that we could not really provide medical assistance in dying because we are really creating a group of people that would be too vulnerable, and being too vulnerable because they would be people who would not feel that they have the ability to exercise the mental capacity in such a way. Then the government decided to plead for a total elimination of access to medical assistance in dying.

• (1720)

The court refused that argument. The court said, "We're going to establish the criteria for those who have access, for the group of citizens — to determine the group of citizens — and, you, Parliament, will determine the safeguards needed to protect the vulnerable."

So, honourable senators, my proposal to you is that it is upon us to make sure that this bill complies with the criteria of *Carter*. This is the essential amendment that we have to bring forward to make sure that what we do will not be challenged on the next day by the very people that Parliament will have excluded.

We can debate the safeguards. We can decide that an additional psychiatric assessment, for instance, will be needed. We can even decide that judicial authorization should be sought in that kind of context, even though, in my opinion, the safeguards in the bill are sound and proven, because in fact, if you read the directives of the 10 provinces, the safeguards in the bill are a compound of all the directives of the 10 provinces in a summary that gives the overall protection that we should be looking for the vulnerable.

But for the government to decide with this bill to exclude a whole class of people who have access, according to the court, to medical assistance in dying is to open the bill to challenge the next day. It's clear; it's so clear that the Canadian Bar Association came in front of us. I want to quote to you what they said in relation to the bill as it stands:

> There were numerous opportunities in the *Carter* judgment for the SCC to have introduced more restrictive criteria such as being at the end of life, and it chose not to do so. We note the SCC was aware of and did not reference the narrow criteria in Quebec's legislation, some of which appear in the proposed definition.

In other words, the Supreme Court was very well aware of the Quebec end-of-life legislation, and the court concluded that it would not retain that limit that exists in the Quebec legislation. By introducing the additional criteria that the person has to be in a situation of "reasonably foreseeable" death, the government goes contrary to what was requested of Parliament to come forward to protect the vulnerable, not only in relation to those who are at the end of their life but those who are suffering to the same level.

The court concluded that it would be cruel to exclude those people, contrary to the Charter.

Honourable senators, it is a very serious issue in this bill. This is the crux, in my opinion, of where the bill can fail. We cannot in our minds, souls and conscience accept to exclude in a blanket gesture those who have been recognized as having that right. If we are to exclude them, we have to have very good reasons. The court had to look into those reasons, and they didn't include them in their reasoning, because they felt that the person with the same grievousness of illness, disease or handicap, being in an intolerable condition of suffering, had exactly the same rights.

So the government comes forward and says, "Well, it's easy. We will invoke section 1 of the Charter as to what is reasonable in a free and democratic society." The government already invoked that when it pleaded against *Carter* in the Supreme Court. Again, if you read the *Carter* decision, the court commented in relation to that at paragraph 126:

> We have concluded that the laws prohibiting a physician's assistance in terminating life . . . infringe Ms. Taylor's s. 7 rights to life, liberty and security of the

person in a manner that is not in accordance with the principles of fundamental justice, and that the infringement is not justified under s. 1 of the *Charter*.

The court was already seized with an allegation from the lawyers of the government that the prohibition for everyone not to have access to medical assistance in dying could be saved by section 1 — that is, to protect the vulnerable, to enhance the sanctity of life, to prevent suicide — objectives of social policies that are certainly sound but that are too broad to deprive a person who is adult, competent, in a grievous and irremediable health condition and suffers intolerably from having access to medical assistance in dying.

That argument of being saved by section 1 has already been made by the court. It's exactly the same arguments. The court said, "No, Parliament can tailor a set of safeguards that would be sufficient to protect. If you feel that the persons who are not at the end of life need to have additional protections, it's up to Parliament to decide to have it."

But you cannot exclude all those people on the same basis that you have argued that those who are at the end of life should also be excluded. The argument didn't fly for those at the end of life no more than the argument flies for those who are in an "irremediable" suffering condition.

That's the reasoning of the court.

MOTION IN AMENDMENT

Hon. Serge Joyal: Therefore, honourable senators, I move:

THAT Bill C-14 be not now read a third time, but that it be amended in clause 3.

(*a*) on page 5

(i) by adding after line 6 the following:

"***irremediable***, in respect of a medical condition, means not remediable by any treatment that is acceptable to the person who has the medical condition. (*irrémédiable*)", and

(ii) by replacing line 36 with the following:

"condition — including an illness, disease or disability — that causes enduring suffering that is intolerable to them in the circumstances of their condition;", and

(*b*) on page 6

(i) by deleting lines 6 to 21, and

(ii) by replacing line 35 with the following:

"condition, and after the condition had begun to cause enduring suffering that is intolerable to the person;".

Honourable senators, as I mentioned, this amendment is a two-part amendment. The amendment would restore the rights to the citizens who were recognized by *Carter* as having access to medical assistance in dying, as much as it calls upon another set of amendments that would be proposed by our colleague Senator Carignan that would add additional safeguards to that group of people who are denied under the bill the right of access to medical assistance in dying. By reinstating their rights to have access to medical assistance in dying, we provide for additional safeguards such that we make sure that the vulnerability would be taken into account by Parliament and that we have met our responsibility as determined by the Supreme Court, which is to enact legislation within the parameters of the *Carter* decision.

That's essentially what this amendment is looking at, and I commend it to honourable senators' attention.

Some Hon. Senators: Hear, hear.

• (1730)

The Hon. the Speaker: Honourable senators, it is moved in amendment by the Honourable Senator Joyal, seconded by the Honourable Senator Tardif:

THAT Bill C-14 be not now read a third time, but that it be amended in clause 3,

(a) on page 5,

— may I dispense?

An Hon. Senator: Dispense.

Hon. Dennis Glen Patterson: I wonder if Senator Joyal would consider a question.

Senator Joyal: With pleasure, honourable senators.

Senator Patterson: I would like to thank Senator Joyal for his compelling speech, and it follows on Senator Baker's equally eloquent speech which basically suggested that there is a very high bar for amending or even defeating a bill from the other place.

Thinking ahead, and sensing that there is significant support for the premise that the bill is unconstitutional in affecting the rights of a class of vulnerable peoples as described by Professor Thomas, I would like to ask Senator Joyal about a procedure under our legislative process. I understand it is a rarely used procedure called a conference between the Commons and the Senate if there is an impasse regarding amendments to bills.

I know I am anticipating what might be coming, but my sense is there are strong convictions in this chamber that the bill is unconstitutional. It was not amended in the House of Commons despite concerns about its constitutionality.

If the bill gets sent back to this chamber unamended, rather than defeating the bill or letting it languish on the Order Paper, should the mechanism of a conference be used to seek to resolve a legislative impasse — that conference being between the Senate

and the House of Commons? It would have to be initiated by the sponsoring minister or a member, but that sponsoring member has invited thoughtful amendments.

Should the mechanism of a conference be considered?

Senator Joyal: Thank you, honourable senator, for your question.

Last week, during the debate, such a point was raised. I quoted Chapter 16-2 of the *Rules of the Senate* — I have one minute left? May I speak for another five minutes?

The Hon. the Speaker: Senator Joyal is requesting an additional five minutes. Is it agreed?

Hon. Senators: Agreed.

Senator Joyal: That chapter of our rules is titled "Messages Between the Houses and Conferences." That is certainly to what the honourable senator is referring.

It is highly speculative, as you will recognize at this stage. The house has not pronounced on any amendments. It would be needed, of course, if the bill is amended by the Senate on whatever grounds and sent back to the House of Commons, and the House of Commons refused the Senate's amendments but the Senate insists on its amendments. Then, to try to resolve the impasse, there is a meeting between the two houses at the highest level to try to reconcile the objectives of the amendments that the Senate is looking for, and the objective of the bill the way the minister has interpreted it. This is a possibility that exists.

But Senator McIntyre has opened up another possibility. That is, if we are faced with a deadlock, there is a way to resolve that deadlock, and that is to go to the Supreme Court.

Honourable senators, it has happened. I was there in 1978, on Bill C-60, the first initiative of the then Liberal government of Mr. Trudeau's father to change the structure of the Senate, fundamentally, by making it half a house of provinces, whereby half of the senators would have been delegated by the provinces.

The committee on which I sat in 1978 — I don't think Senator Baker was on the committee. You were, senator? You were probably listening to me at that time.

Senator Baker: Yes, I was listening.

Senator Joyal: There was strong disagreement on the committee that this was ultra vires the power of section 91 of the *Constitution* that gives the federal government the power to be responsible for its Constitution as Parliament.

Since there was a strong disagreement on the committee that the committee could not resolve, the government of Mr. Trudeau decided to send a reference of the bill to the Supreme Court, and we got a decision in 1980.

Well, what we had lived with, with the former government — and I mentioned it here last week — there were seven different bills that the former government introduced to reduce the terms of senators and to have the senators elected by the provinces, which was equivalent to electing senators.

There was strong disagreement among both houses on the issue. There was even a report from the Standing Senate Committee on Legal and Constitutional Affairs recommending that the bill be referred to the Supreme Court. I think I remember that Senator Fraser was on that committee at that time, and, I believe, so was Senator Cowan. The government, for a period of time, wrestled with it but finally had a reference to the Supreme Court that asked the essential questions that were contained in the bill.

So it has happened and not that long ago. I think that would be a way, also, to resolve the uncertainty around this bill because there is not one person who doesn't recognize, because this bill excludes a whole class of persons who have been granted the right to have medical assistance in dying, that one of those persons will be in court the day after royal proclamation to challenge the constitutionality of the bill. The committee has heard this many times.

As I say, there are different approaches to your question. To have a conference to resolve the impasse exists in our Rules, but to also resort, as Senator McIntyre has asked, to referring the bill to the Supreme Court. I would not say it is a defeat for a government to refer a bill to the Supreme Court. On the contrary, I see it as a sign of a mature government.

The Supreme Court knows this issue inside and out and I don't think it would take that much time for the court to pronounce on Bill C-14. All of the judges there are the same as those who heard the *Carter* case, so we would have a bench that has already been briefed, if you will, on the issue. I think that the precedence that I mentioned in relation to the two initiatives to reform the Senate with bills proved that it was a sound path to follow.

Senator Carignan: Question.

The Hon. the Speaker: Senator Pratte, question?

[*Translation*]

Hon. André Pratte: Would Senator Joyal take another question?

Senator Joyal: With pleasure.

Senator Pratte: I am not a lawyer, but I can play devil's advocate. When you quoted Professor Thomas, you said that one of the grounds on which the Senate can use its legislative power is non-compliance with the Canadian Charter of Rights and Freedoms. When there is an impasse between the Senate and the House of Commons, and the Senate expresses its will clearly and the House of Commons maintains its position, does there not come a time when the Senate has to give in to the popular majority expressed by the House of Commons?

[*English*]

The Hon. the Speaker: Senator Joyal, your extended time has expired. Are you asking for another five minutes?

Senator Joyal: No. I don't want to abuse the time of the Senate. I will simply answer the question, unless the majority does not want me to.

The Hon. the Speaker: With the indulgence of the chamber, you may proceed to answer that question, Senator Joyal.

Senator Joyal: Quickly, honourable senators, the question is a very important one but my answer would be, not at the expense of the rights of citizens who have recently been granted that right and are in a condition of intolerable suffering. It would be cruel to leave them in that condition.

I think that the Senate has insisted in the past, and I could use Bill C-10 as an example. That was the animal cruelty bill amending the section of the Criminal Code in relation to animal cruelty.

Senator Andreychuk was there; I think you were one of the senators on the Legal and Constitutional Committee at that time, at the turn of the century, and I too was one of them. We insisted to the point where the government finally accepted our recommendation that if the government wanted to protect the animals by increasing the penalty, because they felt the Criminal Code was not efficient enough, we agreed immediately to increase the penalty. The government finally introduced a bill that was reflective of the position of the Senate. It took two times for us to insist on our amendment before the government came to that. If we were able to do that for animals, I think we can do that for people who are in intolerable suffering.

• (1740)

Hon. Linda Frum: Honourable senators, I wish to speak briefly to Senator Joyal's amendment to Bill C-14.

Given that this bill addresses the most serious subject matter possible and given that we are to vote on it as a matter of personal conscience, I feel it's necessary to put my position in support of this amendment to Bill C-14 on the record as I have not had the opportunity to speak to it before.

Before I do so, I would like to echo what has been mentioned here frequently over these past few days: It has been nothing short of an immense privilege, which in turn is tied to a weighty responsibility, to have been present in this chamber for an intellectually rigorous, morally informed and emotionally wrenching debate over the issue of medically assisted death in Canada.

I wish in particular to commend our newest colleagues on the independent side of the chamber. Each and every one of your interventions, and in most cases it was your maiden speech, has enriched my thinking and added immeasurably to the quality of this debate. This is a debate that forces us to confront our most primary beliefs and values. Having listened attentively to your perspectives, I find myself in full admiration of each of you, and I am very proud to call you my colleagues.

But I should like to add that what has made this debate in the Senate distinct from past debates in this chamber is only the extreme weightiness of the subject matter. Intellectual gravitas, respectful interaction, thoughtful intervention: These have been the hallmarks of this chamber since 1867.

Some Hon. Senators: Hear, hear!

Senator Frum: The respect and appreciation that you all of you expressed, and not only you but many members of the media as well, for the sage and learned discussions that have taken place in this chamber, well I agree with that emotion. It reminds me of how I felt when I first arrived here seven years ago.

As a newcomer then, I too was inspired by the deep wisdom of those who had arrived here before me. And those feelings have never left. When I look over at the faces of some of my greatest teachers in this chamber, and it's dangerous to single out people because I have learned from everyone here, I can't help but acknowledge in the context of the debate on this specific bill Senator Baker, Senator Cowan, Senator Andreychuk, Senator Fraser and our great treasure, Senator Joyal. I feel genuinely humbled by all of them. And this is not a lazy turn of phrase but a sincere feeling. Canada has been well served by their erudition and wisdom.

Likewise, I am certain that those very same senators, who, if it's not rude of me to point out, have been here for some decades in some cases, if you asked them to name the senators who arrived before them and who in turn inspired and elevated them, could do so; and I note that Senator Joyal made reference to Senator Cools in his earlier remarks. It has always been like this in the Senate, and I fully expect it will remain so.

Now, for the amendment. Let me begin by saying that I believe the government has engaged in a truly good faith effort to strike a reasonable balance between providing Canadians with the right to autonomy over their own bodies and the control over their own destinies, while also providing meaningful protections and safeguards against abuse in medically assisted dying.

Nevertheless, I belong to the camp that believes Bill C-14 is too restrictive, particularly when it comes to access to medically assisted death for those suffering from grievous and irremediable pain but where death is not reasonably foreseeable, or for those whose illness or condition falls outside the qualifying factor of incurable but where the suffering is intolerable nevertheless. Since I will never begin to come close to the eloquence of Senator Petitclerc's unforgettable speech on the subject of unbearable pain and suffering, I won't even try.

What I will do instead is to try to clarify why, as someone who believes in the primacy of Parliament, I will be voting on Bill C-14 in such a way that may appear to put me in alignment with those

who believe it is our duty in this chamber to obediently follow the directives of the Supreme Court when, in fact, that is not my belief at all.

Obviously, Parliament must follow the Constitution when it writes its laws. But parliamentarians are neither obliged, nor is it our job, to guess what the court would like us to do and then endeavour to give the court what it wants. Our job is to do what seems to us to be best for the people of Canada, to satisfy our own conscience, and to act within the limit of the Constitution. The court is not there to decide public policy. Parliamentarians design policy. Courts set the limits.

Senators have no duty to act as the drafting committee of the Supreme Court. Parliament is responsible for the creation of our laws; the nine members of the Supreme Court are not. Even when I happen to agree with the substance of their decision, as I do in the *Carter* decision, I remain concerned that we maintain the distinction between the role of judges and the role of Parliament. Their job is to interpret laws made by others. Our job is to make those laws. With Bill C-14, we are facing the most difficult and important area of the law that many of us will ever be forced to contend with as parliamentarians.

I do believe that there are fates worse than death, such as unbearable and excruciating pain that promises to last for years on end, grievous physical and mental suffering, and the loss of one's human dignity. It's possible for all of these conditions to exist separately from a reasonably foreseeable death; and that is why I will support Senator Joyal's amendment to make physician-assisted death available in such cases, especially if extra safeguards are attached.

I also believe in the conscience rights of doctors who do not wish to perform medically assisted death and that protections for these medical professionals must be explicitly incorporated into the framework of the bill. I will support amendments to that end as well.

I understand that there are those Canadians and even some colleagues here today who would characterize my permissive position on assisted death as being in some way cavalier about the value of life. Obviously I see it differently. There are only a small number of months that separate the age my mother was at the time of her death and the age that I am now, standing before you today. She was 54. I am 53. My mother's untimely death had a profound effect on me in many ways, but the greatest is that it left me with a deep awareness of the fleetingness of life, its beauty, its sacredness and its absolute preciousness.

It is from a stance of love, a love of life, and a compassion for my fellow human beings that I believe unbearable suffering, when it is truly grievous and irremediable but not necessarily terminal, must be addressed by this bill and that all options must be available to those suffering in those types of cases, including the option of medically assisted death when that is the clear choice of an individual who is of competent mind. Of course, appropriate limitations and safeguards must also be in place, as they are with Bill C-14. But to deny such individuals the right to control their own bodies, their own lives and, yes, their own deaths strikes me as a cruel abuse of legislative power.

And so for those reasons, honourable senators, I shall be supporting Senator Joyal's amendment before us now.

Hon. Senators: Hear, hear!

Hon. Lillian Eva Dyck: Honourable senators, I would like to join the debate on Bill C-14. I rise in support of Senator Joyal's amendment to Bill C-14, medical assistance in dying.

First, I would like to acknowledge the work of the members of the Standing Senate Committee on Legal and Constitutional Affairs who undertook a comprehensive special joint pre-study of this bill and who have just now completed their committee's study of the bill. I would also like to acknowledge the many senators who spoke so eloquently at second reading.

• (1750)

Colleagues, I am in support of medical assistance in dying, and I support this amendment to make the bill consistent with the *Carter* decision because the bill unfairly limits a person's access to medical assistance in dying to a time when their natural death is reasonably foreseeable.

Colleagues, I would like to explain why I support this amendment. I have read through the *Carter* decision over and over and have thought carefully about it. As many of you know, I am a neurochemist. My training and much of my research work involved quantitative analyses, precise measurements. Precision is a hallmark of the natural sciences. Legislators, too, have to be precise in their words.

My analysis, comparing the language in the *Carter* decision and in Bill C-14, reveals what many other senators have said: The bill adds in other words, words like "reasonably foreseeable natural death" that were absent in the *Carter* decision. Other senators have outlined how imprecise some of these new words are.

While Bill C-14 is supposed to fulfill the rights of people with grievous and irremediable medical conditions, suffering from intolerable pain, to consent to medically assisted death, I have concluded that the provision in the bill that limits their access to medically assisted death to a time when their natural death is reasonably foreseeable does not fulfill their rights under section 7 of the Charter of Rights and Freedoms. Thus, the bill is unconstitutional, as Senator Joyal and Senator Baker have so eloquently already stated. So we cannot pass the bill as is.

Moreover, this is not just a legal technicality, albeit an important one. It has real consequences for the person. As other senators have pointed out, if we pass Bill C-14, this will force some of the people with grievous and irremediable medical conditions to endure intolerable pain for longer periods of time than others with the same condition who are deemed to be closer to a natural death.

Perhaps I should mention that this is one of the factors. Prolonged intolerable suffering is the factor within the *Carter* condition that was said to infringe upon that person's section 7 Charter rights to life, liberty and security.

Colleagues, the Supreme Court, in the *Carter* decision, ruled that consenting adults have a right to seek medical help to end their lives if they have grievous and irremediable medical conditions that cause them suffering that they deem intolerable. There was no mention in the court decision about limiting this right to a time when that person's natural death was reasonably foreseeable. But Bill C-14 has imposed two conditions that actually limit the time when an eligible person can access medical assistance in dying.

While adults suffering from a grievous and irremediable disease, illness or disability can request and consent to medical assistance in dying, they must be "in an advanced stage of irreversible decline," and their natural death must be "reasonably foreseeable." These restrictions or limitations were not part of the *Carter* decision. As I have said, other senators have pointed this out.

Other senators have also said that the legislation that Parliament enacts does not have to follow the Supreme Court decision exactly. However, it should comply with the Charter.

Like many of you, colleagues, I, too, have concluded that Bill C-14 will fail the Charter challenge and thus would become invalid, and we should get it right before we actually pass it.

It is clear to me from the *Carter* decision that Gloria Taylor, one of the appellants in the *Carter* challenge, as well as other witnesses, wanted to be able to decide the time when they would die with medical assistance. Gloria Taylor stated:

> I do not want my life to end violently. I do not want my mode of death to be traumatic for my family members. I want the legal right to die peacefully, at the time of my own choosing . . . .

"At the time of my own choosing" is what she said, "in the embrace of my family and friends." She continued:

> I know that I am dying, but I am far from depressed. I have some down time - that is part and parcel of the experience of knowing that you are terminal. But there is still a lot of good in my life; there are still things, like special times with my granddaughter and family, that bring me extreme joy. I will not waste any of my remaining time being depressed. I intend to get every bit of happiness I can wring from what is left of my life so long as it remains a life of quality; but I do not want to live a life without quality. There will come a point when I will know that enough is enough. I cannot say precisely when that time will be. It is not a question of "when I can't walk" or "when I can't talk." There is no pre-set trigger moment. I just know that, globally, there will be some point in time when I will be able to say — "this is it, this is the point where life is just not worthwhile." When that time comes, I want to be able to call my family together, tell them of my decision, say a dignified good-bye and obtain final closure — for me and for them.

Colleagues, I believe it is clear from Gloria Taylor's words that she knew that she would know when she would be ready to die and that she wanted to choose the actual time of her assisted death. She talks about the timing so clearly and consistently.

Furthermore, in the evidence from the other witnesses with grievous and irremediable diseases, such as Huntington's disease and advanced-stage cancer, there was:

> . . . a constant theme — that they suffer from the knowledge that they lack the ability to bring a peaceful end to their lives at a time and in a manner of their own choosing.

Again, at a specific time.

Colleagues, I believe, from the testimonies of Gloria Taylor and other witnesses, that they wanted to be able to choose the time at which they would die with medical assistance. To me, that is the essential element of granting someone the right to medical assistance in dying: You, yourself, get to choose the time of your death. Your doctor doesn't get to choose when you die; you do. But, in Bill C-14, someone else gets to decide when you can consent to medical assistance in dying. You will not get to choose the time when you can end your life with medical assistance. To me, that is clearly not right.

Colleagues, I would argue that because a doctor or nurse determines a time when an eligible person can die with medical assistance, this loss of choice contravenes that person's section 7 Charter rights.

Frankly, I wouldn't want to be a medical doctor or a nurse placed in the position of making that decision for someone else. What if the doctor thinks your natural death is foreseeable, say, in three months, but you disagree and think you will live six more months? Could that doctor be accused of advising or encouraging you to undertake medical assistance in dying because you yourself are not ready to take that step?

Colleagues, for these reasons, I support the amendments that will broaden the scope of the bill so that no one with a grievous and irremediable medical condition who requests medical assistance in dying will be denied this just because they are deemed to be not close enough to their natural death. Therefore, I support Senator Joyal's amendment.

The Hon. the Speaker *pro tempore***:** Do you have a question, Senator Cools?

Hon. Anne C. Cools: I want to thank Senator Joyal for what I thought was a stunning speech and a stunning presentation. I also wanted to thank Senator Frum for her intervention and the sensitivity she expressed, particularly around her own mother, Barbara Frum's passing, that is in our minds. It is not that long ago. I remember her very well.

I want, first of all, to say that I shall not support Senator Joyal's —

The Hon. the Speaker *pro tempore***:** Excuse me, are you asking a question, Senator Cools, of Senator Dyck?

Senator Cools: No, I am on debate on Senator Joyal's amendment.

The Hon. the Speaker *pro tempore***:** No, I'm sorry; then it was Senator Bellemare. I thought you were asking Senator Dyck a question. I'm sorry; it is my mistake.

• (1800)

[*Translation*]

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Thank you. I would like to thank all senators who are taking part in this debate. It is an extremely important debate for all Canadians. Before I address some aspects of this amendment, which were barely touched on in the debate, I would like to read an excerpt from paragraph 14 of the *Carter* ruling, where the dissenting justices decided whether they would allow recourse to medical assistance in dying through the judicial process during the additional six-month exemption period.

The four dissenting justices, including the Chief Justice, stated the following in paragraph 14:

[*English*]

> We add this. We do not underestimate the agony of those who continue to be denied access to the help that they need to end their suffering. That should be clear from the Court's reasons for judgment on the merits. However, neither do we underestimate the complexity of the issues that surround the fundamental question of when it should be lawful to commit acts that would otherwise constitute criminal conduct. The complexity results not only from the profound moral and ethical dimensions of the question, but also from the overlapping federal and provincial legislative competence in relation to it. The Court —

— being the Supreme Court —

> —unanimously held in its judgment on the merits that these are matters most appropriately addressed by the legislative process. We remain of that view.

[*Translation*]

In this ruling, the Supreme Court noted that the provinces also have responsibilities in medical assistance in dying.

In the general context of the proposed amendment, honourable senators, I have great difficulty adopting this amendment. With this amendment we are asking for the recognition of a right for individuals who are suffering, but who are not at the end of life. Medical assistance in dying is a right, but this right has to be considered in the context of the whole of society.

For example, we can recognize that homosexuality is not a crime, but that is not the same thing as recognizing that medical assistance in dying is no longer a crime and that it is now a right. It is not the same thing because as we recognize this right, we recognize that it applies to a group of people, and a number of groups. We must take into consideration the whole of society before recognizing this right for a specific group of people. The amendment before us allows us to avail ourselves of this right and makes it a right for all those who are suffering but whose death is not foreseeable. With that in mind, have we had a real discussion with people with serious physical disabilities?

We are giving people a right, but adding safeguard problems for an entire group of people who testified in front of the experts.

[*English*]

I quote Ms. Rhonda Wiebe from the Council of Canadian with Disabilities testified in front of the Standing Senate Committee on Legal and Constitutional Affairs, and what she asked is that we as legislators, and I quote her, that we —

> protect the vulnerable from being induced to take their own lives in time of weakness.

She also reminded us that —

> Canadians with disabilities are more likely to live in poverty, more likely to live in unsafe and inadequate housing, and that they face barriers in their physical encounters with the world and stigma on a daily basis.

[*Translation*]

Ms. Wiebe was quite concerned about broadening access to medical assistance in dying to this group of vulnerable people who are already so marginalized. She was not alone.

The second thing I wanted to say is that I cannot vote in favour of this amendment because it would lead to major legal and constitutional problems for Quebec.

When the Minister of Justice came here among us, I specifically asked her whether Quebec's law was protected within the framework of Bill C-14. She assured me that there was no legal problem. I went to the Standing Senate Committee on Legal and Constitutional Affairs to listen to the famous Professor Hogg, and I asked him what would become of Quebec's legislation if we were to adopt an amendment similar to the one before us now.

That question may have been hard to answer on the spot, but he did suggest that Quebec's legislation would likely become unconstitutional. Why? Because it is limited only to persons who are at the end of life. I would like to make a distinction that we haven't really talked about so far between the Criminal Code and health-related legislation.

Bill C-14 would amend the Criminal Code. Under what conditions and under what exceptions do we have the right to help people commit suicide? That is the question before us right now. Bill C-14 addresses that aspect of the Criminal Code, and I find that it is well written because it provides all the flexibility that the provinces need to define how they will grant this right.

I believe that, under a provincial law based on Bill C-14, Ms. Carter's and Ms. Taylor's cases would probably be eligible because Bill C-14, at paragraph 241.2(2)(*d*), speaks of reasonably foreseeable natural death taking into account the general status of the person's health, not necessarily whether a particular illness is terminal.

Third, we are adding the possibility of granting medical assistance in dying in such cases even if there is no prognosis of imminent death. In such cases, provincial laws may grant medical assistance in dying to a person suffering from an illness that is not necessarily fatal but that can cause other significant secondary effects, an illness that, because of the drugs used to treat it, may

affect the person's overall condition. The death of that person may be foreseeable even if it is not directly caused by the illness in question and even if it is unknown how much longer the person may live.

Bill C-14 offers a number of options. The amendment before us would change the nature of Bill C-14 and would not find support in the other place, in my opinion. We would end up without a law. Under those circumstances and under the provincial law, physicians in Quebec who are already having difficulty fulfilling their duties when it comes to medical assistance in dying will find it even more difficult to do so.

• (1810)

Honourable senators, as for the amendment that aims to open the floodgates to this right, we must remember the group of vulnerable people who came to tell us that we need to set guidelines around this right and think of the provinces, which will have to clarify how it will be managed.

We haven't talked about this aspect, but it's very important to talk about it now, because Bill C-14 amends the Criminal Code. It is not intended to specify how medical assistance in dying should be administered in the hospitals and clinics of all the different provinces.

Quebec has a law that people seem to be happy with. If we pass this amendment, there is a good chance that the provincial law will become unconstitutional. That is why I will be voting against the amendment.

Hon. Claude Carignan (Leader of the Opposition): Will Senator Bellemare take a question?

Senator Bellemare: Yes, of course.

Senator Carignan: I heard your argument, which claims that if we amend the Criminal Code, the Quebec law will become unconstitutional. Is that what you said?

Senator Bellemare: Actually, I am not the one who said it. I was quoting Professor Peter Hogg, who appeared before the committee. I respect your expertise, Senator Carignan. I know you specialize in this field.

I asked him the question directly, and he replied that if Bill C-14 were amended so as to comply with the *Carter* decision, the Quebec law would then become unconstitutional.

Senator Carignan: I'll check what Peter Hogg said, but I would find that very surprising.

What is not constitutional is to look at whether an act or an individual's actions comply with the Constitution instead of with the Criminal Code.

You are saying that we should not amend the Criminal Code, that it is a very complex area and that legislators would be wading into a complex area. The Supreme Court also touched on this in paragraph 126 of the *Carter* decision, which states, and I quote:

> It is for Parliament and the provincial legislatures to respond, should they so choose, by enacting legislation consistent with the constitutional parameters set out in these reasons.

It seems quite clear that the Supreme Court gave legislators a choice about whether to enact legislation, saying that if legislators decided to do so, they would have to comply with certain constitutional parameters. Furthermore, the definition of individuals whose rights are being violated is similar to what Senator Joyal has proposed in his amendment.

My question is the following. Do you agree that we are not required to enact legislation and that if we do not, the parameters set out in the *Carter* decision or the definition that Senator Joyal is proposing will prevail?

Senator Bellemare: What Senator Joyal has proposed in his amendment is very vague. In his first speech, the Honourable Senator Baker pointed out that the criteria pertaining to intolerable suffering were subjective. He also mentioned a case in which a petitioner asked for medical assistance in dying to be available in two months and one week. The court found that this was not consistent with intolerable suffering and that the petitioner had to submit an earlier request. Senator Baker explained this situation in great detail.

Getting back to the main issue, when I asked Professor Hogg that question, he answered that since Quebec would exclude people who are not terminally ill, the Quebec legislation would be unconstitutional. He was clear about that.

Even though he did not have much time to reflect on the question, that is what he said, and you can verify that. I checked again earlier. I have it in my notes and I could give you the exact quote.

It is important to reflect on this point because if only the *Carter* ruling applies, it is unclear what will happen. Bill C-14 opens the door to medical assistance in dying for people who are suffering, but who are not necessarily at the end of life.

The Hon. the Speaker *pro tempore***:** Is more time granted to the honourable senator? A number of senators would like to ask her some questions.

Hon. Senators: Agreed.

Senator Bellemare: I would like to remind all senators that paragraph 127 of *Carter* describes all the various criteria to be met. The last two sentences lead us to believe that some judges wanted to introduce some flexibility. They added 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.

I know that these sentences are difficult to interpret, but they could easily be interpreted as applying to the specific cases of Ms. Carter and Ms. Taylor. Bill C-14, with a broader interpretation, would have made it possible for Ms. Carter and Ms. Taylor to receive medical assistance in dying.

Senator Joyal: Would the honourable senator accept another question?

Senator Bellemare: Yes, of course.

Senator Joyal: You mentioned the impact that the amended version of Bill C-14 would have on the provincial legislation. I would like to draw your attention to what the Quebec Minister of Health, Dr. Gaétan Barrette, had to say about the provision affected by my amendment, in other words, the provision on reasonably foreseeable natural death.

In an article published in *La Presse* on May 31, 2016, Dr. Gaétan Barrette, who is responsible for the Quebec law, stated, and I quote:

> For governmental and professional reasons, I myself am disinclined to support C-14 because of its worst feature: the reasonably foreseeable natural death provision. It makes no sense. It cannot be enforced. I would be very hesitant to get on board with C-14 as it stands.

Obviously, Dr. Barrette has very substantive reservations about how to interpret the criterion of reasonably foreseeable death, which is the subject of my amendment.

I do not understand how your position is consistent with the public position that Dr. Barrette took regarding the constitutionality of the Quebec law.

He never asked that no changes be made to *Carter*. On the contrary, he asked that Bill C-14 be amended to make it consistent with Quebec's legislation and medical practices.

Senator Bellemare: The last thing you said was "he asked that Bill C-14 be amended to make it consistent with Quebec's legislation and medical practices." That is exactly what he is asking for, because he knows that Bill C-14 affords far more rights than Quebec's legislation.

In Quebec, medical assistance in dying is administered only in the context of palliative care. We are talking about six months or less. It is a bit like the U.S. laws, although in some cases I'm not sure that the doctors give six months. I believe it is more like three. We would have to look that up.

• (1820)

In Quebec, the law is very restrictive. In one of his recent public statements, Dr. Barrette asked senators to respect Quebec's legislation because Bill C-14 is much broader than Quebec's legislation. Bill C-14 authorizes the administration of medical assistance in dying to people who are suffering and terminally ill, but whose prognosis is unknown. In other words, will they die from a general condition associated with their illness? Will they die in two weeks, two months or two years? The federal minister said it is not about knowing the prognosis. The distinction between the diagnosis and the prognosis is very important, and we have to consider the fact that vulnerable people who face all sorts of suffering are asking us not to be too permissive.

I would also like to reiterate what Senator Baker said earlier, which was that the public has serious reservations about this legislation and we must take that into account.

[*English*]

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

Senator Cools: Your Honour, thank you so very much. I will enjoy the distinct experience of being partially on the record a few moments ago. I am here again.

Honourable senators, I was recalling what a beautiful woman Barbara Frum was, and in a special way, we have her in Senator Frum here.

I had risen originally to record my opposition to the amendments as moved by Senator Joyal. I am very aware that there are two schools of thought. One school of thought says that Bill C-14 is too restrictive, and the other one says it should be more permissive. Senator Joyal wants it to be permissive. I appreciate that.

What I would like to say to colleagues is that Senator Joyal's proposals for amendments are very well-intended and obviously very well-researched, but what I want us to consider is that they are not amendments, per se, to the bill. They are actually wholly new propositions. It's an expanded proposition. He wants a wholly new expanded regime, so his proposal is not a pure amendment in that sense.

I'm saying this so that he can reconsider it or perhaps re-examine it.

His amendment is so expansive because, as Senator Joyal said very clearly to us, Bill C-14 has narrowed the findings of *Carter*. I say to you that his move to expansiveness makes his amendments a wholly new proposition that was not considered in the bill at all and are not really amendments to the bill, as I would see it.

I didn't want to raise this as a point of order, which it could be. All my books are downstairs, so I don't have access to very much here, but I would like him to consider that possibility himself. For that reason, I rose to speak and then sat down so that Senator Bellemare could ask a question and then she gave a whole speech.

I don't know if in the *Debates of the Senate* we could possibly get my two combined. Senator Joyal had already completed his speech. I feel that my concerns should be placed before the chamber.

His is a wholly new proposition. In actual fact, it is more than one new proposition. A motion should only contain one distinct proposition at a time, not many distinct propositions.

Senator Joyal: Will the honourable senator entertain a question?

Senator Cools: Happily, Senator Joyal.

Senator Joyal: Thank you, Honourable Senator Cools.

In formulating the amendment that I introduced earlier on this afternoon, of course, first of all, I read the summary of the bill, because this is essentially the parameters of the bill that determine the margin of manoeuvre that a legislator may have to introduce amendments. When you read the summary of the bill, especially in paragraph (a), and I'll read it:

> This enactment amends the Criminal Code to, among other things.
>
> **(a)** create exemptions from the offences of culpable homicide, of aiding suicide and of administering a noxious thing, in order to permit medical practitioners and nurse practitioners to provide medical assistance in dying and to permit pharmacists and other persons to assist in the process;

And finally:

> **(b)** specify the eligibility criteria and the safeguards that must be respected before medical assistance in dying may be provided to a person;

So if the summary of the bill would have been so restrictive as to determine a group of persons that would be admissible under the bill to have access to medical assistance in dying, then I think one could contend that the amendment is not valid because it goes beyond the summary of the bill.

My reading is that if it doesn't go beyond the summary of the bill, the amendment is admissible. But if the honourable senator wants to raise that question and propose it to His Honour for adjudication, I think that we would have, of course, a wider debate in relation to the admissibility of the amendments.

As I say, the way I read the summary of the bill is that it is wide enough to entertain an amendment in relation to the proposals that I have included in the amendments.

Senator Cools: Yes, but the problem is, Senator Joyal, your amendment is not to the summary of the bill. Your amendment is to the clauses of the bill. I don't think that you can rely on an explanation in a summary to defend against what I had to say.

My point is that you are basically saying that the bill has not gone far enough, that it hasn't taken everything that it should have from *Carter*, and you are trying to bring the bill to *Carter*. That is what I understand.

This brings on an additional problem, other than the fact of the wholly new distinct propositions. The fact of the matter is that this Senate is under no obligation whatsoever to be obedient to *Carter*.

Honourable senators, there is something called the sovereignty of Parliament, honourable senators. Many members no longer use this language. This chamber is part of the High Court of Parliament, and it is a court of competent jurisdiction, just like the Supreme Court, according to section 24 of your favourite document, Senator Joyal, which, as we know, is the Constitution Act. I shall read section 24:

> Enforcement of guaranteed rights and freedoms
>
> **24. (1)** Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

The great Charter admirers frequently forget that this is a court of competent jurisdiction, just as capable as any other court in coming to judgments.

What I am trying to get to, Senator Joyal — I know that you have great respect for the court and that you are a lover of the court judgments — is that the sovereignty of Parliament instructs us and demands that we take into consideration factors other than just the legal framework.

We also have to take into consideration things like receptivity of the public, and much experience may have shown that some of these measures are best approached gradually in accordance with how the public mind works. At the end of the day, the whole intention is to uphold, defend and contribute to the common good.

• (1830)

Senator Joyal, I feel sympathetic to your position. You want to go from here to there in two steps, and the bill is proposing to take one step at a time. I am saying our considerations here have to be based on many other factors in addition to *Carter* and in addition to the Supreme Court. We have to look at a broader and, to use your word, a more expansive set of facts and considerations.

I would submit to you that this is an extremely weighty matter, and it is creating a lot of fear in many. I know for a fact that large numbers of doctors are very apprehensive. All I am saying to you, Senator Joyal, is to consider the fact that, yes, you want a more permissive regime. I don't have any problems whatsoever with that. But I'm saying to you that your amendment is expansive, and it's more propositions than a single amendment. You are amending many things.

Hon. Tobias C. Enverga, Jr.: Honourable senators, I feel so bad about supporting the bill in this way. As was mentioned earlier by the Honourable Senator Baker. Honourable Senator Joyal, you have explained so much about the bill. Your passion is heart-warming; however, I would like to remind everyone of an individual. We have mentioned so many people, great personalities, so many authors. One thing we have forgotten is the fact that right here in the Senate, in this chamber, we have a great justice of our own — Senator Sinclair.

This chamber deserves to know what he has mentioned to us at second reading, because today is very important. We will be voting on this amendment that will make this bill a lot broader and expand it to the extent that there will be more killing.

I would like everyone to be reminded of what Senator Sinclair told us, which is very important. I am not a lawyer; however, I have this belief in Justice Sinclair, and he said this:

> We should not be surprised that there are disagreements over issues of legality and interpretation. Lawyers are notorious for being able to dance on the head of a legal pin.

He said lawyers, not senators.

> But we must take those concerns seriously here for that is our obligation.

Justice Sinclair also pointed out that, as many of you were former lawyers, colleagues:

> . . . that half of all lawyers who appear in our courtroom are wrong. Most seem to suggest that the bill fails because it recognizes a constitutional right in a manner that is less than what *Carter* said. They suggested that it is only the four principles set out by the court in paragraph 127 of that decision that can be enacted and that anything less is unconstitutional. Those principles have already been enunciated to you here today. The allegation that the law is unconstitutional arises, as I understand it, because of the addition of the words "natural death that is reasonably foreseeable" as well. I agree that those words are not found in *Carter*. I do not agree however that renders the bill unconstitutional.

He even quoted Thomas McMorrow in an on-line article:

> The Court in *Carter* noted: "It is for Parliament and the provincial legislatures to respond, should they so choose, by enacting legislation consistent with the constitutional parameters set out in these reasons."

Those words have been referenced here many times.

This is the most important one:

> Importantly the Court stressed that "complex regulatory regimes are better created by Parliament than by the courts." Moreover, why would the Court be willing to twice extend Parliament's deadline to tailor a new law, if *Carter* imposed a legislative straitjacket?"

According to Senator Sinclair:

> In her testimony before the standing committee Diane Pothier testified that in her opinion the proposed bill was constitutional. As we heard in the house yesterday, the government considers that it is constitutional. It has considered the issue of limiting the right to medical assistance in dying very carefully. They have reviewed the public willingness to support this bill. They conclude that Canadians want the right to medical assistance in dying limited to those cases where a person's natural death is reasonably foreseeable.

Senator Sinclair talked about the Charter of Rights and Freedoms. It says here:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
>
> The Charter itself recognizes the right of governments to legislate for less than what the Charter contains in its provisions.
>
> If there is a constitutional challenge to this bill then the government would likely, in my view —

And in my view, too.

> — be able to sustain a strong argument that the requirement that the applicant had to be able to show that natural death is reasonably foreseeable would be sustainable.

Senator Sinclair concluded with this:

> Therefore, while I understand all of the arguments that have been put forward here today on the constitutionality question, I, with respect, disagree with them. I suggest that the bill does not have to comply with *Carter*, but the bill does have to comply with the Charter and, in my view, the government has acted appropriately to do so.

That's what I mean by let us not expunge this bill because constitutionally it is fine. Thank you.

Hon. James S. Cowan (Leader of the Senate Liberals): Colleagues, I spoke at some length last week on the bill, and I don't propose to repeat those arguments tonight. My views are well known about this bill. I think the Senate has done a good job so far. This is a very serious matter, and, as evidenced by the debates last week and the interventions by colleagues so far and as we continue over the next few days, show that we all recognize what a serious issue this is and how important it is that we take our responsibilities to heart. I commend my colleagues for their attention to this.

• (1840)

As I said last week and repeat again today in the context of support for Senator Joyal's amendment, I believe that this bill is deeply flawed. I can't support it as it stands because, in my view, it is unconstitutional. Without having that fixed, I cannot support it. I suggest to colleagues that whatever other roles we may take on as senators and as an institution of the Senate, surely, at the core of our responsibilities is to ensure that bills that we pass meet the requirements of the Constitution.

In that regard, there is a special responsibility on senators, which I think we have all spoken about, to protect those who are in the minority. We are not just here to speak for the majority. This is not government legislation by public opinion polls. I respectfully disagree with the suggestions that Senator Bellemare

has repeatedly made that this legislation is supportable because there is a higher degree of public support for medical assistance in dying for those who are terminally ill than there is those who fall within the categories. That is not our job. We shouldn't gauge the constitutionality of the provisions in bills before us by the level of support in the latest public opinion poll.

The Supreme Court of Canada, in my judgment, was clear. I said that last week, and I will not repeat paragraph 127. I am sure when we lie in bed at night we can all see it emblazoned on the ceilings of our bedrooms. We know what that says; it is very clear. Those are the eligibility criteria. People who are described in that paragraph of the unanimous decision of the highest court in the land are those who are entitled to receive medical assistance in dying, subject to safeguards that we can talk about.

It is not up to us, in my submission, to distinguish between and to narrow the category of persons who have been afforded that constitutional right.

If this bill were passed in the form that it is now and it came into law, then people who have the right to medical assistance in dying today would be denied it once that bill comes into force. We cannot allow that to happen.

The effect of Senator Joyal's amendment is to bring the eligibility criteria in the bill in line with paragraph 127 of the *Carter* decision. In my view, that would remove the concerns about the unconstitutionality of the bill.

There is some debate about what was meant by the invitation of the Supreme Court of Canada. It said that Parliament and the provincial legislators are entitled to respond, ". . . should they so choose, by enacting legislation consistent with the constitutional parameters set out in these reasons." What are those constitutional parameters? We have heard the evidence of Professor Hogg, who appeared before our Standing Senate Committee on Legal and Constitutional Affairs earlier this week. He is by all accounts the pre-eminent constitutional scholar in this country. For Senator Baker's benefit, I understand his volume on constitutional law has been cited 194 times by the Supreme Court of Canada. His authority on issues of the Constitution of Canada has been cited 1,627 times in the higher courts of this country. Those of us who are lawyers know the eminence and the prestige that attach to Peter Hogg, and I wanted to draw his pre-eminent position to the attention of senators who do not have that familiarity with Professor Hogg.

He said clearly that Bill C-14 as presently drafted does not comply with the requirements set out in the Supreme Court of Canada. I asked him whether the constitutional parameters to which I have referred are those set out in paragraph 127. He said: "Yes, they are."

The opinion of Professor Hogg is that while it's open to us to legislate, we must do that within the constitutional parameters set out in paragraph 127 of the decision. Those are the four criteria that Senator Joyal has pointed out to us.

It would be open to us if we wanted to widen the category of Canadians who would be entitled to access medical assistance in dying, but Professor Hogg was very clear, as is the Canadian Bar Association, that it is not open to us to narrow the category of persons who are entitled to medical assistance in dying.

So what did the court mean when it said that we were entitled to legislate, and what did it mean by the complex framework? It meant exactly what we are talking about when we get to the part of the bill that deals with safeguards. Everyone realizes that we need to have in place robust safeguards to prevent any suggestion of any kind of abuse of this new regime of medical assistance in dying. I fully support robust safeguards that will protect the vulnerable. Nobody disagrees with that.

While I support Senator Joyal's amendment, which will make the bill comply with the provisions of the decision of the Supreme Court of Canada in *Carter*, I also will support the amendments that will be proposed by my friend Senator Carignan, which are designed to provide additional safeguards that will provide additional protection to those people who wish to access medical assistance in dying but don't fall within the narrow categorization of terminally ill.

Many people are concerned — and it is a legitimate concern — that by broadening the category of entitled persons to those beyond terminally ill, there are requirements for additional safeguards. Senator Carignan will be proposing those, and I would be pleased to support them — not because I think they are necessary; I think the safeguards in this bill are adequate. However, I do appreciate and respect the concerns of those who feel that we need more. For that reason, I would be pleased to support that and would be pleased to consider other suggestions that colleagues might have to ensure that there is no suggestion that there would be any unfortunate abuse or misuse of the authority granted under this legislation.

Colleagues, before we go on to that, it is critically important for us to address this essential question of ensuring that the bill meets the constitutional bar. Senator Baker talked earlier about what is the bar. The bar, in my view, is the standard that is set by *Carter*. We cannot go below that. We cannot restrict access to this medical assistance in dying below the standard, below the threshold that was established by the Supreme Court of Canada.

I urge all colleagues to support Senator Joyal's amendment, which will bring this bill in compliance with the unanimous decision of the Supreme Court of Canada and the Charter of Rights and Freedoms.

• (1850)

Senator Cordy: Senator Cowan, would you take a question?

Senator Cowan: Of course.

Senator Cordy: Thank you very much.

Unlike Senator Plett, two weeks ago I thought I had my mind made up on what I was going to do with the bill. I then listened to all the debates last week, which were excellent. I went home and read again notes that I had taken, read the bill again and speeches that I heard, and came to a little bit different conclusion by

Sunday and now I'm hearing more speeches. I guess the good thing is my mind is open, but the bad thing is it would be nice to be extremely definitive on where you're going.

Both you and Senator Joyal have made very persuasive arguments that this bill does not reflect what the *Carter* decision did in terms of who would be eligible for medically assisted dying. You both spoke about Professor Hogg, who suggested that the bill as it stands doesn't meet the criteria, nor does it follow the spirit of the *Carter* decision. Senator Joyal referenced the Alberta court decision and the Ontario court decision, which also have been more reflective of the *Carter* decision.

Do you believe that Senator Joyal's amendment would make the bill more reflective of the *Carter* decision and the decision of the Supreme Court? Do you believe that it would make it more constitutional? If the amendment doesn't pass, do you believe that the bill will in fact be before the Supreme Court once again?

Senator Cowan: Thank you, Senator Cordy, for those questions. Yes, I do believe that by importing the words from the *Carter* decision directly into the bill it ensures that the eligibility criteria in *Carter* are mirrored in Bill C-14. I think that's what we need to do.

As I said, we could expand the category if we want to but we can't go below that. We can't exclude people tomorrow who were granted a right by the Supreme Court of Canada in *Carter*. Yes, I do believe that this amendment proposed by Senator Joyal does precisely that and removes any doubt as to whether the bill is constitutional.

If the amendment was not passed and the bill was passed as it stands, I think within days or weeks or months there would most certainly be a challenge from someone who has that right today and would be deprived of that right if the bill was passed.

I'm confident that the bill is deficient in that way and I'm equally confident that the amendment proposed by Senator Joyal would fix that issue.

Senator Jaffer: Senator Cowan, will you take another question?

Senator Cowan: Of course.

Senator Jaffer: Senator Cowan, I have to state that you are my leader in the Senate here for the Liberals and I really admire how much, from a place of not being that committed to the issue, how much you've become committed to the issue after studying it.

You say that June 6 is not the end date, that this is an important debate and that we have to work on it. There has been so much talk about *Carter* and constitutionality. Tell me if I am correct or if I am wrong, but your obsession is not about following *Carter*. From what I hear, your obsession is about making sure that this bill is constitutional and it meets the needs of the Charter. Can you expand on that?

Senator Cowan: Thank you, Senator Jaffer.

I do believe passionately in the correctness of the decision from a public policy point of view of *Carter*. I absolutely believe that that is so. But I also believe that as legislators we have a responsibility to respect the Constitution and the decision of the Supreme Court of Canada, which defined the right that Canadians have under the Charter of Rights and Freedoms.

I believe that the Supreme Court struck the right balance. I think they considered the relevant sections, as Senator Joyal said, of the Charter of Rights and Freedoms and balanced those and came down with the correct decision.

I believe that our role is to embody that in legislation and then ensure that the appropriate regulations and safeguards are in place to protect against abuse.

It is critically important that there be legislation in place. I don't deny that, but it's important for us to make sure we get the right legislation in place. And what I've said is that without that legislation we would be better with the *Carter* decision and the regulatory regimes at the provincial level.

The Hon. the Speaker: Senator Cowan, your time has expired but I saw a couple of senators rising for questions. Do you want to ask for five more minutes?

Senator Cowan: Yes, I would, if the chamber agrees.

Some Hon. Senators: Agreed.

Hon. David Tkachuk: Senator Cowan, my understanding is that you disagree with the Department of Justice officials who have given confidence to the government that this bill meets its constitutional requirements and also the Minister of Justice, who was here, who also said that the bill was constitutional.

Are you supporting this amendment because you believe that this is the right amendment that should be passed, or are you supporting this amendment because you're afraid that the bill will go to court and be declared unconstitutional?

I want to know if you actually believe in this amendment and that this amendment would have happened if it had nothing to do with the Constitution.

Senator Cowan: I'm not sure that I understand the question, Senator Tkachuk.

I believe, as I said in response to Senator Jaffer, that the Supreme Court of Canada made the right categorization. I accept and I agree with the decision of the Supreme Court of Canada, but I do not, as I've said, accept that this bill complies with the requirements of the Constitution.

The minister and her advisers have repeatedly said that the government has made a public policy decision, and I think that's correct. I think they have. And it's a perfectly reasonable public policy decision for them to have made were it not for the unanimous decision of the Supreme Court of Canada.

If we were simply debating this issue without the *Carter* decision, we might well say, "This is a step into the unknown. Let's extend this right to those who are terminally ill." That would be a reasonable public policy position for us as legislators to take.

My submission to you, senator, is that because of the decision of the Supreme Court of Canada, we don't have that option. We have to accept that the class of persons identified by the Supreme Court of Canada is the class that is entitled to access medical assistance in dying, and our role is to devise a regulatory network of safeguards to ensure that there is no abuse and no misuse of the rights that are granted in that case.

Senator Tkachuk: I think that partially answered my question. My premise is that there are those people who say this bill is unconstitutional, like you and Senator Joyal, and if we continue on this path it will be declared unconstitutional. But there are a whole bunch of lawyers and justices who agree that it is constitutional. I think you answered that, but I'm not quite sure.

You are supporting this amendment. I want to know, if the constitutional question was not part of the equation, would you still be supporting this amendment, or are you using the constitutional argument to give you an excuse to support this amendment?

Senator Cowan: No. Senator Tkachuk, as I said, I believe if there was no Supreme Court of Canada decision and I was asked to define the category of persons who ought to be entitled to medical assistance in death, I couldn't come up with a better definition than the Supreme Court of Canada. I believe as a matter of personal belief that medical assistance in dying ought to be available at least to that category of people, perhaps further. But, I would accept this to be reasonable. However, when the Supreme Court of Canada unanimously says that as a matter of constitutional right, these people have it, then I respect that. That's why I'm supporting this amendment. I came at it the other way. I could not support the bill unless it was amended in this way, because in my view it would be unconstitutional.

• (1900)

I have repeatedly asked the Minister of Justice to provide a legal opinion, with the opinion of an expert. I've been offered but have not received a technical briefing. The minister said that she would arrange for that to be done. That's not been done, so I have the background that was circulated to us all when the bill was started; however, it was more of a statement of policy position.

I think the minister has been misled as to the true meaning of the Supreme Court of Canada. That meaning of the Supreme Court of Canada has been confirmed by a unanimous decision of the Appeal Court in Alberta and trial judges right across the country. It is unconstitutional, and the court did not intend to restrict access to those who were close to death. As they've repeatedly pointed out, had the Supreme Court intended to so restrict access, they could have done so.

Hon. Kelvin Kenneth Ogilvie: Honourable senators, I spoke last week, so you have a very good idea of where I stand with regard to the debate on this bill. I will speak specifically to Senator Joyal's amendment.

The issue I have spoken about on a number of occasions is the issue of vulnerable persons. It was dealt with at our joint committee. The most vulnerable Canadian is someone suffering from an intolerable medical condition. They are suffering in ways that are totally intolerable to their quality of life and are looking down the road to several years of their suffering increasing in magnitude and their ability to withstand it declining continuously over that period of time. Nobody could be more vulnerable than that person.

If I had been asked to request of the Supreme Court what it would include in its ruling on the area of medical assistance in dying, I would have been urging for this category of individual. I don't have to do that because that was an appeal that came before them as they reached their decision. This major issue in support of vulnerable Canadians was dealt with by the Supreme Court. It wasn't answered by a policy decision or a group of bureaucrats getting together. It was answered by a reasoned decision of the Supreme Court of Canada. It wasn't just reasoned in general, it was reasoned on the basis of the Charter of Rights and Freedoms within our Constitution.

I've listened during our debate to those who have spoken on both sides of this issue. Scientists learn quickly to evaluate the quality of the evidence before them. So in this debate, obviously there would be lawyers with various titles on both sides of this argument. I wanted to determine which ones had the most credibility with regard to this issue.

Those that have argued against this bill, or the amendment, or without arguing against the amendment have supported the bill in its current form, have essentially used arguments put before justices of the Supreme Court and justices of the Superior Courts of two provinces. It was the very same argument. They have been ruled on unequivocally, and in exceedingly clear language. They have spelled it out precisely, clearly, and to the benefit of vulnerable Canadians.

With all due respect to the mover, I come down firmly on the side of Senator Joyal. He asked the relevant questions: Can we amend this bill? Can we as a Senate enter into this and require Parliament to look at this much more thoroughly? It was a quality argument by Senator Joyal. I am firmly in support of the argument he clearly enunciated.

Honourable senators, we have a bill which attempts to take away a right that was granted on a very sound basis, and it is against the Constitution and the Charter of Rights and Freedoms to take that away. In my opinion that is cruel. We've heard from two or three speakers this evening. They've differed about when it's likely that this will occur. I believe it will likely occur very quickly. Somebody suffering intolerably will be required to take to the Supreme Court a request for a ruling in their favour that the Supreme Court has already granted.

As a Canadian, I cannot support such a cruel action on the part of the Parliament of Canada. Parliament's role, in my opinion, is to lead for Canadians and their protection, not to take it away. Honourable senators, I absolutely, unequivocally, and with extremely deep thought, fully support and will vote absolutely for Senator Joyal's amendment.

Senator Dyck: Will the honourable senator take a question?

Senator Ogilvie: Certainly, senator.

Senator Dyck: Thank you. I enjoyed your speech very much. I thought you were very, very clear. You stated that this bill will be taking away the rights of a category of people, and that is cruel. I agree with you entirely.

In the court challenges, in particular the *Carter* decision, was the Government of Canada not arguing that no one had those rights? They weren't even willing to grant those rights, those same lawyers in the government. Would that mindset still be part of their decision making? Would that not give them a perspective that maybe they are being generous, when, in fact, they're not?

Human beings all have their own viewpoint. Did the argument against granting any rights taint their neutrality in granting rights to all those groups of people?

Senator Ogilvie: I thank the honourable senator for the question. There are a number of elements in the question with regard to why. I can't speak for the absolute motivation of either the Minister of Justice or the officials advising that minister. I can say unequivocally it is now a matter of judicial decisions in this country. I refer to the arguments put before it and the decision that it made. It is very clear, honourable senator, that there is a mindset somewhere in the Justice Department that's been there, it seems to me, probably for 20 or more years.

Senator Dyck: Right.

Senator Ogilvie: They fail to respond to the evolving needs of Canadians in society. I suspect if they're totally entrenched, it's almost a religious zeal on their part. However, the minister has a responsibility to weight the advice as well. That advice has been argued in exactly the same manner, before the *Carter* decision. It has been argued in exactly the same form before the Alberta Supreme Court of Appeal and in the Ontario case that we've heard. It is lost, clearly and unequivocally, in all three cases.

• (1910)

Senator, I would say that whatever emotion leads a minister to take this position, for the Attorney General of Canada to argue to take away a right of the most vulnerable Canadians is, in my opinion, at the very least, a very cruel action.

Senator Dyck: As I understand it, the Attorney General did not give a fulsome answer with regard to the reasons why this particular group was limited. She did not articulate why the person had to be near a natural death that was reasonably foreseeable. If we had known why, perhaps that would have helped us understand. As I understand it, there was no good explanation as to why those provisions were put in. Is that correct?

Senator Ogilvie: I understand your question, but I think I better answer in the following way. I have not heard the minister enunciate an argument that is either convincing or different from simply a fixed-policy position, and I think the minister came closest to that when she actually admitted to the term "terminal" in her responses to us in open session.

I think we know where the minister is coming from. I believe the minister is offside with the needs of an extremely vulnerable section of Canadians and the decisions of the courts to protect those individuals.

Hon. Frances Lankin: Will the honourable senator accept another question?

Senator Ogilvie: Yes.

Senator Lankin: I want to follow up on the last question and your response. My recollection is that the minister in fact did give a reason. It's not one that was convincing to me that we should not support this amendment, but her reason was the need for greater protections for those vulnerable people, perhaps people with disabilities, perhaps people like Senator Munson spoke to earlier, where the fulsomeness of protections have not yet been addressed in this legislation. Some of us will be talking in further amendments about that particular issue.

Would you agree that the protections that have been put in the act with respect to the number of physicians required to support and make a decision with respect to medical assistance in dying, and other measures, could in fact be amplified for people who are not terminally ill, and that that would be in keeping with our obligations to put in place a regulatory regime for the administration of medical assistance in dying? It could be a different set of regulations and protections, but that would still be in keeping with the *Carter* decision, the Supreme Court decision.

Senator Ogilvie: I thank the honourable senator for the question. I would repeat that I personally did not think that the minister's arguments were substantive with regard to why this particular group was not included.

With regard to the overall nature of the question, I would say the special joint committee's overriding objective was to protect vulnerable Canadians in all sectors of society and walks of life. That is why I have been so focused on the most vulnerable, in our opinion, category of Canadians: those suffering intolerably over long periods of time with no end in sight.

With regard to all other vulnerable populations, what the special joint committee did was look at protections that it could put in place that could be easily carried out in nearly every part of Canada and that would give protections that were not in themselves restrictive.

The first issue that we must remember in every case, no matter which vulnerable group you're thinking of, the *Carter* decision spells out the protections absolutely clearly. It must be an adult person. That adult person must be competent, and not competent as determined by a relative with an interest or a hospital that wants to get them out of there, but by physicians who can measure that competency and determine that. And then, if granted that permission, it must be reviewed.

Honourable senator, I would say, without going through all of the issues and the details in the language in the bill and in our report, I believe the special joint committee got it right in terms of what it recommended for protections in all areas. Those protections did not lead to further suffering from anybody who had a right to access this special condition to end their lives.

I do agree with the basis of your question, senator, that the protection of the vulnerable is absolutely critical. Do I think that there are additional things we could put in place? There always would be. We must, however, when we analyze them, make certain that we are not defeating our own purpose by making the vulnerable more susceptible to intolerable suffering. Nothing could be worse than for us to impose a condition that, beyond a reasonable basis of determining the right of the individual to the *Carter* decision, would impose conditions that would make their suffering intolerable for far longer than necessary. That is the balance, I think, we are required to strike.

Hon. Denise Batters: Honourable senators, I want to make a brief intervention on this particular issue to let honourable senators know that haven't had the benefit of sitting in the Legal and Constitutional Affairs Committee, as I am honoured to do, that we have heard from learned constitutional scholars, from law professors and from lawyers on both sides of the issue of the constitutionality of Bill C-14.

During the Senate Legal Committee's comprehensive pre-study of this bill, and during this week's committee hearing, we heard from several learned constitutional experts who adamantly believe that this bill is constitutional and is Charter compliant.

Our Legal Committee heard from a number of legal and constitutional experts that it would be constitutional for Parliament to narrow the criteria for eligibility for assisted suicide, as in Bill C-14. Professor Dwight Newman stated:

> The *Carter* judgment is not legislative in character. That's simply not the role of the Supreme Court, and it's not the role of Parliament to abdicate to the Supreme Court as if it were a legislative body. So the specific wording of the Supreme Court of Canada judgment needn't be entirely determinative.

He went on to say:

> The court's declaration is not a statute, and it's ultimately Parliament's responsibility to craft a statutory regime that meets the objectives that Parliament determines to be most appropriate.

Professor Hamish Stewart testified that the current wording in Bill C-14 establishes "constitutionally permissible safeguards to ensure that people who are, as the court said, tempted to commit suicide at a moment of weakness are not tempted to do so." In Professor Stewart's view, the Supreme Court rejected a blanket ban on physician-assisted suicide as overly broad, but the limitations in Bill C-14 could be found to be justified under section 1 of the Charter — if the government can satisfy the court that "it's the best that can be done to separate the vulnerable from the non-vulnerable who want to access the assisted suicide regime." Professor Stewart maintains that the provisions of Bill C-14 would survive a Charter challenge in this regard.

This week we also heard similar testimony from Professor McMorrow and constitutional lawyer Chipeur. And of course, honourable senators, the Minister of Justice and the federal Department of Justice officials have defended the constitutionality of this bill in front of our Legal Committee twice, and in front of our Committee of the Whole in this chamber.

Last week we also heard new Senator Sinclair, formerly Justice Sinclair, tell us that he believes this bill to be constitutionally compliant.

• (1920)

Honourable senators, the significant paragraph of Bill C-14 that Senator Joyal would strike out and then with just small portions put back in in other places, I want to read it to you so that you realize what this particular amendment does.

It takes out the entire subsection called "Grievous and irremediable medical condition," which reads:

> **(2)** A person has a grievous and irremediable medical condition only if they meet all of the following criteria:
>
> **(a)** they have a serious and incurable illness, disease or disability;
>
> **(b)** they are in an advanced state of irreversible decline in capability;
>
> **(c)** that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and
>
> **(d)** their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

Honourable senators, on the issue of constitutionality, I do think that the federal government here has struck a delicate balance in an appropriate way. I oppose Senator Joyal's amendment because it is my contention that Bill C-14 is constitutionally sound, as it is Charter compliant and *Carter* compliant.

Hon. John D. Wallace: Honourable senators, this topic, legalization of medical assistance in dying, suicide, euthanasia, it's obviously a very difficult topic, and it's one on which we've heard some very personal and impassioned speeches from many of our colleagues.

I know we each find ourselves looking at it from our own personal experiences and, for a number of us, through family and friends. We also look to those that are vulnerable and how it can impact them. Certainly Senator Ogilvie has expressed that as clearly and as pointedly as anyone could, and very effectively.

Then there is the broader societal interest, beyond individuals, beyond how it would personally impact us or what we think personally. It is: What is the right answer in the broader sense?

As Senator Cowan has said a number of times, when the issue became whether we would meet the June 6 deadline, the sky will not fall, and it's more important that we get it right.

I completely agree with him, and I'm sure we all do. We are trying to get it right, but it is very difficult to determine what is right. There will be no unanimous agreement on what is right, so the best we can each do is make our own determination on getting it right.

This is a difficult topic. It's a difficult process we're going through, and it should be difficult. The consequences of life and death and the lives it impacts, should keep us awake at night, and I know we all are. I know it has totally preoccupied us. It is difficult, and that's the way it should be.

However, as a result of the *Carter* decision, it does require us to deal with and make the best judgment call we can on this issue, having declared void the absolute prohibition on medically assisted death.

I think what each of us is considering is that we have to find balance. Whatever the end result of this process is that we're going through, we have to find a proper balance, one that would respect and value human life, the sanctity of life; respect the individual rights that are protected under the Charter of Rights and Freedoms, particularly under section 7 and 15; and, as well, the competing social interests.

Beyond individual rights, there are the competing social interests that we have to consider as well: the protection of the vulnerable that so many have spoken of, that is, those who might be induced in times of weakness to end their lives if we do not offer enough precision and definition to the circumstances under which medically assisted death would apply.

A concern I'm sure we all have is the normalization of suicide, euthanasia. We do not want that to become something that's normal, accepted and is just another means of dealing with difficult personal and social problems.

All of those issues we have to balance together, as Senator Cowan would say, to get it right.

The constitutionality of Bill C-14 and, in particular, as it would be impacted by the *Carter* decision, is a major issue. As Senator Batters pointed out a few moments ago, there have been conflicting opinions on that issue as to whether or not it is constitutionally compliant, and I would not be dismissive of those who have supported the bill as being constitutionally compliant. Obviously, Professor Hogg is an eminent authority, but there are others who see it otherwise.

That's not unusual to have debate and have differences of opinion on the constitutionality of bills that have been put before us. I served a number of years on the Legal Committee with Senator Baker and Senator Joyal, and I can tell you, it would be the rare exception where someone did not raise the constitutionality of a bill when it was brought before us. So that's not at all unusual.

It's been stated very strongly by a number of honourable senators that, in their opinion, Bill C-14 is not compatible with *Carter*. It's inconsistent with *Carter*; therefore, that's the end of it. The Supreme Court determined the parameters for medically assisted death. Bill C-14 is inconsistent, and that's the end of it.

I must say I don't see it that way. Bill C-14 deals with the protection of individual rights under section 7 and section 7(15). It was not concerned with broader societal interests and concern, which Parliament is entitled to do. The courts were prevented from looking at those broader issues. They were restricted to the individual rights of section 7.

The broader issues are able to be considered by us, by parliamentarians, under section 1 of the Charter of Rights and Freedoms. I will read it to you:

> **1** The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

What that says very clearly is that there can be exceptions. I would say if the conclusion is — and there isn't consensus on it — that Bill C-14 is contrary to the Charter, even in that case it is possible for parliamentarians, under section 1, if we chose to exercise that, to provide an exception.

One of the requirements to meet the section 1 requirement is that if there is going to be a limitation on individual rights, it must be reasonable. So the issue then becomes: Does Bill C-14 present a reasonable limitation on the individual rights under section 7 or a reasonable limitation on what was set out in *Carter*?

• (1930)

And that limitation is that in determining what is a grievous and irremediable condition would also, as part of that, concern natural death that's reasonably foreseeable. That is the reference that seems to cause the most concern.

The expression "grievous and irremediable condition," which is not defined, is broad. It does lack clarity. I believe it does require further definition. That's what Bill C-14 does. It does narrow the parameters of what that term means. That's required so there is predictability and not uncertainty as to the breadth of what Bill C-14 could involve.

We have to define, I believe, parameters around "grievous and irremediable condition," and in my view the inclusion of a reference to "natural death that is reasonably foreseeable" in Bill C-14 does that.

As I said, the section 1 limitation on individual rights, there is a reasonable test to be applied. In terms of reasonableness, it is important to recognize that in the world today, where does Canada as a country fit? Are we laggards on this issue of medically assisted death, or would we be on the leading edge of it? Obviously, if we are lagging behind the rest of the world, that might give us some cause for concern.

The fact of the matter is we are certainly not lagging behind. We will be on the leading edge with Bill C-14 in its current form.

When you think of the countries that we most closely associate ourselves with and have the closest relationships with in the world, none of them have federal legislation governing medical assistance in death. When I say "other countries," the ones that come to my mind — and obviously there are many — are England, Scotland, Ireland, Wales, France, Australia and New Zealand. The Scandinavian countries: Denmark, Finland, Sweden. The Far East: South Korea, Japan. In our western hemisphere, none of the South American countries, with the exception of Colombia, have medically assisted death provisions. All of Central America. In North America, our NAFTA partners, the United States doesn't have federal legislation dealing with this and Mexico doesn't have legislation.

The point is I believe there are four of them that do. In terms of reasonableness, are we providing for our citizens in a reasonable way? I think that is an important fact.

There are a few additional points I would like to draw to your attention from the *Carter* decision. First, in *Carter*, the Supreme Court justices were dealing with the provisions of the Criminal Code and an absolute prohibition on medically assisted death. That is not the case in Bill C-14. To that extent, to simply apply *Carter* to the current situation, the critical facts are not the same.

The scope of *Carter* and the facts in *Carter* were limited to the factual circumstances presented to the court. The court was clear. In its decision it made no pronouncements at all that would impact other facts beyond *Carter*. The effect of the Supreme Court's declaration was to render the prohibition void.

In *Carter*, at paragraph 147, it is stated that:

> Section 241(b) and s. 14 of the Criminal Code unjustifiably infringe s. 7 of the Charter . . . .

Section 7 is the protection of individual rights.

"Unjustifiably infringe." It is possible for parliamentarians, again through section 1, to justifiably restrict the application of the rights under section 7. But in *Carter* they said it unjustifiably infringed. Why did they say that? Because the provisions they were looking at provided for an absolute ban on medically assisted death. That's not the circumstance here. That is extremely important, because if we are of the view we have to rely hand in glove on *Carter* when considering Bill C-14, I would say to you that that is not the case.

The courts also said that it was possible for parliamentarians to develop a carefully designed system with strict limits providing safeguards that would enable legislation regarding medically assisted death to be acceptable. I would say to you that that is exactly what Bill C-14 does. It is a carefully designed system. It draws parameters and definition around what is acceptable going forward and what is not. That will be important for all Canadians. It will be important in a broader sense to Canadian society as well. That design system has built-in safeguards.

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

Senator Wallace: Yes, please.

Hon. Senators: Agreed.

Senator Wallace: The other point I would make is that the courts rejected the qualitative approach to right to life. I want to draw that to your attention, because as we discussed, some were of the view that the Charter provides a right to die. It doesn't; it provides a right to life. If a person's quality of life has deteriorated, then that in itself could be justification for medically assisted death.

The courts rejected that and referred directly to the trial judge's statements that the qualitative approval has been rejected.

The persons that were considered before the court in *Carter* were individuals who were in serious physical decline, nearing the end of their natural lives. To that extent, they were not different, I would say to you, from what is provided for in Bill C-14, which speaks of the foreseeability of natural death.

In conclusion, colleagues, this issue for all of us is one, as with so many issues we deal with in this chamber, of a balance of competing interests, a balance of individual rights and a balance of broader social interests.

The bill provides for a five-year review, and that's extremely wise. I believe it will require all Canadians to have an opportunity to see how this works out. I look at Senator Ogilvie when he describes that he has lived it; he has seen those personal situations that cause him tremendous concern and his heart reaches out for them, as it does with all of us. Going forward within five years, it will give us an opportunity to look at the extent to which, if at all, we should expand the provisions that apply to medically assisted death.

• (1940)

I believe that we are concerned, we have to be concerned, as I say, about the normalization of medically assisted death in this country. We have to proceed very cautiously and, to use the words of Senator Sinclair, cautiously and, I believe, incrementally.

I do support the current requirement in Bill C-14 that a grievous and irremediable medical condition must be one where natural death has become reasonably foreseeable, and for that reason I'm unable to support the proposed amendment.

Senator Dyck: Senator Wallace, would you take a question?

Senator Wallace: Yes.

Senator Dyck: Thank you. I very much enjoyed listening to your speech.

As I was looking back at the *Carter* decision, you were saying that you didn't agree with the amendment because we can infringe upon a person's section 7 rights by invoking section 1; however, if

you look at the *Carter* decision in paragraphs 65 and 66, they do talk extensively about the suffering that the appellants had to go through when they were grievously and irremediably ill. The B.C. court and the Supreme Court said that that interfered with their bodily integrity and medical care and thus trenches on liberty, and therefore that was impinging on their security, which is a violation of section 7.

I'm not sure how we can square that with taking it away, by saying section 1, if we don't take it away from one group but not another, because the groups who are near to death will have their rights acknowledged but those who are not will not. So it seems to me a contradiction.

The Hon. the Speaker: Senator Wallace, your extended time has expired, but with leave of the house you can answer that question. Is leave granted?

Hon. Senators: Agreed.

Senator Wallace: Thank you, senator. There is no question that any time we as parliamentarians would create a limitation through section 1 of the Charter of Rights and Freedoms — and the effect of that, yes, could well be to limit individual rights under section 7 — that is not something to take lightly.

There is a very strict test that you may be familiar with from the Supreme Court of Canada in the *Oakes* decision, which lays out what would have to be demonstrated in order for the section 1 limitation to be considered reasonable. All I can say is that the effect of a section 1 restriction would, to some extent, limit individual rights. That's true. The extent to which we wish to do that is something we each have to make a decision on.

For me, the only real justification in doing that is if there is some broader societal interest that needs to be considered; perhaps the safeguards that are in C-14 right now may not be adequate to cover a broader range of circumstances that, for example, the proposed amendment could open up, and that would be a concern.

[*Translation*]

Senator Carignan: This debate on a major social issue engages our feelings, opinions and values. We all respond in our own way.

Still, there is an important constitutional aspect to this bill that bothers me. I talked about it during my speech at second reading. I believe that this bill as written is unconstitutional and does not adhere to the parameters in *Carter*.

I would like to read paragraphs 126 and 127 of the 2015 *Carter* ruling. Paragraph 126 reads as follows:

> We have concluded that the laws prohibiting a physician's assistance in terminating life (Criminal Code, s. 241(b) and s. 14) infringe Ms. Taylor's s. 7 rights to life, liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice, and that the infringement is not justified under s. 1 of the Charter. To the extent that the impugned laws deny the s. 7 rights of people like Ms. Taylor they are void by operation of s. 52 of the Constitution Act, 1982. It is for Parliament and the provincial legislatures to respond, should they so choose, by enacting legislation consistent with the constitutional parameters set out in these reasons.

I don't need to ask myself whether I am in favour of a situation in which a person who is sick, disabled, or suffering intolerably from an irremediable disease seeks medical assistance in dying.

Whether one agrees or not, the Supreme Court ruled that the rights of that group of people were violated. It describes that group in paragraph 127, which states that the Criminal Code is void insofar as it prohibits, I quote:

> . . . 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.

It goes on to say:

> "Irremediable", it should be added, does not require the patient to undertake treatments that are not acceptable to the individual.

Those are the exact words that Senator Joyal chose to use in his amendment to describe the class of people whose rights are being violated.

Paragraph 6 of the Supreme Court's 2016 ruling on the request for an extension states the following:

> In agreeing that more time is needed, we do not at the same time see any need to unfairly prolong the suffering of those who meet the clear criteria we set out in *Carter*.

The Supreme Court gave the government one year. We need more time, but the Supreme Court is saying no. It is saying that people have already suffered enough. It would be unfair to prolong the suffering of those who meet the clear criteria set out in *Carter*. The court is also saying that if it does not grant a constitutional exemption, then these people's rights will continue to be violated. There could be no clearer or more current element in the debate than two rulings of the Supreme Court that identify the class of people likely to invoke the right to medical assistance in dying.

The problem with Bill C-14 is that it creates two classes of people: one for whom death is reasonably foreseeable and another for whom death is not reasonably foreseeable. The Supreme Court found that the rights of both classes had been violated. By choosing to limit the scope of Bill C-14 to the class of people whose death is reasonably foreseeable, the government continues to violate the rights of the other class. Bill C-14 does nothing to limit the impact or prevent the violation of those rights. Bill C-14

sets a limit and minimizes the impact for those who are closer to the end of their life, but not for the others, and that is the major problem with this bill.

• (1950)

I would like to speak to you about Peter Hogg. I know that name doesn't mean much to those who are not familiar with constitutional law, but Peter Hogg is the leading constitutional expert in Canada. I therefore paid particular attention to him when he appeared before the Standing Senate Committee on Legal and Constitutional Affairs to talk about this bill and said, and I quote:

> I think it gives no room for narrowing the class of entitled people. Parliament can't establish a subclass of people within a class whose rights are being violated. It could broaden the class of entitled people. It could add different safeguards, but it can't narrow the class of entitled people.

Why? Because the more Bill C-14 narrows the class of entitled people, the larger the number of people whose rights will be violated becomes. The solution is to make a distinction, to set up safeguards for each group. The safeguards could be different depending on the person's individual nature. For example, there could be safeguards for people at the end of life and another type of safeguards for people who are not. Setting parameters is a responsibility of the legislative branch, but it is illegal to draw a blurred line between two groups, one whose constitutional right to medical assistance in dying will be respected and another group whose right will not. That creates a demarcation that violates the Canadian Charter of Rights and Freedoms. What is worse, the line of demarcation is blurry.

There are about 80 of us here in this chamber — I'm including everyone — and if we tried to define the term "reasonably foreseeable death," we would never agree on the same day, week or month. That means that we are leaving it up to doctors to determine where to draw that line. One doctor could decide, based on his reasonable belief that an individual's death is foreseeable, that the line should be drawn at a certain place. Another doctor could draw the line somewhere else. What happens when the line is blurry and cannot be agreed upon? One doctor would be providing medical assistance in dying, respecting his patients' rights and doing his job as a doctor, while another doctor would be committing a criminal offence because the line of demarcation is there for a reason. The line separates those whose constitutional right is respected from those whose constitutional right is violated. It separates a doctor who is doing his job from a doctor who is committing a criminal offence. If we decide to draw a line, it needs to be very clear. Obviously, the line drawn by the term "reasonably foreseeable death" is not clear, and all of the witnesses agree on that.

Therefore, in my opinion and according to Peter Hogg and constitutional expert Blake, the beauty of Senator Joyal's amendment is that it makes the bill constitutional and gives certainty to the application of the bill.

The next step we must take, and here we are considering eligibility, is to identify the safeguards. In my opinion, it is vital that we do this in the coming hours and days. We must do exactly what Senator Wallace proposed: identify the reasonable limits that we can impose as part of a free and democratic society.

We will then consider a group of people. The people are different; some of them are at the end of life, while others are not. In both situations, how do we assess the vulnerability of these people? What measures must be put in place to ensure that their rights are guaranteed and that the vulnerable are protected? The objective is precisely to protect vulnerable people. The Minister of Justice told us so. We saw this in *Carter* with the justification of the pressing and substantial object used in the Oakes test to justify the reasonableness under section 1. However, what is the pressing and substantial object that we wish to attain? We want to protect vulnerable people. Are we protecting vulnerable people by imposing a total prohibition for one sub-group of people covered by *Carter*?

It is true that we are preventing them from exercising this right, that these people will not take that step, and that they will not ask for medical assistance in dying. But does that mean that are we respecting their rights? The answer in *Carter* is no. Therefore, how can we strike a balance between protecting the vulnerable while allowing people to exercise their constitutional rights?

It is not a simple thing to do, which is why the Supreme Court recognized in *Carter 2* that requiring judicial authorization during the interim period ensures compliance with the rule of law and provides an effective safeguard against potential risks to vulnerable people. The Supreme Court indicates that a safeguard could be, for example, judicial authorization so that cases are assessed individually in order to protect vulnerable people. That kind of measure is possible.

The legislator chose a total ban, complete prohibition. The Supreme Court already said no, that that was unreasonable and not minimally impairing. The principle of minimal impairment set out in the test of section 1 of the Canadian Charter of Rights and Freedoms requires that we look at how we can impair people's rights as little as possible. The Supreme Court has already said that judicial authorization ensures compliance with the rule of law and serves as an effective safeguard for vulnerable people.

I will be voting in favour of Senator Joyal's amendment, while keeping in mind the next steps. Together, we will have to come up with the most appropriate measures to protect vulnerable people. We might also have to consider different safeguards for different groups of individuals depending on their condition, because I don't think it would be reasonable, for instance, to require judicial authorization for someone who is terminally ill.

May I ask for five more minutes, Your Honour?

The Hon. the Speaker: Is it your pleasure, honourable senators, to grant Senator Carignan five more minutes?

Hon. Senators: Agreed.

Senator Carignan: I don't think it's reasonable to require judicial authorization for people who are in end-of-life situations. The notion of "end-of-life" in the Quebec law is clear and recognized, and it is already in practice. We can definitely have safeguards in place for people in end-of-life situations, for

physicians, somewhat like those that are already in Bill C-14, and other safeguards for people who are not in end-of-life situations.

• (2000)

It is our duty as legislators to strike a balance. It is not about determining which group had their rights denied or not. That is not how we deal with individual rights. I heard the argument that this percentage of Canadians is in favour compared to that percentage of Canadians. Be careful. The Charter seeks in fact to protect minorities from abuse. Just because the majority wants to violate certain rights, that does not mean it is permitted to do so. That is why charters of rights and freedoms exist. They protect citizens from abuse. Please, let's not use a poll to determine the merits of a bill. I will stop here to answer questions.

[*English*]

Senator Tkachuk: Senator, when you talked about the restrictions or safeguards that would be put into place, I can't see how that's possible. If this amendment passes, what guarantee is there that we'll have any safeguards passed? What guarantee do we have that it's going to be passed? Why don't we make an amendment to that bill?

[*Translation*]

Senator Carignan: I believe that senators would agree to insert adjustable safeguards. If the amendment is passed, safeguards are already provided for in the bill. I will propose amendments to improve them, but at the end of the day, if the safeguards are not there, if the amendment is passed and if someone disagrees with the bill as a whole, he or she could always vote against this legislation.

[*English*]

Senator Tkachuk: I have one more question. I still don't understand the reasonableness of asking people to vote for an amendment on the possibility that safeguards may be passed, when they're not attached to the amendment.

Nonetheless, the question I have is this: You talked quite a bit about the reasonable and foreseeable death of a person, that it be reasonably foreseeable. But I don't understand the difference between that being a very subjective issue, which it is — but what's the difference between that and enduring suffering that is intolerable? That is also a very subjective phrase, which is open to a terrific amount of interpretation, and will have exactly the same effect as the present bill has.

[*Translation*]

Senator Carignan: I believe that the Supreme Court is leaving it up to the individual to determine his or her capacity to tolerate suffering. Part of the definition is objective as far as the illness is concerned, and the other part is subjective with regard to the individual and that person's capacity to tolerate suffering. That is why this right depends on the individual, the only person who can make the request. It is a decision that requires reflection because it is a rare constitutional right that a person can exercise only once in a lifetime.

[*English*]

The Hon. the Speaker: Senator Carignan, your time has expired. I saw two other senators rising. Did you wish to ask for more time?

Some Hon. Senators: No.

The Hon. the Speaker: No?

On debate, Senator Harder.

Hon. Peter Harder (Government Representative in the Senate): Thank you, honourable senators. It was not my intention to rise with respect to this amendment, as I had ample opportunity last Friday to make my position clear with respect to this bill, but I felt I ought to respond to some of the comments made, just for the record and before senators have the opportunity to vote on this amendment.

I particularly want to respond to the suggestion made in the course of the debate that the minister was misled by officials in the Department of Justice.

I know the minister. The minister has been here taking questions, and I don't believe that the minister is parroting any particular brief for any particular official in the department but, rather, informed by her own legal background and, as Attorney General of Canada, the resources that she has relied on in developing and making a recommendation to cabinet. The sources available to her, as they have been available to the committee and to senators, show us that there is a wide range of legal views. She has formed a view, and she has expressed freely and confidently in this chamber that this bill is Charter-compliant.

Now, it's not unreasonable, when ministers form an area of public policy, that they want to be assured — as would the Prime Minister, cabinet and indeed both chambers of Parliament — that it is right. Senator Joyal spoke in his comments about the importance of our chamber reflecting the protection of Charter rights and Charter compliance. So it is absolutely primordial that ministers be confident that the legislation they bring forward is Charter-compliant. I want to re-emphasize to all senators that the ministry's and the minister's views, and indeed the views of parliamentarians in the other chamber, was that the bill before us is Charter-compliant.

That brings us to a broader question of public policy. Public policy can be framed in various ways. The minister spoke of the public policy choices that she made in conversations and discussions with, first of all, her colleague the Minister of Health, and other ministers, and then indeed before the whole chamber, and here in our discussions as well.

The objective of public policy discussion is to ensure that the legislative framework being brought forward is not just Charter-compliant but is the result of a good deal of public consultations, a good deal of policy, guideline and detailed operational considerations, so that an act, on being adopted, is implementable. It's not unreasonable that there have been

broad engagements with the medical community and practitioners, broad engagement with the vulnerable, disabled community, those who have concerns for the disadvantaged and concerns about the operating of a particular new approach and first-time effort in the area of medical assistance in dying.

I think it's important for us — particularly as we deal with the most fundamental amendment before us, in my view, which is the amendment with respect to eligibility — that we not confuse the confidence with which the ministry brings forward what they believe is a Charter-compliant proposal. We can have our disputes as to whether it's the right public policy, but I would ask that you respect the Attorney General of Canada as not being misled by nameless officials in her department.

I also want to remind us that while we are dealing with one clause, we ought to consider that there are other aspects of this bill that interact with this clause, and that by no means is this clause alone defining the public policy of the bill. The public policy of the bill speaks to, later on, safeguards — and I was pleased to hear Senator Carignan's speech on safeguards — but it also interacts with clause 9, which predicts that there will be other discussions, inquiries and opportunities to study further some of the issues that are before us in this evolution of consideration for how we deal with medical assistance in dying.

• (2010)

So in closing, I want simply to reaffirm with confidence that the ministry believes, through its considerations, its advice and its deliberations, that this bill is Charter-compliant. Let there be no mistake about that as we vote on this amendment.

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Would Senator Harder take a question?

Senator Harder: Of course.

Senator Fraser: Let me preface the question by saying I certainly do not — and I don't think anyone here does — question the sincerity or the conviction of the Minister of Justice. I think clearly she would only come here to defend this bill if she believed it was going to be good law.

However, you hang around here long enough and you get to see an amazing number of bills where the lawyers in the Justice Department have assured us six ways from Sunday that a bill was Charter-compliant, and then it gets to the courts and, whoops, it's not.

The first and most, to me, embarrassing example of this that I recall was a bill presented by the Chrétien government on extradition, which Senator Joyal will recall, and I was chagrined by it because I was its sponsor and I believed the lawyers in the Department of Justice. Senator Joyal and then Senator Grafstein explained to me that I was wrong. I thought, "No, no, the Justice people, they know."

Senator Joyal and Senator Grafstein were right, and the Justice Department was not.

This is a request that would have obviously some little urgency about it, if it could be carried out. As we go forward, would it be possible to obtain for us some outside legal opinion upon which the minister relied? Again, I'm not attacking the integrity of the Justice Department, but I am saying there is demonstrated history here of their, on occasion, being wrong.

So would it be possible to get some kind of authoritative outside legal opinion upon which the minister also relied in coming to the policy decision that she, and indeed the government, did reach?

Senator Harder: In responding to the honourable senator's question, I want to reaffirm that I was reacting to comments made tonight that the minister was believed to have been misled by the Department of Justice. I don't believe that's the case. I am not suggesting anybody is impugning the integrity of the minister; I just want to assure all senators that this is a considered viewpoint that the minister has brought forward.

With respect to the specific question that you're asking, of course I can't answer that, but I can on your behalf make inquiries and would be happy to respond.

Senator Fraser: Thank you.

[*Translation*]

Senator Carignan: Mr. Leader of the Government, when you were appointed to the Senate and then made Leader of the Government, I read your biography, which says that you had extensive experience in the public service.

You held high-level positions on Parliament Hill, so, seeing as you probably have a lot more parliamentary experience than I do, I would like to ask you the following question.

Have you ever seen a justice minister introduce a bill he or she described as unconstitutional?

[*English*]

Senator Harder: Well, I knew I was being buttered up with the preamble. Of course I haven't, at least not within my direct hearing. I have, of course, been a party to discussions on the risk factors in a number of bills, and that's not unusual in public policy either. But I do think that it is important for legislators to be reminded from time to time, particularly in dealing with a subject that is as important as the one before us and an amendment that is as integral to the bill — the amendment in some measure largely guts the bill — that it be clear that the ministry and the Attorney General of Canada have given assurances, both in this chamber and elsewhere, that the bill is Charter-compliant. That is what I wanted to ensure that all senators were reminded of before we vote.

Senator Cowan: Would Senator Harder entertain another question?

I think I might have been the senator who entered into the lexicon of our discussion the word "misled," and if anybody was offended by that, I think a better phrase would be, "I believe that

she was mistakenly advised." Would you accept that as a correction of my intent?

Senator Harder: I would, on the condition that you would accept that accepting this amendment would be mistakenly advised.

Senator Cowan: You and the minister believe that accepting this amendment would be mistakenly advised.

Senator Harder: Now I agree with you.

Senator Lankin: Senator Harder, will you accept another question?

Senator Harder: Of course.

Senator Lankin: I want to return to an issue that was raised earlier, and that is the reason for the prohibition of access to medical assistance in dying by those Canadians who are not at a point of a reasonably foreseeable death. There was a question as to whether or not we understood the minister's reasoning for that.

I intervened that I thought I heard very clearly from her that it was her concern about having adequate safeguards in place for those people, not necessarily, as Senator Ogilvie talked about, the people who are experiencing intolerable suffering in a definition of "vulnerable," but other vulnerable populations, such as people with disabilities, and there's a range that we could talk about.

I wanted to ask you, one, if that is your understanding; and two, if we, through measures here, could not look to create some safeguards that might meet the minister's concerns. That might be a point of debate as we carry on. I understand there are some amendments that will address that.

I'm interested in knowing if you believe, as I do, that that is the main reason the minister did not extend medical assistance in dying to the full *Carter* definition and, in fact, wanted to see more protections for vulnerable people.

Senator Harder: Again, I am speaking on my understanding, as your question would suggest.

Within a framework that acknowledges compliance with the Constitution, I believe that the minister in her comments indeed reflected the view as you describe it. I would hope and would wish that perhaps later in our considerations we could adopt an amendment that would specifically lead to an inquiry or a set of work being done, as organized in clause 9, that the cases of persons for whom "reasonably foreseeable" is not applicable can be addressed.

This is an important issue that has been raised by a number of senators in their interventions. We did question both ministers on this, and I believe that that would find favour with the government in assuring that this area was on our agenda as we develop public policy in this particular important area.

But I do think it's important for me to repeat that this is the start of public policy discussion, and where we end up over the course of the next years I hope is informed by our experience, the data that we will collect and the studies and consultations, which will be launched immediately upon Royal Assent so that we can have better-informed public policy and better engagement on the basis of information, experience and dialogue with Canadians.

Senator Enverga: I have a question for Senator Harder, if I may, please.

Senator Harder: Of course.

The Hon. the Speaker: I'm sorry, Senator Enverga. Senator Harder, your time is about to expire. Are you asking for five more minutes to answer a question?

• (2020)

Senator Harder: I would be happy to, if the house will allow it.

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

Hon. Senators: Agreed.

Senator Enverga: Today, we heard about protecting minorities, the vulnerable and the disabled. We even talked about constitutional rights.

You are talking about the minister not wanting to put in this particular amendment. It says "condition including an illness, disease or disability that causes enduring suffering that is intolerable to them in the circumstances of their condition."

With all the suicides — we have all heard about the suicides in Woodstock or Attawapiskat. When the Aboriginal Peoples Committee was in Kuujjuaq, we heard about suicides there. Even in Igloolik, we heard about suicide. Is it possible that the minister is not including the wording of this amendment to specifically state that without safeguards it will be too late — that we will be sending the wrong message to our youth? We will be sending the wrong message to our youth when this is opened up — that anybody who has particular issues intolerable to them in their circumstances can be killed or can die.

Would this be some sort of a "lesson," let's say, that kids would say, "I'm not a part of this — I'm not an adult — but since this is now legal, I will be able to do this." Do you think the minister is acting on the belief that if she ever put this particular amendment there that the kids — our youth — would think that this is good for adults, why can't it be good for me? It's just like smoking.

Senator Harder: I will answer for myself and obviously not for the minister. This bill is carefully crafted and balanced to have a public policy regime consistent with the Charter that is respectful of the court's decision; that is balanced in respect of access, eligibility and safeguards; and that sets in place a broader public policy engagement on issues that are not specifically addressed in this bill that we need to have a broader conversation on.

It's important on all sides that we have a respectful and moderate engagement on this matter, because medical assistance in dying is going to be with us as a country. It will evolve in our experience and our understanding, and we should be respectful in our language.

Hon. A. Raynell Andreychuk: Would Senator Harder take another question?

Senator Harder: Of course.

Senator Andreychuk: I intend to speak to the issues later, but you've compelled me to ask you a question. The right to die is not an issue here; it's the assistance of that. I think the court made it very clear in many ways that is a right we have. It's not a right a government gives us. Our rights are in the Charter.

This bill is about who can assist without drawing liability and criminal liability.

What troubles me is that you're saying pass the bill because there is this time limit, and then we'll find the facts. What will we do then with the facts? Will we amend the bill? Will we live with the bill? I think you've been around the Hill as long as I have. It's very difficult, once a law is in place, to change it. There's an inevitable inertia: People change, and they have to be brought up to date.

What I don't understand is the court didn't say we had to pass a law; the court said there is a right to die. It did not get into the other aspects of how the assistant medical professional and others will be treated except I think we're all drawing the conclusion that there shouldn't be a penalty for those people — and a criminal penalty.

So why are we put in a public policy position that we're going to pass a law and then determine whether it's the right law?

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Senator Harder's time has expired. Is it your wish that he have time to respond to the question?

Hon. Senators: Agreed.

Senator Harder: Thank you for your question. It's important for me to be a little clearer than I've obviously been. The bill before us is a response to the court ruling, and through the eligibility criteria it makes clear to whom this bill applies.

It also ensures that there is clarity to the medical and assistance-providing community as to what legal protections they would have. It also predicts that there are other groups. We ought to have greater engagement on discussing the implications of providing access to medical assistance in dying to those groups. In clause 9, there are very specific references. That might be added to, as I predicted in my previous answer.

There is also the mandatory review. You've got 180 days for studies to commence. We could, if it was the will of the chamber, define an end-point for those studies to report back and be tabled in the chamber. There is an automatic review.

I'm afraid this is a rather unique piece of legislation that is beginning a legal framework for an issue we have never dealt with in this country, and as Senator Wallace indicated, very few countries have.

So, yes, I am saying that we should proceed with the caution and the balance of this bill, but the bill itself predicts and establishes parameters for further discussion in the public and ultimately in this chamber as we deal with the implications of those studies in the years ahead.

The Hon. the Speaker: Are senators ready for the question? Senator Mercer, on debate.

Hon. Terry M. Mercer: I will be brief. I was not going to speak but Senator Enverga has prompted me to. He has been reading my notes. He's might be the only one who can read them.

I wanted to talk about the unintended consequences of this legislation. I'm going to speak at a later date in this debate over the next few days about some other things. But I want to talk about the unintended consequences, because every time we pass legislation people say, "What are the unintended consequences of this legislation?"

This is not an illegal unintended consequence, but this is a moral unintended consequence: What do we tell the people of Woodstock, Ontario, where five young people under the age of 19 committed suicide in the last month? Also, 36 people in Oxford County in Ontario also attempted suicide in the last month or so. What do we tell those families? We are now talking about assisted dying that everybody refers to — the media refers to it as "assisted suicide." It's not a word we want to hear in here, but that's what everybody talks about in the public, and those are the words.

So what is the message we're sending to the young people of this country? What's the message we send to young people on reserves across this country where suicide is an epidemic? What is the message we're sending to young people everywhere?

I noticed just before I stood up that there's a large group of young people in the gallery tonight.

What is the message we send to the families of those people who do take their own lives? What is the message we're sending to Canadians who are vulnerable?

Carter says it must be an adult person. That's all well and good for us to say that in legislation that we pass. The liquor laws in this country say that you have to be a certain age before you drink, and the tobacco laws say you have to be a certain age before you can buy tobacco products, but we all know — and many of us in here have — I know that I certainly smoked tobacco before the legal age in the province of Nova Scotia. I did not, by the way, drink before the legal age, but that's because I'm a pure individual, as you all know.

Some Hon. Senators: Oh, oh.

Senator Moore: You made up for it.

Senator Mercer: As Senator Moore mentions, I did make up for it in later years.

• (2030)

This is the unintended consequence of this entire debate, and this is what bothers me the most. I have wrestled with this piece of legislation for as long as it has been on our agenda. I think that one of the things that we need to wrestle with is the message that it sends to people that, suddenly, in this country, it is okay to have someone help kill you. What a message to send to the young people in this world.

I have a one-year-old granddaughter. I love her dearly. I am glad that she doesn't watch television and can't watch these debates because I wouldn't want her to remember that we talked about this. This is not something I want her to hear, and I am sure you don't want your grandchildren to hear. Just think about the unintended consequences. Even if we say, time and time again, that we don't want people to commit suicide, we don't want people to drink liquor and smoke tobacco but we continue to put it in front of them. We're putting the word "suicide" in front of millions of young Canadians. It bothers me greatly.

I continue to wrestle with this problem. I hope that we always keep in mind what this will mean to young Canadians all across this country.

Some Hon. Senators: Hear, hear!

Senator Dyck: Would the honourable senator take a question?

Senator Mercer: Yes.

Senator Dyck: I am glad you brought that issue up because it has come up before.

The question I have for you is that in this bill we have not struck down the provisions in the Criminal Code that make it illegal for someone to counsel or abet a person to commit suicide. Perhaps that has been the failing in our attention to the bill and the media, and maybe here in the chamber, to stress that it still will be illegal to try to convince someone to commit suicide. What we are doing is we are exempting, in specific cases, medical and nurse practitioners to do that.

I don't know if you were aware that that provision is still in effect. That provision was not struck down.

Senator Mercer: My colleague is absolutely correct, it's not struck down, but "unintended consequences" doesn't have to be written in law. "Unintended consequences" doesn't have to be a word that is in the wrong place. "Unintended consequences" doesn't have to be something that some lawyer overlooked or that this chamber overlooked or the House of Commons overlooked. We are talking constantly, and the media and Canadians are talking constantly, about people taking their lives and having someone else help them. Indeed, maybe we are counselling and abetting people to commit suicide and are in contravention of those laws.

I'm not a lawyer and I don't purport to know, but I think that caution needs to be used. I also wrestle with the fact that we can't put the toothpaste back in the tube here. We have been talking about this for months. We can talk about assisted dying and medical assistance in dying, but the word that comes out at the end of it is "suicide" in the media and in the public. What a message to send to those young people all across the country. It is not the message I came here to send to Canadians. I am having a difficult time with it because of the effect that our action, and the action of the Supreme Court of Canada and our colleagues in the other place, has had in talking about this subject and dealing with this legislation.

Senator Enverga: May I ask you a question, Senator Mercer?

Senator Mercer: Yes.

Senator Enverga: The statement that it is illegal to counsel is something that we have discussed. Would you not think, and we are right now on Facebook, Twitter and in the news, the fact that we are discussing this and there are many honourable senators who say we should allow all this, are we not counselling youth that it is okay for adults to choose to die but not for them?

Senator Mercer: My problem is, as I stated in the beginning, I would rather we not be debating or have this legislation at all; however, the Supreme Court of Canada has made a decision that has forced us to do just that.

I don't know how to discuss this without the "suicide" word coming up. My purpose in speaking tonight is to put it in the proper context. Whether we vote for or against the final piece of legislation, we know, by just mentioning it and by the coverage that we get in the media, that there may be somebody in this country who hears what we have said and — God forbid it would be my words that they hear — that tips them to the point to say, "Well, if they are passing legislation to regulate it, I guess it must be all right. They passed legislation to regulate alcohol and tobacco and everyone drinks and smokes, so it must be all right." That is not the way I want to spend my life as a legislator.

[*Translation*]

The Hon. the Speaker: Are senators ready for the question, or do other senators wish to participate in the debate?

Hon. Pierrette Ringuette: Honourable senators, I promise to be very brief.

I listened to all of my colleagues' comments on the proposed amendment. I don't think that the bill is clear as to what "reasonably foreseeable" means. That's the first reason why I intend to support the amendment before us. The second reason, honourable senators, is that it's 2016.

Thank you.

Some Hon. Senators: Hear, hear!

[*English*]

Hon. Daniel Lang: Honourable senators, I will be brief. I want to put my position on the record.

You will recall that at second reading I was one of the members that referred to the responsibilities of the provinces and the territories for the responsibility of health and the day-to-day responsibilities that go with that. I would submit to you that we should not forget that.

I also want to make the point that today is the day that the law has been struck down. You should be aware that in at least one province, the Province of British Columbia, there is at least one medical assistance in dying procedure going to be taking place today or tomorrow.

What I am saying is that without this law passed or amended, the ability to go forward with a medical assistance in dying procedure is in place within the provinces and territories.

That being said, I want to say that I feel very strongly that there is a law that has been brought forward to us that, in my judgment, restricts the recommendation put forward by the Supreme Court of Canada.

• (2040)

I do agree in part with some of the senators who spoke earlier with respect to the Supreme Court perhaps at times being too involved with trying to direct the legislatures of this country, in this case the Parliament of Canada. But I want to come to their defence, colleagues. The reality of it is we would not be discussing this issue today if we did not have a Supreme Court that heard an individual and dealt with an issue that not only affected that individual but affected society as a whole. We are very fortunate to have the Supreme Court of Canada. I, for one, welcome this debate because I think it is long overdue.

If it wasn't for the court decision, we would not be discussing this. I would lay bets that no parliament would be discussing this issue in the next 20 years because no parliament wants to talk about death. This is not the most comfortable topic that we could discuss on any given day.

Senator Joyal, I support the amendment brought forward. I feel strongly that we should not be restricting the rights of Canadians to deal with their own very real, very personal and very final moments as they have to make decision in respect to their family members. If we restrict that, then we have not done the job that we have been asked to do.

I want to deal with it from a pragmatic and real point of view. As I said on second reading, it is not just us in this Parliament; there are 36 million Canadians one day or another who will have to deal with the issue we are talking about, and they should have the right to deal with it. Thank you.

Senator Plett: Senator Lang, the last comment that you made, are you saying that if someone disagrees with you or with Senator Joyal's amendment, we are not doing the job we have been put here to do?

Senator Lang: If that inference is taken, accept my full apology. That is not the case at all. I wanted to put on the record, from my perspective, how I see this particular piece of legislation and how I see our responsibilities for the bill that we have been presented with from the other place.

Senator Munson: Honourable senators, tonight I am thinking of the tens of thousands or perhaps hundreds of thousands with a degenerative disease. I am thinking of those with Huntington's, MS, and on a personal note, thinking of those here on Parliament Hill with ALS. They are excluded from this bill. With that in mind and with their rights in mind, I want to say clearly and concisely that as we talk about death, we're also talking about quality of life. This amendment is about compassion, and it is about human rights. Thank you.

Hon. Senators: Hear, hear!

Senator Enverga: May I ask you a question, Senator Munson?

Senator Munson: Yes.

Senator Enverga: You mentioned several diseases, Huntington's, ALS and so many more.

Are they grounds for someone to request assisted dying? Is that what you are saying? Is their quality of life while dealing with those kinds of diseases so poor? Do you think they feel that they are worthless, that they don't have anything in life left for them? Is that how you perceive why they should die?

Senator Munson: Honourable senator, it's simply a matter of personal choice. We don't live inside the bodies of others who have these diseases. We don't understand and feel the suffering that they are going through. If they do give consent, and there are these safeguards put into place with physicians and others, it is their personal choice. I think that we must respect that.

Senator Enverga: I understand it is their personal choice. However, you were thinking about someone, perhaps, who is a caregiver and cares for them who doesn't like them or sort of doesn't respond to them well. Don't you think that if these people who have these ailments, ALS and Huntington's, if they have the proper caregiver, somebody to talk to, do you not think that they would refuse to have this death because someone receives their love?

Senator Munson: Honourable senator, they do have the right to life. That is what we would all love to see. We would all love to live a natural, healthy life. However, in this time, living in this country, it is about choice. Whether you live in a rich environment or in a poor environment, at the end of the day, an adult in this country who has the competency to understand what he or she is going through has the right to live, and also has the right to have the dignity of a quiet and dignified death. They have a right to choose their time.

Senator Enverga: Senator Munson, I know they have the right to life, and now they have the right to die. However, don't you think that if they have the right care they wouldn't do that? That is not the question, right? It is not palliative care we are talking about here. If we allow this to happen, are you not scared that palliative care will not be there and it will not be given to them because they have choices?

Senator Munson: Honourable senator, the Supreme Court is allowing this to happen. I am confident there are enough safeguards.

No matter what happens at the end of this day, or tomorrow or the next day, one would hope that some amendments are accepted on the other side to show that Parliament does work. At the end of the day, we will still have a bill that will, hopefully, allow every Canadian to make that choice. It's pretty simple from my perspective.

Some Hon. Senators: Question!

The Hon. the Speaker: Senator Enverga, one more.

Senator Enverga: We are talking about safeguards. If we allow this amendment, we are putting the cart before the horse. Let's open it up, but put the safeguards first before this amendment.

Senator Munson: I will repeat what I said before: The safeguards are there. We are going to have further discussion on so many amendments that will come before us on this issue. This is about a person's human rights, the right to die in dignity and have the choice to do so or the right to live and have the choice to do so. It is that simple at the end of the day. Thank you.

An Hon. Senator: Question, question! Enough, enough!

Hon. Grant Mitchell: Colleagues, I have huge respect, of course, for Senator Munson. I feel the emotion that he has just expressed.

I do want to make the point that ALS comes with a death sentence. It is very, very foreseeable that someone will die. Certainly under this legislation, someone with ALS would absolutely qualify.

With respect to these other diseases that he listed, I expect that they, too, will have very foreseeable deaths involved and they will qualify as well.

While we all need to be concerned and considerate about them, the emotion that Senator Munson expressed is clear in that regard. There have been powerful arguments made today and before on this debate about other groups of vulnerable people. What this bill says is we will deal with so much at this time. It tries to strike a certain balance. In fact, Senator Harder has indicated an acceptance of a further amendment, once it comes forward, that would define the point at which reports on further issues have to be presented, and that that can be dealt with quickly but with enough time to make certain that all classes of vulnerable people are cared for and dealt with under this legislation prudently.

• (2050)

The Hon. the Speaker: Senator Beyak, on debate?

Senator Beyak: I was questioning Senator Munson.

The Hon. the Speaker: Sorry, we are past that.

Are honourable senators ready for the question?

Senator Patterson on debate?

Senator Patterson: On debate, Your Honour, briefly. I know the night is getting long.

I am going to oppose the amendment and I want to state my thinking.

I do believe that the question before us is about more than whether the bill is compliant with the Charter. I do respect the arguments that have been made about the Charter, which are compelling and which we may have to deal with in the future, but I also believe that it is a public policy issue.

Senator Ogilvie and others have talked about the balance between protecting the vulnerable and respecting the Constitution. This amendment, however sincere and well-intentioned, does, in my opinion, take us much further along the scale than I am comfortable with. My gut feeling on this question of balance is that we should proceed incrementally and with caution. I think we are starting down a new path, and we should take cautious incremental steps.

The amendment takes categories of persons, albeit vulnerable persons, much further than proposed in the bill. Once these rights are extended, it is difficult to retrench. We can always expand the rights, and, indeed, we may be forced to by the predicted Charter challenge.

Thank you for the opportunity to state my reasons for opposing this amendment.

Some Hon. Senators: Question.

The Hon. the Speaker: Are there any other senators who wish to join the debate?

Hon. Lynn Beyak: Regarding the risk of error, as Senator Mitchell has already pointed out, ALS would already fall under the law. The other diseases are still having research done for a cure. I think that the risk of error or of finding a cure is too high for me to support the amendment. If someone is faced with unbearable pain and they have the option of death and we are giving that to them, they may take it just to be out of the pain, when in fact they could go on a few weeks later to live long and productive lives because they didn't choose to take the option of relieving the pain at that time. I think the risk of error and of finding a cure is too high for me to support the amendment.

The Hon. the Speaker: Are there any other senators who wish to join the debate? Are senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Joyal, seconded by the Honourable Senator Tardif, that Bill C-14 be not now read a third time but be amended in clause 3 — may I dispense?

Hon. Senators: Dispense!

The Hon. the Speaker: Honourable senators, we will go straight to a voice vote.

All those in favour of the motion, please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion, please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Do the government liaison and the opposition whip have a recommendation on the bell?

Senator Mitchell: Thirty minutes.

The Hon. the Speaker: The vote will be at 9:25 p.m., colleagues.

• (2120)

The Hon. the Speaker: Honourable senators, the motion is as follows:

THAT Bill C-14 be not now read a third time, but that it be amended in clause 3,

(a) on page 5 — shall I dispense?

Some Hon. Senators: Dispense.

Senator Cools: No, read it, please.

The Hon. the Speaker: Honourable senators, the amendment is as follows:

THAT Bill C-14 be not now read a third time, but that it be amended in clause 3.

(a) on page 5

(i) by adding after line 6 the following:

"***irremediable***, in respect of a medical condition, means not remediable by any treatment that is acceptable to the person who has the medical condition. (*irrémédiable*)", and

(ii) by replacing line 36 with the following:

"condition — including an illness, disease or disability — that causes enduring suffering that is intolerable to them in the circumstances of their condition;", and

(b) on page 6

(i) by deleting lines 6 to 21, and

(ii) by replacing line 35 with the following:

"condition, and after the condition had begun to cause enduring suffering that is intolerable to the person;".

Motion in amendment agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Black	McIntyre
Boisvenu	Mercer
Campbell	Mockler
Carignan	Moore
Cowan	Munson
Dagenais	Ogilvie
Day	Omidvar
Downe	Petitclerc
Dyck	Pratte
Eggleton	Raine
Fraser	Ringuette
Frum	Rivard
Greene	Seidman
Jaffer	Smith
Johnson	Stewart Olsen
Joyal	Tannas
Lang	Tardif
Lankin	Wallin
Maltais	Wells
Massicotte	White—41
McInnis	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Marshall
Ataullahjan	Martin
Batters	Merchant
Bellemare	Meredith
Beyak	Mitchell
Cools	Ngo
Cordy	Oh
Doyle	Patterson
Eaton	Plett
Enverga	Poirier
Gagné	Runciman
Harder	Tkachuk
Housakos	Unger
MacDonald	Wallace
Manning	Watt—30

ABSTENTIONS
THE HONOURABLE SENATORS.

Nil

(The Senate adjourned until Thursday, June 9, 2016, at 1:30 p.m.)

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