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(HANSARD)

Thursday, June 9, 2016

The Honourable GEORGE J. FUREY
Speaker

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# THE SENATE

**Thursday, June 9, 2016**

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

## SENATORS' STATEMENTS

### THE LATE HONOURABLE ROD A. A. ZIMMER

TRIBUTE

**Hon. Mobina S. B. Jaffer:** Honourable senators, I rise today to honour our friend and colleague Senator Rod Zimmer. Senator Zimmer was born and raised in Kuroki, Saskatchewan, and completed his Bachelor of Commerce degree at the University of Saskatchewan in 1973. Senator Zimmer began his career in politics at the ripe age of 26 when in 1968 he began to serve as the assistant to Honourable Cyril MacDonald, then-Liberal Minister of Welfare in Saskatchewan. From 1972 to 1979 Senator Zimmer served as assistant to the Honourable James Richardson, federal Minister of National Defence.

Senator Zimmer also had a very successful private sector career. He served as Vice-President of Corporate Communications for CanWest Capital Corporation from 1979 to 1983, and from 1985 to 1993 he served as Director of Marketing and Communications for the Manitoba Lotteries Foundation.

I had the great pleasure of working with Senator Zimmer when I was the Vice-President of the Liberal Party of Canada and as President of the Liberal Women's Commission. I always found Senator Zimmer to have tremendous energy and enthusiasm toward the Liberal Party causes.

Besides being a lifelong Liberal, Senator Zimmer was always ready to voice his opinion on the rights of Manitobans and the issues they faced. He was always the first to raise the issues wherever he went.

On August 2, 2005, Senator Zimmer realized his lifelong dream of being appointed to the Senate by Prime Minister Paul Martin. I had the distinct personal privilege of working with Senator Zimmer on the Standing Senate Committee on Human Rights from 2011 to 2013. Senator Zimmer always attended the meetings on Monday and always stayed longer to assure me that he supported the work of the Human Rights Committee.

On behalf of all of us assembled here today, I wish to extend our deepest condolences to Senator Zimmer's family and to express our heartfelt gratitude for Senator Zimmer's service to Canada. Now rest in peace, my friend, next to your father in Saskatchewan. Thank you.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of the family of Myrtle McIntyre — the Deschênes. They are the guests of the Honourable Senator McIntyre.

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

**Hon. Senators:** Hear, hear!

[*Translation*]

### NATIONAL HEALTH AND FITNESS DAY

**Hon. Paul E. McIntyre:** Honourable senators, as you know, Saturday, June 4, was National Health and Fitness Day in Canada. Senator Raine mentioned it in this chamber last week.

I want to talk about National Health and Fitness Day again today because it is very important to me. As you know, its purpose is to increase awareness among Canadians and encourage them to participate in physical activities that will contribute to their health and well-being.

Senators will recall that Bill S-211, which was enacted in 2014 and sponsored by Senator Raine and former Member of Parliament John Weston, instituted this day and formalized this concept. Bill S-211 encourages municipalities and Canadians to mark the day with local events celebrating and promoting the importance of using local health, recreational, sports and fitness facilities.

The goal is to reduce the burden of illness on families and on the Canadian health care system by encouraging people to become healthier and more active. Several hundred cities and towns across Canada have already proclaimed National Health and Fitness Day, and that number is growing every month.

We all know that Canada's mountains, oceans, lakes, forests, parks and wilderness areas offer recreational and fitness opportunities. Walking, jogging, cycling and swimming are just a few great ways of improving physical fitness.

Dear colleagues, let us continue to celebrate National Health and Fitness Day and take the time, both individually and collectively, to participate in physical activity as often as possible.

One thing is certain: there are many benefits to doing so. Thank you.

**Hon. Senators:** Hear, hear!

[*English*]

## BRAIN INJURY AWARENESS MONTH

**Hon. Terry M. Mercer:** Honourable senators, June is Brain Injury Awareness Month. Brain Injury Canada defines an acquired brain injury, or ABI, as a non-degenerative and non-congenital insult to the brain that may result in a diminished or altered state of consciousness and result in impaired cognitive, physical, emotional and/or behavioural functions.

Some of the stats are alarming. According to Brain Injury Canada, over 1 million Canadians live with the effects of an acquired brain injury. Acquired brain injuries are the number one killer and disabler of people under the age of 44. About 50 per cent of all acquired brain injuries in Canada come from falls or motor vehicle accidents.

I happen to be one of those people living with an acquired brain injury. Last year after suffering a stroke I was required to rehabilitate myself with the help of caregivers, doctors, therapists and, most importantly, my family and friends. The sheer amount of time and effort it takes to recover from an acquired brain injury is huge.

Organizations like Brain Injury Canada help to improve the quality of life for those living with a brain injury and their caregivers. Promoting awareness of acquired brain injuries and possible early detection and treatment goes a long way in preventing the devastating effects of an acquired brain injury. It also helps those who have suffered to get the help they need to recover.

I ask honourable senators to join me in helping to spread awareness about acquired brain injuries and the continued need for adequate support services to help those who have suffered from them. I encourage you to listen to the stories of survivors and family members about the support and guidance that they have received. I look for your support, honourable senators.

• (1340)

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of Her Excellency Petronila P. Garcia, Ambassador of the Philippines to Canada; Rose Tijam, President of Philippine Press Club Ontario; and Ben Ferrer, President of the Silayan Community. They are the guests of the Honourable Senator Enverga.

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

**Hon. Senators:** Hear, hear!

## PHILIPPINE DECLARATION OF INDEPENDENCE

### ONE HUNDRED AND EIGHTEENTH ANNIVERSARY

**Hon. Tobias C. Enverga, Jr.**: Honourable senators, it is with pride that I rise today to bring to your attention that Sunday, June 12, marks the one hundred and eighteenth anniversary of the signing of the Philippine Declaration of Independence. This momentous event, which indicated the beginning of the end of 333 years of Spanish rule in the Philippines, also marked the first time that the Philippine flag was officially unfurled and the music of what would later become the Philippine national anthem was first played in public. Millions of Filipinos all over the world come together to celebrate this historic day to honour the sacrifices of our forefathers and to promote our unique cultural heritage.

Honourable senators, Filipinos make up a significant portion of Canadian society. Approximately 700,000 people of Filipino descent currently live in Canada. One can only assume that this number will continue to grow, especially when we consider the fact that the Philippines has once again become the top source country of permanent residents in 2015. Preliminary estimates of data compiled by Immigration, Refugee and Citizenship Canada show that more than 50,000 permanent residents in 2015 came from the Philippines. In addition, facts and figures released last February indicate that the Philippines was among the top 10 countries of citizenship of temporary workers with a valid permit on December 31, 2014.

Honourable senators, the thousands of Filipinos who come to Canada every year continue to increase people-to-people ties that bolster the bilateral relations between Canada and the Philippines. These Filipinos — my *kababayans*, as we call one another — bring with them the unique customs, traditions and faith of my country of birth, thereby enriching the beautiful multicultural mosaic that is Canadian society. It is our proud cultural heritage that we celebrate today, along with the hard work and sacrifice of the Filipino people, past and present, within the Philippines and without.

Honourable senators, the Philippine national hero, Dr. Jose Rizal, once said: "He who does not know how to look back at where he came from will never get to his destination." Honourable senators, we are proud to say that Canada is our destination, and we are home.

I wish to end in my native language, Tagalog: *Maraming salamat, at mabuhay tayong lahat*, which means thank you very much.

## DISTINGUISHED VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of former Senator Jerry Grafstein.

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

**Hon. Senators:** Hear, hear!

# ROUTINE PROCEEDINGS

## CONFLICT OF INTEREST AND ETHICS COMMISSIONER

2015-16 ANNUAL REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table, in both official languages, the 2015-16 Annual Report of the Conflict of Interest and Ethics Commissioner.

## BUDGET IMPLEMENTATION BILL, 2016, NO. 1

FOURTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ON SUBJECT MATTER TABLED

**Hon. David Tkachuk:** Honourable senators, I have the honour to table, in both official languages, the fourth report of the Standing Senate Committee on Banking, Trade and Commerce, which deals with the subject matter of those elements contained in Divisions 3, 4, 5, 6 and 10 of Part 4 of Bill C-15, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures.

**The Hon. the Speaker:** Honourable senators, pursuant to the order of the Senate of May 3, 2016, the report will be placed on the Orders of the Day for consideration at the next sitting of the Senate, and the Standing Senate Committee on National Finance is simultaneously authorized to consider the report during its study of the subject matter of all of Bill C-15.

## LA CAPITALE FINANCIAL SECURITY INSURANCE COMPANY

PRIVATE BILL—FIFTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

**Hon. Bob Runciman**, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, June 9, 2016

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

FIFTH REPORT

Your committee, to which was referred Bill S-1001, An Act to authorize La Capitale Financial Security Insurance Company to apply to be continued as a body corporate under the laws of the Province of Quebec, has, in obedience to the order of reference of May 19, 2016, examined the said bill and now reports the same without amendment.

Respectfully submitted,

BOB RUNCIMAN

*Chair*

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

(On motion of Senator Runciman, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

# QUESTION PERIOD

## DEMOCRATIC REFORM

ELECTORAL REFORM—REFERENDUM

**Hon. Linda Frum:** My question is for the Leader of the Government in the Senate. It concerns an issue I have previously raised in Question Period, and that is the Liberal government's plans for electoral reform.

This past weekend, the Minister of Democratic Institutions told CTV's Question Period that the government would not move forward with changes unless they had broad buy-in from Canadians.

Could the Leader of the Government please tell us if this means the Liberal government's view on this matter has changed? Is the government now willing to hold a referendum on electoral reform so Canadians would have the final say on any changes to the design of the country's electoral system, or does the Liberal government plan to confine itself to consultations with professional activists and political partisans?

**Hon. Peter Harder (Government Representative in the Senate):** I thank the honourable senator for her question and would like to refer to the minister's comments in answering, where the minister made a commitment on behalf of the government to have broad consultations. There is a reference to a special committee of the other chamber, as you know, in which the government has adjusted its representation. I'm sure that that committee and other methods and engagement with Canadians will elicit the kind of response that will allow the government to come forward with an appropriate recommendation.

**Senator Frum:** Leader, you are aware that 74 per cent of Canadians have expressed their belief that a referendum is required before our electoral system is reformed. Doesn't this prove, leader, that Canadians believe that our electoral system

belongs to them? It does not belong to a party leader who made a pledge in an election. It does not belong to a parliamentary committee, and it does not belong to self-interested partisans. Our electoral system belongs to the people of Canada. Don't you agree, leader?

• (1350)

**Senator Harder:** I thank the honourable senator for her question. I want to assure her, as the minister has assured Canadians, that the government is intending on proceeding on the basis of broad support.

**Hon. Michael L. MacDonald:** Honourable senators, my question is also for the Leader of the Government in the Senate and it's also in the area of electoral reform.

As the leader and all of us in the Senate are undoubtedly aware, the government recently relented on the makeup of the all-party committee on electoral reform, which I will remind everyone includes only MPs and nobody from the Senate. The leader of the Green Party, the party of one, will now have a vote on the committee, and, of course, the separatist Bloc Québécois will have a voice on the committee.

In the press conference on May 10, the Minister of Democratic Institutions said the committee will ". . . present cabinet with a proposal." Therefore, the ultimate decision on changes to the electoral system will be made by the cabinet — not by the committee and certainly not by Canadians through consultation, as the government will not commit to having a referendum.

Could the Leader of the Government in the Senate please tell all honourable senators what is open and inclusive about making fundamental alterations to the country's voting system behind the closed doors of cabinet?

**Senator Harder:** I thank the honourable senator for his question. As he will know, government legislation requires cabinet to form a view. That view is then presented to the House of Commons in legislation, and that legislation, should it be accepted in the House of Commons, will find its way to this place. This place will have its voice at that time.

## IMMIGRATION, REFUGEES AND CITIZENSHIP

### APPLICATIONS FOR REFUGEE SPONSORSHIP

**Hon. Ratna Omidvar:** Honourable senators, my question is for the Leader of the Government in the Senate. It relates to recent changes in the political work required for private sponsor groups, also called groups of five, to file applications for sponsoring refugees.

Until recently, the government was accepting scanned copies of both the refugee paperwork and the sponsorship paperwork. However, this has recently changed. The government now requires groups of five to submit applications for all refugee populations, including Syrians, by mail, with original signatures on both the refugee application and the sponsor application.

Leader, as you can imagine, this adds a layer of complexity to an already complex situation and creates delays for individuals who are in precarious situations and precarious places where they may not work to the standards of Canada Post. Furthermore, affidavits to certify translations, whilst understandable, also present challenges.

I understand that this new regulation comes from security concerns, and those must be taken seriously. Will the government, however, consider a reasonable alternative, such as accepting scanned copies at the first stage and original signed applications at the interview stage?

**Hon. Peter Harder (Government Representative in the Senate):** I thank the honourable senator for her question. As she indicated in the question itself, the concern of the government in making this change was with respect to security concerns. The honourable senator's suggestion is one I would be happy to take to the responsible minister.

## FOREIGN AFFAIRS

### RUSSIA—DUMPING OF TOXIC CHEMICALS—ARCTIC SOVEREIGNTY

**Hon. Dennis Glen Patterson:** Honourable senators, my question is to the Government Representative in the Senate.

Last week I expressed my concerns and those of my constituents in Nunavut about a Russian rocket launch last Saturday which was expected to result in debris, including toxic hydrazine fuel from a rocket stage from the launch, falling into Canadian waters. I did appreciate the Government Representative's assurance that the Government Operations Centre would carefully monitor this launch.

Earlier this week we heard from Ms. Mylène Croteau, a spokesperson for Public Safety Canada, who told *Nunatsiaq News* that the government operations centre had been monitoring the rocket launch and that "Nothing has landed in our territory."

My question is this: First, where did the rocket launch debris fall if not in what was described as our territory, please?

**Hon. Peter Harder (Government Representative in the Senate):** I thank the honourable senator for his question and for his ongoing interest in this important question.

I would like to report, as the honourable senator's question confirmed, that the rocket was launched on June 4. As his question last week indicated, there was concern with respect to the potential for the rocket to land in Canadian soil.

I am left to understand from authorities that Public Safety Canada, the Department of National Defence, Global Affairs Canada, the Department of Fisheries and Oceans and

Environment and Climate Change Canada monitored the launch and reentry. Transport Canada issued a noticed to airmen to restrict air traffic for the time surrounding the launch. The precise entry point has not yet been made available, but current information expects that the physical debris landed in open water and sank.

The environmental concerns that the honourable senator raised with respect to hydrazine are taken seriously, but at this point there appears to be no evidence of that. Experts in Canada's Department of National Defence have assessed that there is a high likelihood that the hydrazine fuel used to boost this rocket phase would be either completely expended prior to separation or burned up in the atmosphere upon reentry, and therefore minimal environmental damage or risk is believed to have taken place. However, we are not yet able to confirm that. Authorities are continuing to monitor.

I should also indicate to the house that, as I indicated last week, this has been an area of active conversation and, indeed, deliberate engagement with the Russians to express our concerns and our frustration with the lack of clarification at various times.

We've used the occasion since the launch to remind the Russians of advance warning being required, and we've also urged the Russian government to make every effort in future both to give us advance warning and to ensure that nothing falls within our exclusive economic zone.

**Senator Patterson:** Well, I'm pleased that so many federal departments were involved in monitoring this situation, which has caused great concern in Nunavut, particularly to the residents of the area where the second stage was slated to land somewhere between southern Ellesmere Island and Greenland.

I would like to reiterate that although the debris was not planned to fall within Canadian territorial waters, it was projected to possibly fall on Canada's exclusive economic zone. Canada enforces its jurisdiction over its exclusive economic zone through the Arctic Waters Pollution Prevention Act and has a remedy for the dumping of pollutants, including from the air, in those waters even though they're outside so-called "territorial waters."

I would ask the Government Representative in the Senate this: Since it seems that we are not really sure yet where the debris fell, would Canada keep the people of Nunavut informed about what more is learned and also about what remedies might be pursued to prevent this kind of thing from happening in future?

**Senator Harder:** I would be pleased to ensure that the appropriate information is provided to the people of Nunavut and elsewhere.

• (1400)

With respect to the future, the kind of cooperation we are asking of the Russians cannot necessarily be guaranteed, so we'll have to continue to be vigilant.

## FISHERIES AND OCEANS

### MARINE PROTECTED AREAS—COMPENSATION FOR FISHERMEN

**Hon. Nancy Greene Raine:** The mandate letter of the Minister of Fisheries and Oceans includes the objective of protecting at least 10 per cent of coastal waters by 2020. When former minister Hunter Tootoo appeared before the Senate, he indicated that consultations would occur with provinces, territories, indigenous representation and fisheries organizations. Can the Leader of the Government update us at to what consultations have occurred so far? What feedback has there been from these affected groups?

**Hon. Peter Harder (Government Representative in the Senate):** I thank the honourable senator for her question and take note and will respond appropriately.

**Senator Raine:** Further, I would like to know if your government plans to compensate the workers and fishers whose livelihoods might be affected by increasing the marine protected areas to 10 per cent. Further, will any compensation be the same on all coasts? I'm from British Columbia, and I have noticed that there are different formulas for compensation with respect to fishermen and programs of support for fishermen, so if you could take that as well.

**Senator Harder:** Indeed, I would be happy to.

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[*Translation*]

# ORDERS OF THE DAY

## CRIMINAL CODE

### BILL TO AMEND—THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Baker, P.C., seconded by the Honourable Senator Harder, P.C., for the 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), as amended.

**Hon. Josée Verner:** Thank you, honourable senators. I rise today to share my position on Bill C-14. Although I am on medical leave right now, I wanted to join you on this day to commend you on the human compassion and intellectual rigour you have shown so far in the study of this bill.

I also want to reiterate my support for medical assistance in dying and the parameters set by the Supreme Court in *Carter*,

which unfortunately are not reflected in the current wording of Bill C-14.

In April 2010, when I was a member of Parliament in the other place, I supported in principle Bill C-384 introduced by Francine Lalonde to amend the Criminal Code to allow a doctor to help a person die with dignity.

On February 18, 2015, I delivered a speech here in this chamber a few days after the Supreme Court's decision, in support of the principle of Bill S-225 introduced by our colleagues, Senators Ruth and Campbell, to allow medical assistance in dying.

In that speech, I commended the decision in *Carter*. I also stressed how important it is for this chamber to respect the autonomy and fundamental rights of Canadians who, as much as possible, want to be free to choose, in an informed manner that is consistent with their own convictions, the appropriate care that will allow them to pass from life to death, without anyone else restricting that choice or making it for them.

I said those words just a few weeks before I myself received a devastating diagnosis of colorectal cancer. The tumour was at a very advanced stage. Every day for nearly 15 long months, I lived with the awareness of another reality: death.

During that period, I had time to reflect on my end of life, should it come to that, and how I would like it to happen.

In the hospital, I met other Canadians who, along with their loved ones, were forced to reflect on that possibility whether they were terminal or not.

Honourable senators, I am unable to support a bill that, contrary to the Supreme Court ruling, would set up a discriminatory system for Canadians afflicted with irremediable medical conditions and intolerable suffering.

Unfortunately, because of medical appointments, I will not be with you for the final vote on this bill. However, I want to make it clear that passing a bad bill and defeating the bill are not our only two options. We have a third option: an amended bill, as we saw last night, that eliminates, among other things, the reasonably foreseeable natural death criterion so that people like Kay Carter and others can choose how they want to die.

That is my wish too. Thank you.

[*English*]

**Some Hon. Senators:** Bravo.

**Senator Verner:** Your Honour, I would like a few more seconds to very sincerely thank you, as well as my colleagues here in the chamber, who have shown me sympathy, comfort and encouragement throughout my battle against cancer. Know that your messages touch me profoundly. Thank you again.

[ Senator Verner ]

[*Translation*]

**Hon. Claude Carignan (Leader of the Opposition):** Honourable senators, yesterday we adopted an amendment moved by Senator Joyal to change the definition of persons eligible for medical assistance in dying so that Bill C-14 complies with the Supreme Court ruling in *Carter*.

With the adoption of this amendment, we gave access to medical assistance in dying to a group of people who are enduring intolerable suffering but for whom death is not reasonably foreseeable.

[*English*]

But this is a right that will only be exercised once, so we must get it right.

[*Translation*]

Therefore, it is a unique fundamental and constitutional right, because it can only be exercised once.

Today, we are beginning a discussion that is just as crucial as yesterday's because we will attempt to establish a framework for access that will protect this class of people who have been given the right to medical assistance in dying.

[*English*]

We must carve out certain protections that will both provide access and rights for these persons to receive medical assistance in dying and, at the same time, protect them if they are vulnerable. The goal is therefore to provide a framework and a system that is a balance between the right to choose and protection.

We want to ensure there are strict, fulsome safeguards that could address any concerns that have been raised throughout this debate — safeguards that we decide moving forward will distinguish Canada from other jurisdictions where medical assistance in dying is legal.

Who are those who could have access? Who do we want to protect?

[*Translation*]

First, I would like to explain why we are talking about a "class of people". The lives of the people we talked about yesterday are all different.

Their individual characteristics, their illnesses and their suffering are unique. They could die after suffering for 10, 20 or 30 years. The absence of an imminent death and the fact that they may suffer for years before dying make it necessary to have a unique protection that is adapted to their personal and medical situation.

• (1410)

Protection, safeguards, are already built into the law. The law is appropriate. We will see this, through our deliberations, once we get to the topic of protections. The law already contains measures that I believe are tailored to people in end-of-life situations. However, people who are not terminally ill also face the risk of abuse, manipulation and undue pressure in a way that is different than people who are dying. For instance, the pressure that can be placed on them to hasten death can be more insidious and harder to identify. In addition, the manipulation can go on for an extended period of time.

Paragraphs 114 and 115 of the Supreme Court's *Carter* decision contain a list of possible sources of error. If I may, I'd like to quote an excerpt:

[*English*]

> . . . cognitive impairment, depression or other mental illness, coercion, undue influence, psychological or emotional manipulation, systemic prejudice (against the elderly or people with disabilities), and the possibility of ambivalence or misdiagnosis as factors that may escape detection or give rise to errors in capacity assessment.

[*Translation*]

The judge therefore concluded that vulnerability can be assessed on an individual basis. Accordingly, balanced legislation that gives access to medical assistance in dying must also offer protection.

Since every case is unique, the solution is to make a distinction and include protections for each group based on the individual nature of the person. There needs to be an individualized assessment of the situation of people who are not terminally ill. That is why protections for people who are sick, people with disabilities, people whose suffering is intolerable but whose death is not foreseeable, must be adapted to each individual's reality. Every case is different, and this means that the criteria to be examined for every request for medical assistance in dying must be subjective and therefore assessed on a case-by-case basis. I am therefore proposing a model of judicial authorization that would be exercised by a superior court.

[*English*]

As we have seen in the number of cases that have gone before the Superior Courts in the four-month extension, this method was impartial, balanced and provided individual oversight.

[*Translation*]

As we saw in *Carter* 2, the Supreme Court indicated that a safeguard could be, for example, requiring judicial authorization so that cases are assessed individually to protect the vulnerable.

This measure is possible. It allows a person to be eligible for medical assistance in dying, but it also protects the vulnerable. A judge could give access to medical assistance in dying if he or she is satisfied that two independent medical practitioners and a psychiatrist confirm that the person was informed of their medical condition; the prognosis for their medical condition and, if known, their life expectancy; the palliative care that could relieve their suffering; and the risks associated with medical assistance in dying. A psychiatrist could confirm that the person has the capacity to provide informed consent.

[*English*]

Now to require each individual to appeal to the Superior Court would be a barrier to access for those who meet the eligibility under *Carter*. But we must make a distinction between those who are at the end of life versus those who are suffering intolerably but their death is not near.

As we have seen in Quebec and other jurisdictions, "end of life" is a well-understood medical and legal term. It provides a timeline whereby individuals may be assessed. But for those who are not at the end of life, the only way to have sufficient parameters in place is to have a judicial review on a case-by-case basis.

I will quote the *Carter* decision of extension in 2016:

> 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.

This will still be the case for those seeking medical assistance in dying whose death is not near but still meet the criteria as set out in proposed subsection 241.2(1).

We must not exclude those who are suffering, but as Peter Hogg expressed at the committee, it is pertinent to provide safeguards.

[*Translation*]

Constitutional expert Peter Hogg told the Standing Senate Committee on Legal and Constitutional Affairs, and I quote:

> It could broaden the class of entitled people. It could add different safeguards . . .

How do we assess how vulnerable people are in each of these situations? What measures do we need to put in place ensure that their rights are guaranteed and that vulnerable people are protected? Yesterday, when we adopted Senator Joyal's amendment, we broadened access to include people who meet the eligibility criteria set out in *Carter*. Today, I think we need to start examining the conditions that would give these individuals access to medical assistance in dying.

In the case of people who are at the end of life, I believe that we could adapt the provisions in the bill, but in the case of people who are not at the end of life, we need to create a mechanism. However, a mechanism is a type of limit, and as we know, with respect to democratic rights, a limit must pass the reasonable limits test under section 1 of the Canadian Charter of Rights and Freedoms. This test involves identifying that the legislator has a pressing and substantial objective in implementing these measures or safeguards and looking at that objective.

In this case, the objective is to protect vulnerable people, and we have to ask ourselves whether these measures harm or have any effect on people who want to exercise their constitutional right. I think that judicial authorization is the best way to balance these rights in the case of people who are not at the end of life. The legislator chose a total ban for people in this group. The Supreme Court already said that this was unreasonable and not minimally impairing. I therefore propose that a judge examine the requests on a case-by-case basis, with the help of an assessment by a medical practitioner and a psychiatrist.

• (1420)

Yesterday, we defined a group in terms of the reasonable belief of a natural or foreseeable death. Today, my amendment puts forward the notion of end of life based on Quebec's law, which has begun to prove its worth and is recognized in the medical community as being easy to apply.

MOTION IN AMENDMENT

**Hon. Claude Carignan (Leader of the Opposition):** That is why, honourable senators, I move:

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

(*a*)
on page 6,

(i) by adding after line 5 the following:

"**(1.1)** In addition to the criteria set out in subsection (1), a person who is not at the end of life may receive medical assistance in dying only with the authorization of a judge of a superior court.

**(1.2)** The judge must provide the authorization referred to in subsection (1.1) if the judge is satisfied that

**(a)** the person meets the criteria set out in subsection (1);

**(b)** two independent medical practitioners confirm that the person was informed of

**(i)** their medical condition,

**(ii)** the prognosis for their medical condition and, if known, their life expectancy,

**(iii)** the palliative care that could relieve their suffering, and

**(iv)** the risks associated with medical assistance in dying; and

**(c)** an independent psychiatrist confirms that the person has the capacity to provide informed consent to medical assistance in dying.", and

(ii) by adding after line 39 the following:

"**(c.1)** ensure that, if the person is not at the end of life, the person has obtained the authorization referred to in subsection (1.1);"; and

(*b*)
on page 8,

(i) by replacing lines 9 to 12 with the following:

"viding medical assistance in dying, the medical practitioner or nurse practitioner who provides the opinion referred to in paragraph 3(e), the medical practitioners providing the confirmation referred to in paragraph (1.2)(b) and the psychiatrist providing the confirmation referred to in paragraph (1.2)(c) are independent if they

**(a)** are not a mentor to the other practitioner or practitioners or re-", and

(ii) by replacing line 21 with the following:

"the other practitioner or practitioners or to the person making the re-".

The purpose of this amendment is to ensure that when the doctor refers to the section that lays out the procedure for providing medical assistance in dying, he or she ensures that an individual who is not at the end of life has obtained the judicial authorization referred to in subsection (1.1).

Following that are concurrence amendments that obviously ensure the enhanced applicability of the legislation.

**The Hon. the Speaker:** It is moved by the Honourable Senator Carignan, P.C., seconded by the Honourable Senator Martin, that Bill C-14 be not now read a third time, but that it be amended in clause 3, on page 6 . . .

**Hon. Senators:** Dispense.

[*English*]

**The Hon. the Speaker:** Senator Carignan, your time has expired, but a number of senators have expressed a desire to ask a question. Do you want five minutes?

**Senator Carignan:** Yes.

**The Hon. the Speaker:** Is five minutes granted, honourable senators?

**Hon. Senators:** Agreed.

**Hon. David Tkachuk:** I'm still a little confused about the true meaning of what was passed yesterday in amendment, whether it included people who claimed that they have psychological pain. Is it your interpretation that it includes those who make a claim to have unbearable psychological pain? Since it does not exclude that group, it simply says "pain," and that this particular amendment would apply to that particular aspect of assisted death?

[*Translation*]

**Senator Carignan:** The bill, as amended, makes no mention of psychological pain. It will be up to the courts to interpret, in future cases, the extent to which psychological suffering can interfere with physical suffering.

In the presence of psychological suffering, there must be physical suffering. When I refer to a psychiatrist, the idea is to ensure that the person is not suffering from a mental illness that could have an impact on their capacity to give their consent in a free and informed manner.

If the person was suffering from a mental illness that could alter their judgment, I believe that their consent, which would be neither free nor informed, could not be deemed given in this case.

[*English*]

**Senator Tkachuk:** In other words, a judge would have to decide whether the pain that the victim is claiming would be physical or would be psychological? Does the judge have to make that decision and exclude one or the other? I'm not exactly sure how this process is going to take place.

[*Translation*]

**Senator Carignan:** It doesn't change anything, because this method is for people who are not at the end of life and those who meet the criteria of irremediable suffering or pain, as defined in *Carter*, which were included in the bill.

The bill does not refer specifically to psychological or other pain. It will be up to the courts to specify, but I would say that was the idea of yesterday's debate.

Today's debate is about the idea that someone with intolerable and irremediable suffering can access medical assistance in dying. My proposal provides that at least two independent medical practitioners must assess the person's medical condition and a psychiatrist must confirm that the person's psychiatric condition does not prevent them from providing informed consent. The psychiatrist requirement has to do with free and informed consent.

[*English*]

**Hon. Terry M. Mercer:** I don't doubt the motive of your motion. I hope you don't interpret my questions as being that. I think I understand what motivates you. But you do make two references in your proposed amendment to palliative care and that "an independent psychiatrist confirms that the person has the capacity to provide informed consent to medical assistance in dying." That would indicate that the psychiatrist has had time to sit down with the person, interview them and make a professional assessment that he or she does have the capacity to provide informed consent to medical assistance in dying.

If we were to do this, it would dramatically limit the provision of the bill to Canadians in urban centres. The last time I lived in a rural area, I didn't see a sign on anybody's front lawn saying, "Local Psychiatrist." So you would have to go to the city to see the psychiatrist. I have not had to do this, but I'm told by people who have that if you want to see a psychiatrist, the line-up is not short.

• (1430)

All of the discussions that we've had are about timing and not interfering too much in the process. If you add the psychiatrist to the mix, then timing will be an issue and also availability to Canadians in many rural communities. I don't know this for a fact, but I suspect that in some regions of the country there will be no psychiatrists that could be consulted and could perform this service.

[*Translation*]

**Senator Carignan:** I based my motion on the guidelines that the administration of the Ontario Superior Court gave to its judges who had to give the constitutional exemption authorized in *Carter*. What I am proposing in my amendment is already being done. It is part of the guidelines given to the justices of the Ontario Superior Court to require a psychiatric report to assess free and informed consent. I realize this is limiting, but I believe that it is justified in a free and democratic society, given the individual nature of the decision, and that this is about a constitutional right that is exercised only once. We must proceed with caution.

[*English*]

**The Hon. the Speaker:** Senator Mercer, we are rapidly running out of time, and there are a couple of other senators who would like to speak. If we have time, we will come back to you.

[*Translation*]

**Hon. Pierre-Hugues Boisvenu:** I have a question for Senator Carignan. I am totally open to the idea of people being able to avail themselves of this right. I voted in favour of yesterday's amendment. However, I have two quick questions.

I try to keep justice as far away from health as possible. We have seen how the courts have become increasingly involved in the mental health field, and families pay the price. I want to talk about how much it could cost a family to go to Superior Court in order for a loved one to exercise this right. They will need to call on lawyers and specialists, and this will cost the family money. Isn't this a form of discrimination between the rich and the poor and something that would keep the less fortunate from accessing this privilege?

[*English*]

**The Hon. the Speaker:** Honourable senators, Senator Carignan's time has expired. May we extend another five minutes? There are a few more senators who would like to ask questions.

**Hon. Senators:** Agreed.

[*Translation*]

**Senator Carignan:** Thank you. You are right to raise the issue of cost. First, getting this authorization is not an adversarial process. The person is not going up against anyone. We are not talking about a trial. We are talking about affidavit evidence, a medical report, that can be presented in court or in the office of a judge. This type of request is usually heard on an urgent basis because it affects a person's integrity. It is given priority and the hearing cannot be postponed.

With regard to cost, surely the provinces can provide legal aid to people who don't have the money for this procedure, if that is not already the case. However, in my opinion, very few people will use this procedure. It will not further clog the court system.

This procedure applies only to people who are not at the end of life. People who are at the end of life will follow the procedure set out in the existing legislation, which relies on the opinions of doctors. This procedure is not as great an obstacle as one might think, given the situation. Yes, there will be a delay, but that delay may be a good thing in that it will give the person extra time to be sure that he or she is making the right decision.

[*English*]

**Hon. A. Raynell Andreychuk:** Senator Carignan, my understanding of the amendment last night by Senator Joyal was to make it constitutionally compliant to the Supreme Court decision, and so the other category was being added that had been excluded.

My understanding, originally, was that yours would be to add a layer of judicial oversight, which would make sure that the rules were followed — not a full trial. In reading your amendment, you seem to have gone further than Senator Joyal's amendment.

Is it your intention to have simply added the "judicial," or by using some of the assessments that you have here, and the "psychiatric," that you've gone beyond the amendment of Senator Joyal?

[*Translation*]

**Senator Carignan:** No. It is the same group of people targeted by the bill and Senator Joyal's amendment. The only distinction is between those who are at the end of life and those who are not. Those who are at the end of life would follow the procedure that is already set out in the bill, with a doctor. Those who are not are more susceptible to pressure. For example, someone with a serious disability who has been bedridden for five years and whose spouse has moved on with life is vulnerable. Such a person may feel like a burden and may feel unduly pressured to end his or her life. These people need to be protected, and that is the purpose of judicial authorization.

**Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate):** If I understand correctly, you want to put medical assistance in dying under judicial control. In the 2015 *Carter* decision, at paragraph 125, the Supreme Court states that stand-alone exemptions are not the best solution. By requiring people who are not at the end of life, whose life expectancy is more than three to six months, to go to court, don't you think you are significantly limiting the right recognized by the amendment we adopted yesterday, compared to what Bill C-14 recognizes? The bill is broader and doesn't require patients to go to court when their prognosis is unknown.

[*English*]

**The Hon. the Speaker:** Senators, I don't need to underscore the importance of this debate and the importance of letting as many senators as possible not only enter the debate but ask as many questions as possible. I plead with senators to try and keep your questions direct so that we can get the senators who wish to ask questions involved in the debate. Thank you.

Senator Carignan.

[*Translation*]

**Senator Carignan:** First of all, *Carter* 1 called for openness to everyone, including people in end-of-life situations. Clearly, requiring judicial authorization for people at the end of life is completely ridiculous, and the Supreme Court said as much. Furthermore, what was decided in Ontario was that if death is not foreseeable, in order to resolve the issue, it is better to apply to the courts. For people at the end of life, that is completely inappropriate, and I agree with the Supreme Court.

However, in *Carter* 2, the Supreme Court states:

> 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 *Carter* 2, the Supreme Court states that judicial authorization can be an appropriate way to protect vulnerable people and balance people's rights.

[*English*]

**The Hon. the Speaker:** Point of order. Senator Runciman.

POINT OF ORDER

**Hon. Bob Runciman:** Your Honour, could you give guidance to the chamber with respect to the point that Senator Andreychuk raised questioning whether, as I understood her intervention, the

amendment put forward by Senator Carignan is in conflict with the motion passed by the chamber last evening?

**The Hon. the Speaker:** Thank you.

On debate? Senator Carignan.

[*Translation*]

**Hon. Claude Carignan (Leader of the Opposition):** No, on the contrary. Senator Joyal's amendment identifies the group eligible for medical assistance in dying. One group will need a doctor's authorization to access medical assistance in dying; the other group will need a judicial authorization. Unless there was a problem with the translation, I do not see how this is contradictory.

• (1440)

[*English*]

**Hon. Joan Fraser (Deputy Leader of the Senate Liberals):** I would submit that this amendment is in order.

In the main body of the bill there are provisions for safeguards. This amendment addresses the matter of safeguards for persons who avail themselves of the services of assistance in dying, whether under the original form of Bill C-14 or as now amended. The matter of safeguards is entirely within the scope of this bill and, in my view, is the appropriate subject for an amendment.

The fact of the amendment last night, which opens up the application of the bill to persons who are not at the end of their life, makes it all the more appropriate for an amendment to address that class of persons who were not envisaged directly by the original drafters of the bill.

In my view, the purpose of this amendment — and I hope later to speak to the amendment itself — is entirely within the scope of what we are doing; therefore, the amendment would be in order.

**Hon. Anne C. Cools:** Perhaps I can offer some insight.

The amendment which Senator Joyal moved has already been adopted by the Senate. It is a serious matter to draw into conflict a new amendment which, in my view, has properly been put before the house and debated.

Any issues of disagreement or difference between those amendments are probably dealt with by votes of this house. Therefore, Your Honour, unless Senator Carignan's amendment is out of order for some very definite reason that can be identified and proven, the solution has always been that the resolution of different motions is for the house to vote on Senator Carignan's amendment. Therefore, I recommend that we proceed toward that vote. If we have a problem with it, then the house will deal with it by the vote. I would submit that at this point in time the house has not demonstrated that it has a problem with Senator Carignan's amendment.

**The Hon. the Speaker:** Thank you, colleagues, for your input.

Senator Runciman raises a point of order that pertains to a point of law. My role as Speaker pertains to adjudicating on points of order relating to procedure. In my view, procedurally, Senator Carignan's amendment is in order, and we will continue with the debate.

We are out of extended time again for Senator Carignan, unless it's the wish of the house to continue with questions, we continue with debate. I'm in your hands, colleagues. Do you want to give Senator Carignan another five minutes for questions?

**Some Hon. Senators:** Agreed.

**The Hon. the Speaker:** Senator Carignan.

[*Translation*]

**Hon. Percy Mockler:** Senator Carignan, as you have often heard said, and as mentioned in the previous debates, Bill C-14 affects everyone. I listened carefully to the amendment you are proposing, which further enhances the safeguards. I also had a chance to carefully read an article in *Le Devoir*. I have a question for you on what you are proposing right now.

I appreciate the process that the applicant must go through. In Quebec and in other provinces, the person expresses their desire to receive medical assistance in dying. That is the first step. The second step is to apply for medical assistance in dying. The third step is the manner in which this application will be forwarded and where it will reach within the jurisdiction. Once the application is accepted, a plan will be designed to administer the medical assistance in dying. That is the fourth step.

In your experience, will the proposed amendments assure the applicant that the process will be followed in a dignified manner?

**Senator Carignan:** Absolutely, Senator Mockler. This is an extremely sensitive topic. I have talked to Superior Court justices who have had to make truly sensitive decisions affecting the integrity of the person, and these justices do so with a great deal of care and compassion. What is more, if people are unable to travel, judges can go to their bedside to hear them and ensure that there is no outside pressure. This happens quite frequently for other types of procedures.

Sometimes people refuse. There has to be certainty about consent or refusal for certain types of care. Think of blood transfusions for Jehovah's Witnesses, for example. These are the kinds of cases that judges are involved in fairly frequently.

[*English*]

**Hon. Ratna Omidvar:** Senator Carignan, I have a question about whether judicial pre-authorization could become unconstitutional. There are some precedents with the abortion committees which were deemed by the Supreme Court to be unconstitutional because they caused delays and barriers. May I have your opinion on that?

[*Translation*]

**Senator Carignan:** A person seeking medical assistance in dying would be better off going through a process with a judge, which would take a few weeks at most, rather than trying to challenge the constitutionality of the law to make the judicial process take a month.

I sincerely believe that the goal is to protect vulnerable people, to protect people whom others might want to abuse. A judge is an impartial, independent person with the skills to detect undue pressure on an individual. I don't think it would be challenged or declared invalid because it is a justifiable limit in a free and democratic society.

[*English*]

**Hon. Carolyn Stewart Olsen:** I need clarification on two things, senator, if you don't mind.

You suggest a judge of a Superior Court. In New Brunswick, we don't have a lot of judges in Superior Court, so that will mean travel time and extra costs for people in rural areas. I know that you think they are going to come to your bedside, but I really don't know.

Are you suggesting we need two medical practitioners and a psychiatrist to sign off? I need some clarification because it seems to be developing as many hoops as Kay Carter had to go through to get her judgment.

**The Hon. the Speaker:** Colleagues, Senator Carignan's time has expired. Can we indulge Senator Carignan to at least answer the question?

**Hon. Senators:** Yes.

[*Translation*]

**Senator Carignan:** It would be a superior court judge within the meaning of section 96 of the British North America Act, 1867. All of the provinces and territories have superior court judges, even though they don't necessarily call them that. Some provinces used the term "supreme court." These would be superior court judges, and they travel throughout their jurisdictions. In Quebec, for example, judges fly to Iqaluit in order to cover the territory.

• (1450)

With respect to the physicians, there are two doctors and a psychiatrist, depending on the significance of the request, the consequences and the health condition of the person who is not terminally ill.

[*English*]

**Hon. Frances Lankin:** I rise to support Senator Carignan's amendment, and I do so for three reasons. First, I believe this amendment is in keeping with the ruling of the Supreme Court that it is the job of Parliament to put in place the regulatory regime that provides the governance for medical assistance in dying.

Second, I believe that this amendment is a bridge to and respectful of the decision of the House of Commons and their concern for vulnerable persons and the needed additional protections that we heard both ministers speak to in this house when they came.

The third reason I will support this is because of extensive discussions and consultations I've had with members of coalitions of disability groups, and I will speak to each of those three points.

Before I do, I will preface my remarks by returning to last night and saying I appreciate the contributions of all senators and all the perspectives shared. I found myself in agreement with the comments of Senator Joyal, Senator Cowan, Senator Ogilvie and Senator Frum, and I voted in favour of that amendment.

I have spoken on second reading about my concerns for a whole class of Canadians, those whose natural death is not reasonably foreseeable, being exempted or faced with prohibitive ban under the legislation of Bill C-14 as it was written. But I have always felt that we were open to consider the kind of protections that should apply to that class of Canadians and whether they should be different than the class of Canadians whose natural death is reasonably foreseeable.

We heard people talk to that last night who said they saw the possibility of a different regime of protections, including judicial authorization. People have quoted Professor Hogg in this chamber, and he has alluded to the possibility of a different regime. And, quite frankly, the bill itself and the House of Commons and the government in putting forward Bill C-14 looked to different regimes in the reviews that they have put forward to study further protections for groups of people that were not considered in *Carter*, such as mature minors.

I believe that this is both in keeping and supportive of the amendment that we passed last night and supportive of our job as parliamentarians and in fact supportive of Canadians, a group or class of Canadians who meet the criteria that has been set out in *Carter* of intolerable suffering and irremediable illnesses and yet whose natural death is not reasonably foreseeable. There is a subset of Canadians among that group who are facing vulnerabilities because of things such as disabilities, intellectual or physical disabilities, or other groups of people, and we can expand on that as we have our debate.

In the process of establishing protections, I believe two routes will unfold in our discussions here. The first route is one being suggested by Senator Carignan, and that is of judicial authorization. I think one of the principles that we have to meet — and you spoke to this when you asked whether it meets the test of reasonableness — is whatever provisions are put in place, they must not create an outright barrier and they must meet a test of a minimal impairment of a person's rights.

I would suggest that this process of judicial authorization meets that. The Supreme Court itself set it out with respect to *Carter* 2 and the four-month period after the extension was granted to the government to bring forward a bill in the House of Commons and before the Senate. I believe, therefore, the Supreme Court would see this as a minimal impairment and as a further protection for a class of people and they would not find a problem with it.

Now do I think it is the ideal mechanism? No. I think we need to look to what are the actual groups of people we are talking about. What is the problem we are looking to in terms of coercion? What is our concern to ensure that there is voluntariness about the request that is coming forward? What are the conditions that might lead a person to request when it's not fully voluntary? What are the social conditions? What are the social determinants of health that feed into that?

That is a very long discussion and there is much to be considered. Many of the remedies we will find as part of the protections to be put in place will fall within provincial jurisdiction, but the discussion has to be had. We have to bring parties to the table.

When I speak about the disability community, let me say that they began the process of looking at Bill C-14 in complete disagreement with the bill because they felt that it left their stakeholders completely vulnerable. By the time the bill came to the Senate, they came to us and said, "We actually want you now to vote in favour of it because at least it gives us some protection, but we want some more."

It was in discussions with that coalition that we developed the concept of bringing forth an amendment, which we will talk about at a later time, to section 9.1 and the reviews, and I've shared my proposed amendment with all of you, which would be a further review to be established that would look to these particular Canadians. I know there is an amendment coming to my amendment, a sub-amendment which would classify and specify for those persons whose natural death is not reasonably foreseeable, that we look at the social conditions and social determinants of health that place people in vulnerable situations, and perhaps without, where we would put into question the voluntariness of their request, and in those circumstances we should have additional protections.

I think that Senator Carignan is very right when he speaks about the small group of people for whom the judicial authorization will apply. If we look at cases that have come forward during the four months, the majority of those cases were people whose natural death was reasonably foreseeable. It was a small minority where that was not the case.

The protections, while they're for an even smaller subset, are for an incredibly important reason and I think both justifiable and the humane and appropriate approach in Canada for us to care for those people who are the most vulnerable.

I've mentioned the amendment that will come forward that will look to establish a review. It would be my hope that the amendment, which both suggests the establishment of the review and suggests an end date of two years for a time period after which the government needs to report out with their recommendations to both houses of Parliament, that we would see concrete recommendations for protections that could replace the judicial authorization.

So we have come from a period of time where there was a complete ban on all Canadians to seeing post-*Carter* a judicial authorization process to us now putting a legislative regime in place that governs but understands a difference in Canadians' sensibilities between those whose death is or is not naturally foreseeable and our concern for the most vulnerable.

I want to raise one issue, and this comes from a number of stakeholder groups, BC Civil Liberties and others, who are concerned about the question raised and that Senator Carignan addressed around poverty and around access. At second reading debate, Senator Omidvar asked us to carefully apply a lens of poverty as we looked at the issue of access, and I think this is a real issue.

I do understand that it is a much lesser cost than the appeal system that Kay Carter and others had to undertake, but it is still a real issue and there are barriers. Legal Aid, while available, is not universally available. Legal Aid clinics are not universally available, nor are legal certificates for individual lawyers. In all places there are shortfalls in funding. There are barriers there. But I don't believe we need to fix that here.

• (1500)

I will give you an example of the concerns that have been raised about conscientious objection on the part of health care practitioners. It's a concern that I share. The Province of Ontario and other provinces are moving in a direction to put in place an essential referral capacity so that doctors who conscientiously object do not have to make a referral. The patient can go to a central registry and find a referral to a doctor who would be willing to help them with this process.

I believe the provinces can put in place the kind of streamlined and cost-assisted way to make accessing this right feasible for all Canadians and that finances are not a barrier.

I will finish my remarks by saying that the bridge to the House of Commons and respect for their decision, and the concerns that the minister has expressed here in this chamber about the most vulnerable of this group of Canadians who they had prohibited from access to medical assistance in dying under Bill C-14, are important concepts that we should take to heart. As we wrestle with the concept of actually sending a bill back to the democratically elected house and as we look to fulfill our responsibilities as senators of review and advice and improving a bill, ensuring constitutional compliance, we also look to protect groups of people and minorities and ensure that there are not abuses of those persons. This is the perfect sweet spot for us: to understand the real, meaningful and appropriate concerns the minister expressed; to address them in a way that is consistent with what the Supreme Court set out for a four-month period; to do so with the knowledge that we're also asking them to review this and to look at building appropriate recommendations for the future for better protections than this that are not tying health care decision making to legal courts as an ongoing process; and to at a point in time, when they report, be able to replace this process with a process of better public policy.

So, senators, I urge you to support this recommendation and hope that if we are successful, we will be able to convince the House of Commons and the government to support it as well.

Thank you very much.

**Hon. Daniel Lang:** Would the honourable senator take a question?

**Senator Lankin:** Yes.

**Senator Lang:** I want to follow up on the questions put to Senator Carignan by Senator Stewart Olsen and, I believe, Senator Mercer in respect to the realistic, pragmatic ability for this legislation to work for people in rural Canada.

I understand that you live in a part of rural Ontario, not unlike some of us who live in other parts of rural Canada. In accessing this particular amendment, if somebody in your region were to apply, would it be easy for them to contact and get the time of a judge of a Superior Court and, secondly, the assistance of a psychiatrist in the area that you come from?

**Senator Lankin:** Thank you.

As things stand today, it would not be the easiest thing. But I firmly believe that the province has a responsibility to put in place the procedures for people to access health services that will become legal health services when this bill is passed by both houses and eventually receives Royal Assent. So what does that mean?

I don't want to be put in a place of answering questions from senators who didn't get to ask Senator Carignan a question. I'm not a lawyer. Let me say again that I'm a policy person. But I do believe, as a person who lives in rural northern Ontario, that there are occasions where the Superior Court comes to the community to hear cases. I believe that there are occasions where through Legal Aid and other supports individual claimants are allowed and supported to travel. That may not be something that a person is able to do given their health conditions, and, therefore, it would be the responsibility of the court to hear them somehow.

With respect to psychiatrists, that is a rare resource, but it is a resource that has been put in place already and has been expected in terms of the judicial authorizations that we have them seeing. It has worked thus far. I honestly don't have an analysis for you that says whether all the people who have applied live in urban Canada or not. But there are mechanisms through telehealth and other things where we are doing massive health care provision at a distance these days. I believe that that might be a solution. Again, is it ideal? It sure is a better protection than not having it at all.

**Hon. Pana Merchant:** Could I also ask you a question, Senator Lankin?

**Senator Lankin:** Yes.

**Senator Merchant:** You're not a lawyer, and I'm not a lawyer either, but I didn't have a chance to ask Senator Carignan.

I'm just wondering about necessity and how this is going to work. From your experience, are you aware of instances where psychiatrists and a doctor have gone to a judge, presented their case, and the judge disagreed with them? I'm just wondering why you feel that we need this.

**The Hon. the Speaker:** Senator Lankin, are you asking for five more minutes?

**Senator Lankin:** No, I'm asking to answer this question, because they are all for Senator Carignan anyway, not really for me.

**The Hon. the Speaker:** Colleagues, agreed?

**Hon. Senators:** Agreed.

**Senator Lankin:** Am I aware of a case where the judge has disagreed with the medical practitioners who have come forward? Personally, I'm not. Do I believe that they have the capability and capacity and the willingness to do so? Absolutely. I have seen judges in many situations disagree with the expert advice and/or testimony that comes forward. But only a number of applications have come forward to Superior Courts under the judicial authorization that was put in place by the Supreme Court in *Carter* 2. I know of cases where the judge agreed, but I don't know if there were cases where they disagreed. It's possible.

**The Hon. the Speaker:** On debate, Senator Batters. Senator Lankin has not asked for extra time to answer questions.

**Hon. Denise Batters:** Thank you, honourable senators. I have a brief intervention on this particular amendment. I wanted to note a few different things.

First of all, there is no definition of "psychiatrist" in this amendment of Senator Carignan, and there isn't a definition in this bill. Also, I note that "psychologist" is not included as one of the types of medical practitioners that could be accessed for this particular assessment.

As well, colleagues, the federal Liberal government has previously ignored amendment recommendations to require a psychiatric assessment for people who have a concurrent mental illness along with also having a grievous physical illness, so I'm wondering why Senator Carignan believes that the Liberal government would accept this particular request for a psychiatric assessment for everyone who is not at end of life. I'm wondering if Senator Carignan has assurance from the federal Liberal government that they support this particular portion. Does he have this assurance from the Senate Liberals that they support this particular portion? I am wondering if he has assurance from those senators who represent the government in this chamber, that he has their approval of that particular portion.

I want to let my honourable colleagues know that it was actually judges in Alberta who agreed on the assisted suicide that was done last month with a patient who had a solely psychological non-terminal illness. We heard testimony about this particular case at the Legal Committee this week. We heard from the lawyer of that patient that three doctors approved that patient's assisted suicide. In this particular case, it was an extremely rare psychiatric disorder, and, with all the work I have done on mental health for several years, I have never heard of that condition before. Yet the only psychiatrist who approved the assisted suicide never met the patient, only reviewed the file. The assisting doctor who was willing to do the assisted suicide also

never met the patient and did the consultation by FaceTime. Only one of those three doctors even met that patient, and judges approved that assisted suicide last month.

• (1510)

Lastly on this brief intervention, I want to note for honourable colleagues that Senator Carignan's amendment (1.2)(b) states:

> **(b)** two independent medical practitioners confirm that the person was informed of

And it lists different other things. However, subparagraph (iv) states:

> the risks associated with medical assistance in dying;

I am wondering what that phrase means. What does "risks associated with medical assistance in dying" mean? Death?

Thank you.

**The Hon. the Speaker:** Senator Batters will you take a question?

**Senator Batters:** Yes.

**Hon. Lillian Eva Dyck:** Thank you, Senator Batters. You were asking some of the questions that were in my mind as well.

Both of us are from Saskatchewan. I know that you know as well that psychiatrists are in great demand. There are probably not enough psychiatrists to serve our province, particularly in northern Saskatchewan. Would you consider that there could be someone other than a psychiatrist who could confirm that the person was mentally competent? For instance, you mentioned psychologists. Would there be any other professional people that you might consider could replace the psychiatrist in that kind of capacity?

**Senator Batters:** Unfortunately, I know all too well the need for more mental health care and more psychiatrists throughout our country and in Saskatchewan as well. That's why I asked about the possibility of a psychologist.

I do agree that those types of assessments are necessary to make sure that somebody is properly consenting. I just want to make sure that people are receiving the care that they need and that the strictest safeguards are in place for a procedure that has no do-over. This needs to be done correctly, but I also want to make sure that, for people who need the help, this is what they actually want and not because they are dealing with a mental health condition that might be giving them tunnel vision because they are really not sure what they want. I want to make sure there is proper access. At the same time, I think that we don't want to make it extremely wide open. We want to make sure that there are the strictest safeguards possible.

**The Hon. the Speaker:** Senator Batters, will you take another question?

**Senator Batters:** Yes.

[*Translation*]

**Senator Carignan:** Senator Batters, I want to reassure you by pointing out that paragraph (*c*) states:

> (*c*) an independent psychiatrist confirms that the person has the capacity to provide informed consent to medical assistance in dying.

Don't you think that this precaution addresses your concern about protecting people with mental illness who wouldn't have the capacity to give free and informed consent? Our aim is to protect people who might request medical assistance in dying without being fully aware of what they are asking for or able to grasp its impact. Don't you think that asking an independent psychiatrist to assess that would be an additional safeguard in line with your desire to protect people with mental illness?

[*English*]

**Senator Batters:** I agree that it's an important additional safeguard. That's why I want to make sure it's effective and will actually be accepted by the other side.

Yesterday, this chamber passed an amendment, and before it was even voted on, the Minister of Justice indicated that it would not be accepted by the federal government and that it would be sent back here. I want to make sure that with such an important safeguard, particularly for an issue like mental health — and this is important to me as I have spent a lot of time and effort dealing with this issue for the last several years — it's as effective as it can be. That's also why, Senator Carignan, I want to find out if you have actually received some assurance from the Senate Liberals, the government senators in the caucus and the federal Liberal government that they will actually go ahead with this particular provision.

[*Translation*]

**Senator Carignan:** We have to be creative in how we ask our questions. Obviously, Senator Batters, the Senate has the authority to pass and amend bills, and I don't think the common practice is to ask the other place if it plans to accept our amendments.

Don't you think that it would be more prudent for us to try to come up with a bill that is comprehensive, that balances the rights of people who have access to medical assistance in dying and the protection of the most vulnerable people, and to pass such a bill within a comprehensive system? We can then return the bill to the other place and its members will have the opportunity to assess its merits at that time.

[*English*]

**Senator Batters:** Yes, Senator Carignan, I want to make sure that we have the appropriate safeguards in place. I accept your statement that you can't get the assurance from the other side, but I'm sure that you have been seeking the assurance of senators in this honourable chamber. I'm wondering if you have assurance from the Senate Liberals that they support this particular portion of your amendment and also from the government senators in this

chamber. I'm assuming that you would have had those discussions with them, given your support for the amendment last night.

Also, so this amendment is properly set out, I want to make sure that that particular definition of "psychiatrist" is included because it isn't included in the amendment and it isn't in the bill.

**Hon. James Cowan (Leader of the Senate Liberals):** First, I want to reassure Senator Batters that those of us who are in the Senate Liberal caucus have, since February 2014, been completely independent of our former colleagues in the House of Commons. We have never whipped a vote in all that time. We discuss together; we work together. However, we don't necessarily vote together, as you saw on the amendment last evening.

It would be inappropriate for Senator Carignan to seek from me anything more than my personal opinion on an amendment which he has proposed. As I will indicate shortly, we have done that. I don't speak for my caucus on this. I'm presenting my personal views, as I did last evening. As you can see, my views were shared by some of my colleagues, but not by others. I respect their right to their view, and I know that they respect my right to do the same.

Colleagues, I want to thank Senator Carignan for presenting his amendment today and for the explanation that he has given as to the balance he has tried to strike on this issue.

As we're considering this very serious issue, all of us have a responsibility to ensure that there are appropriate safeguards in place to meet the concerns of not only those who are vulnerable and those who would seek to access medical assistance in dying, but also those who care about those who are seeking or might seek medical assistance in dying, whether they are family members or organizations representing various groups in our society.

As senators, we are always conscious of our responsibility to look out for minorities and for those who don't have powerful voices to speak on their behalf. That's part of the responsibility and the concern that all of us share.

We have a responsibility here with respect to this issue to make sure that the framework of safeguards is as robust and as complete as we can make it. Obviously — and this has been mentioned before — there are always unforeseen, unintended consequences. That's why legislation evolves, and that's why it's necessary to meet changing circumstances and to deal with things that could not have been anticipated at the time that the legislation or a regulation might have been put in place.

Personally, I believe that the protections which are already contained in C-14 are sufficiently robust to protect against abuse. However, I do understand that many feel they are not robust enough and need to be enhanced. I respect those views. I don't necessarily agree with them, but we have all been inundated with concerns that people have expressed — some legitimate, some not so legitimate, but all I think honestly and firmly held and respected. So I think we have a responsibility to understand their concern and to respect the reasons behind it.

For that reason, I do support Senator Carignan's amendment. I think it is an appropriate addition to the suite of protections contained in the bill at the moment, and I endorse what Senator Lankin said a few moments ago about her own experience and the concerns that she has about this.

• (1520)

But I want to caution, as other senators have, that while we want to make sure we have safeguards in place, we all know that safeguards, in certain instances, can become roadblocks. If we put in place something that we believe is a safeguard, with the intention of making it a safeguard, and it becomes a roadblock to access, then that may raise an issue under the Charter.

Senator Lang and others have raised the issue — and I know in my own province of Nova Scotia — how difficult it is to get access to physicians, specialists and, perhaps particularly, psychiatrists if you are in remote areas.

But I have confidence. I have talked to colleagues in the medical profession and medical regulatory agencies in my own province, and I'm confident that the medical profession, the medical regulatory agencies and the provincial authorities are up to this challenge, and will respond to this. While some of us might see that it is not necessary, or don't feel that it is necessary, I'm persuaded that, on balance, it will meet the firmly and deeply held concerns of so many Canadians about protection of the vulnerable. For that reason, I am pleased to support the amendment.

One final cautionary note: There are always concerns about cost. Anytime courts are mentioned — lawyers, judges and availability — cost is always a big factor. That is something that needs to be borne in mind. As the federal government proceeds to negotiate and consult with the provincial governments and regulatory authorities, this is a factor. The accessibility and cost of accessibility of this type of service need to be considered.

With those few remarks, colleagues, I'm pleased to endorse my friend's amendment.

[*Translation*]

**Senator Carignan:** Would Senator Cowan answer a question?

With respect to access to care, does Senator Cowan agree with me that when someone who is not at end of life requests medical assistance in dying, they must necessarily have an extremely serious medical condition, one that is exceptionally difficult, and they must already be receiving substantial care from the health care system? There is a difference between someone who is already being followed by the health care system and someone who is waiting in line at the emergency room. These are two completely different situations.

**Hon. André Pratte:** Honourable senators, I want to say that in debates like this one, it's always important that legislators be able to find creative solutions and paths. In this debate, we have had many. Although we've had one or two disagreements in the past

few days, I must commend Senator Carignan for his amendment, which represents a substantial contribution. I thank him for that.

[*English*]

Minister Wilson-Raybould, when she was here last week, said that the government had chosen "death being reasonably foreseeable" because the government was fearful of possible abuse against vulnerable people and that it needed time to study additional safeguards. I think the great usefulness of this amendment is that it provides additional safeguards, sufficient safeguards, to avoid these possible abuses. In fact, I think it's a safeguard that someone who is concerned about abuse can imagine; of course, it is the safeguard that the Supreme Court had proposed for the transitional four-month period.

I don't think it's ideal. I'm a bit concerned, as others have said, about the possible cost, delay and burden that it will impose on the people involved — the additional steps in a process that is already onerous.

Medically assisted dying is a revolution in our criminal justice system and health systems, so we do need to proceed carefully. I think this amendment permits us to do that. I do hope the government seizes this opportunity, because the amendment does provide, as Senator Lankin has said, a bridge between the government's position to protect the vulnerable and the Senate's concern as expressed by the amendment voted on last night.

[*Translation*]

There is one big advantage of setting the boundary between those who will have easier access to medical assistance in dying and those who will have access with additional safeguards and through a clear mechanism or principle, namely the end of life that Quebec now has and that seems to work well; that advantage is that we are now able to get rid of the vague notion of "reasonably foreseeable death," which is in Bill C-14, and which everyone agrees is vague and unenforceable. For these reasons I will vote in favour of the amendment.

[*English*]

**The Hon. the Speaker:** Senator Pratte, will you take a question?

**Senator Pratte:** Yes.

**Hon. Nicole Eaton:** Senator, I'm surprised by some people's reservations. You've supported Senator Carignan, but I feel you have reservations. Senator Cowan has reservations. With regard to these roadblocks, we're not dealing with hundreds of people seeking medically assisted death, are we? Do you have any numbers of how many people last year sought medically assisted death in Quebec?

**Senator Pratte:** I don't have the numbers in front of me, no; I'm sorry.

**Senator Eaton:** Are we talking 10? Are we talking 50? Are we talking hundreds?

**Senator Pratte:** Tens, as far as I know.

**Senator Eaton:** Thank you.

**Hon. Paul E. McIntyre:** Colleagues, I want to say a few words on the issues of safeguards and judicial authorization.

As far as safeguards are concerned, as we all recall, the Supreme Court in both the *Rodriguez* and *Carter* decisions were very much concerned with the issue of procedural safeguards for medical aid in dying; so was Parliament's special joint committee and the Provincial-Territorial Expert Advisory Group.

I think it's important not to confuse the safeguards in Bill C-14 with the safeguards as requested by Senator Carignan in his amendment. There is no question that Bill C-14 addresses concerns regarding safeguards. As a matter of fact, there are a number of procedural requirements that Bill C-14 introduces to safeguard medical aid in dying. I don't have a problem with those safeguards in Bill C-14.

As far as judicial authorization is concerned, a number of senators were asking questions in regard to this issue. It's important to note that the safeguard requirement has a history of judicial authorization. For example, Chief Justice McLachlin imposed it in her dissent in the *Rodriguez* case, as did the trial judge in *Carter* during the period of her judgment suspension, and likewise for the five judges of the Supreme Court in granting the four-month extension to draft legislation in response to the *Carter* judgment for cases of physician aid in dying occurring during the interim period.

Those are all my comments.

• (1530)

**Hon. A. Raynell Andreychuk:** Honourable senators, I also want to add my voice and express my appreciation for all points of view. We've had legislation before, for which I seem to get pro and con emails and letters. I have received more letters on this bill from every shade of possibility of opinion on this issue.

Therefore, while I appreciate the personal experiences that honourable senators have put forward, I'm impressed that we're talking about not only our personal experiences but the input of Canadians in looking at the objectives of the bill.

At this point, I would like to take more time, with your patience, to talk about the bill itself and its objectives. At this time, I want to put on the record that for me, Bill C-14 is unconstitutional. The court said clearly that it was the right to die. Interestingly, however, in the interim period, they put out judicial oversight and applications and some 20 were used. To me, that was the obvious way to go to implement the directions of the Supreme Court. The right to life, which is part of the right to death, is probably the most irreversible right we have. If it's gone, it's gone. Everything else we can try and make up, redress or whatever it is. I'm not going to use legal terms. I'm going to use only practical terms, because I think eminent minds have already brought the legal issues forward. Some lawyers don't even want to talk as lawyers.

The bill clearly addresses only part of the Supreme Court's judgment, so that troubles me greatly, but I don't believe that either what was happening in this chamber or in the bill were proper safeguards. Quite frankly, if I had to deal with it, I would have put in judicial safeguards for both categories; in other words, exactly what the court said about the right to die, these categories and a judicial oversight.

All of this discussion about costs of going to court is the price of life. We allow people judicial application upon judicial application. When there is an alleged terrorist, we allow everyone whose freedom is being denied — not their life, their freedom — judicial applications. All of a sudden we're saying it's not cost effective? I'm sorry. I think if I were going to put any dollars into the Criminal Code system, it's not the layers of applications we have for all the criminal cases, minor criminal cases, and not for this act, particularly when there are only seven other jurisdictions who have had any experience.

I have a lot of other comments. I could not support Senator Joyal's amendment yesterday because it was simply saying a part of what the Supreme Court has said, which was, "There are two categories; include them." That's what Senator Joyal said.

But the court did talk subtly to us about safeguards. At least Senator Carignan's amendment goes to part of my concern, and that's the part that's not terminally ill. I will support any and all amendments here that go to protections and safeguards and guarantee that we don't quickly remove life, that we take it as one of our fundamental duties. By doing this, in the end, I want to speak to the bill itself and to the bill as amended, if that is the case.

At this time, my signal is that every safeguard we can bring forward will be supported by me. All other safeguards that I hear about are administrative. It is the system overseeing the system in one form or another.

Another is parliamentary oversight of five years or three years. I guess I've been in this chamber too long. Senator Joyal and I sat for years on the Standing Senate Committee on Legal and Constitutional Affairs spending time on parliamentary review. Time goes by, the reviews are there, someone mentions it and we make a half-hearted attempt on the review. There may be some benefit to those because time changes and our attitudes change, but because I want to move very cautiously, it seems to me judicial review and oversight are very important, so I want the judicial oversight now. I know the judicial review will come. No matter what we do, we will find ourselves in the court.

**The Hon. the Speaker:** Senator Andreychuk, will you take a question?

**Senator Andreychuk:** Yes, certainly.

**Hon. Yonah Martin (Deputy Leader of the Opposition):** First of all, I really want to thank you for your intervention, because I was sitting and listening, wrestling with the decision that we will need to make on the proposed amendment by Senator Carignan. And we share this journey of caring for our mothers. An example came to my attention about safeguards — and I, too, will support safeguards because I think whatever we can do to ensure that the most vulnerable, the least protected, are taken care of, that's important.

Will we continue to explore safeguards? Can we ensure that in this suite of protection that we already have in the bill, those vulnerable individuals who are thinking of the family members burdened by their illness — they may have 10 or 20 years to live — there is undue pressure not only physically on them, but I'm imagining the struggle they must face watching an only child or perhaps an aging husband or wife at their side, the pressure they might feel to actually request death because they want to unburden the family. Is there a safeguard to look at these case-by-case examples?

I would like to hear your response to such an example. These are the things I'm wrestling with as I'm making decisions on amendments and this bill.

**Senator Andreychuk:** I think when we get to palliative care, senator, I can answer that question.

The right to die has been stated here as my individual right. My experience in the last 10 years of really studying people in terminal and burdensome illnesses — I don't want to talk about my own personal case — pain for one person is different from pain for another. But what has not been stated sufficiently here is that when a person dies, it is not just the person who dies who is affected; everybody around them dies and the community suffers one way or another. I can give you 20 examples. There is regret about the person going. There is relief about the person going. There is a loss, a community loss.

I tend to want to be on the side of hope. We say it's incurable today. I don't give up on ALS. Tomorrow there could be a cure. Today we have medical miracles for illnesses that were absolutely unknown or understood in the past. The best doctors always say to me when they give me advice, "I'm giving you the science today and I'm giving you the art, which is my opinion."

We can't give up on hope. Therefore, judicial oversight is very important to me. I want to speak to the fact that administrative oversights become very bureaucratic and difficult and put us at risk. I think judicial oversight double-checks the system and the government. Parliament can play its role as a double-checker.

I had the difficult task of having to determine whether I had to deprive an individual and lock them up for mental health applications. I want to go back to Senator Carignan's point: It's not difficult to go to court. The court will determine if they followed the rules and the judge will intervene. If I received a psychiatric report that said a person needed to be housed, that's not a medical opinion and I would seek a fuller opinion.

• (1540)

But I don't think the courts will get involved in medical opinions per se. They will make sure that the paperwork and conditions are met, and it is not costly in that sense, but I go back to the point that it's a cost well worth enduring as a society.

**Hon. Joseph A. Day:** Honourable senators, I'll speak briefly on this particular amendment, and I do intend to speak generally about the bill at the conclusion of our debate.

Generally, with respect to this amendment, I have concerns. I don't agree with my honourable colleague, Senator Andreychuk. I know a lot of people who are quite intimated by the very mention of having to do something with respect to a judge; and to add a psychiatrist to that mix would be hugely intimidating for a very large segment of the society that I know well. I'm speaking as a lawyer who has represented many people in applications in court situations, and this would be a barrier. I'm wondering if it's really necessary.

I look at the safeguards, and what I have been trying to do is read this amendment against the bill and the changes that we, and I, agreed to yesterday and voted for. I felt they were reasonable amendments. But then this particular amendment is a bit of an adjustment to what was agreed to yesterday, trying to add more safeguards for a particular group we felt should be added that were excluded by the bill, and that's those who are not at the end of life or terminally ill but still fit the other criteria.

There is a requirement for a medical practitioner or nurse practitioner to help sign the form being signed by the individual. There is a requirement for an independent medical practitioner or nurse practitioner; there is a requirement for two independent witnesses to witness the application. So we've got four independent people that are going to be involved in terms of being assured that what is taking place is reasonable. Now we have an amendment that comes along and adds a judge, a psychiatrist and two independent medical practitioners. There are five added on, honourable senators. Is this more than we need in order to be assured of the protection of this class of society and these individuals?

I believe that it's more than we need, in particular because of the involvement of judges and psychiatrists, and knowing the situation in a lot of rural Canada, where nurse practitioners are like doctors. They deliver babies; they help people to die with dignity; they remove teeth for people. They do everything in the community relating to medical health, and that is why nurse practitioners are added in Bill C-14. You'll see that everywhere: It is a medical practitioner or a nurse practitioner. I agree with that.

But then I look at the amendment, and I ask you to follow me on this: 1.2(b), about halfway down the page, "two independent medical practitioners." So the nurse practitioners were left off with respect to this amendment; and if they are left off, they are obviously left off for a specific reason. There is an indication there is a lack of trust in the qualifications of nurse practitioners in relation to this second safeguard that we wish to incorporate for those who are not at the end of life.

I regret that that decision was made. I note as well that in 1.2(b) (ii) and (iii) there is a suggestion that the judge must provide — and then there's a list that the judge is satisfied that, and in (iii) the independent medical practitioner confirms that the person was informed that palliative care could relieve their suffering.

Palliative care could relieve their suffering, and these people are not at the end of their life. Palliative care is an area we need to do a lot of work on. But I can tell you that palliative care, in virtually all instances where it is available in my province of New Brunswick, is for people who are in end-of-life situations. Now we're putting in here palliative care for non-end-of-life situations and saying, "Gee, if you qualified for that, you might be able to be relieved from your suffering."

I'm wondering about that particular clause as well.

Someone else mentioned earlier the risks associated with medical assistance in dying. That is another one of those items that the person must have been informed about. What are the risks associated with medical assistance in dying that are contemplated by this?

I am ill at ease to start with by putting judges into the process, as opposed to leaving judges for a review in the event that there is some perception of a problem. Judicial intervention as part of the process is something that I would prefer not to see. For that reason, along with the other points I have made about clauses in here that leave me ill at ease in terms of understanding and recognizing and believing that they are needed, I will not be able to support this particular proposed amendment.

**The Hon. the Speaker:** Will you take a question, Senator Day?

**Senator Day:** Certainly.

[*Translation*]

**Senator Carignan:** Senator Day, allow me to read you the definition of the word "palliative" in the Larousse:

> (of a treatment) that does not act directly on an illness (in particular a symptomatic treatment), or that alleviates it without curing it

It doesn't say anything about the condition being terminal. Do you agree with that definition?

[*English*]

**Senator Day:** Thank you for your question. In the last while, I haven't reviewed the Larousse definition of "palliative care," but I can speak from a practical point of view of what is available for palliative care in my region, and it is for people who are in the final stages of life.

**Hon. Joan Fraser:** I am going to support this amendment. I can't say I like it, but that has nothing to do with its purpose. It has to do with the tools available to us to provide safeguards for the class of people to whom, last night, we extended the services offered by this bill.

• (1550)

There is not a whole lot of international experience with medically assisted dying at all. There is even less experience from which we can learn in the case of people who seek medical assistance in dying even though they would otherwise not be at the end-of-life stage.

I don't think any of us needs to think very hard to realize that in making what I profoundly believe was the right decision last night to accept the Supreme Court's extension of that assistance to

persons who are not relatively imminently otherwise doomed to die, in doing so we did raise, I suspect in many of our minds, concerns about safeguards.

Senator Carignan talked about some of the pressures of many kinds that can be exerted on people. We all, I'm sure, believe strongly that people have the right to die with dignity, but they also have the right to have their interests safeguarded as they face that choice.

Judicial oversight, judicial authorization, is essentially the strongest tool we have to try to ensure that their interests will be safeguarded, and that is why I support the amendment. It is designed to use the strongest tool we have, short of an outright ban, which would not protect their interests, to protect their interests. But it is, at the same time, a comparatively burdensome tool.

Senator Andreychuk, a long-time colleague for whom I have infinite respect, is shaking her head. Those of us who are not lawyers do see the judicial system as complex, arcane, burdensome, mysterious, unknown, not to mention costly. We may be right or we may be wrong, but that is our perception.

My concern there, in particular, is not for people like members of the Senate of Canada who have good links and networks that they can turn to for advice on how to get inside this arcane world of the judicial system, it's for people who are not poor enough to qualify for legal aid and not really rich enough to face, without considerable trepidation, the prospect of hiring a lawyer.

I believe very strongly that as we go forward here, it will be very important for medical and legal authorities to provide the kind of guidance that Senator Lankin was talking about earlier with the medical system, registries, single points of contact where you can go to be guided to someone who says, "Here is a lawyer who understands the system and who can work with you."

Senator Carignan, in his speech earlier today, went some of the way to persuade me that in implementing this system, we need not face the really terrifying legal costs that would exist in a trial situation. That's comforting, and it's comforting to be reminded that applications of this nature can go to the top of the judge's list and not have to wait endlessly for resolution, because that would be a terrible thing. Still, I look for the day when experience will have helped us to find a system that need not involve the judicial system.

Senator Andreychuk expressed understandable caution about the medical system. One way or another, we are going to be dealing with systems here. This amendment will, as we move forward now, justifiably layer one system on top of another system. If we could resolve that back down to a single system, I would be more comforted that the interests of the applicants were really being served.

Let me also address the matter of psychiatrists. As I read this amendment, the work required of the independent psychiatrist referred to in 1.2(c) is not that complicated. It consists, as I read the text, solely of saying this person is competent to give informed consent.

Senator Mercer, I'm not a psychiatrist, but in my view, it would not necessarily have to take very long because it doesn't need a diagnosis about many emotional conditions. It simply requires an assessment as to whether this person, whatever their other difficulties may be, can make an informed decision. That, I suspect, is a comparatively simple matter. However, as has been pointed out, psychiatrists are not easy to get, and they are also not inexpensive.

Without venturing into the undesirable terrain of provincial jurisdiction where we have, of course, no authority whatsoever, I would like to make a small suggestion that it would be very helpful if provinces, as part of their exercise of jurisdiction over health care matters, put psychiatrists on retainer; maybe one psychiatrist for small provinces, maybe a few psychiatrists in different regions for big provinces. That would mean that the psychiatrist would be available when needed, that the applicant would not have to go, find a psychiatrist and then wait for who knows how long to get an appointment.

Lawyers can be been on retainer. When the client calls, they have to answer. The same could be true for psychiatrists. Of course, I'm assuming that the service would be covered by medicare.

I wish we didn't have to do this, but I believe we do. I do believe that Senator Carignan has responded to a significant degree of uncertainty as we go forward. As I said, I hope that over time and over not too many years, we will find a different way to meet the needs of these safeguards, but now, I do believe, for practice and also for the purpose of reassuring the public, this is an appropriate way to go, and I shall support the amendment.

**Hon. John D. Wallace:** I have some observations I would like to make, having listened to Senator Carignan. I only received the amendments as he began to speak to them. I wish I had more time to perhaps reflect on this.

A couple of points: Bill C-14, as we are all aware, does provide safeguards to protect the vulnerable. It provides for two independent opinions to be provided by medical practitioners or nurse practitioners. Those opinions require the medical practitioner or nurse to confirm that the individual does suffer from a grievous and irremediable condition, endures pain and suffering and, as well, that the consent that was given is an informed consent.

• (1600)

As has been pointed out by Senator Day, Senator Carignan proposes that we should layer on that. With this amendment, we would create two categories for those seeking medically assisted death; those who, according to his amendment, are at the end of life, and those who are not. There would be different safeguards provided for those two categories of individuals.

The first comment I would make is I don't know how we differentiate a person who is at the end of life and one who is not.

With the amendment that was made last night, it removed the requirement for a grievous and irremediable condition to apply to someone whose natural death is foreseeable. I could get a sense of

who that would apply to. But in this case, a person who is not at the end of life, I'm not sure who that applies to.

An individual who has a grievous and irremediable condition could be someone with rheumatoid arthritis who suffers physically and who could be 75 years old. Are they at the end of life? Maybe there is a younger age that a person might be considered at end of life. My point is I'm not sure of the category or the classification of people that this would apply to.

The other point that troubles me is, having created these two categories of persons who would be seeking medically assisted death, it seems to fly in the face of the equality that all persons are entitled to under the Charter of Rights and Freedoms. Why should one category receive this enhanced safeguard and others don't?

I take from Senator Carignan's proposed amendment the need for an independent psychiatrist to confirm that the person has the capacity to provide informed consent. If there is a concern that the medical practitioners or the nurse practitioners do not have the technical expertise to do that, and that this newly created category of persons should have an independent psychiatrist confirm it, I have a problem with that.

If there is an issue around the quality of one's informed consent, that is critical to all of us. That informed consent relates to knowledge of their condition, the prognosis and possible treatments that could be available. All of that is a factor to consider in determining if the person has the informed consent.

So if we now believe that nurse practitioners and medical practitioners may not be able to do that, then I believe the remedy should apply to all. Quite frankly, I can't differentiate between the situation of one who may be closer than someone else to eventual death and having a different standard apply.

The point is how do we determine who is at the end of life? I think what this indicates is a lack of confidence with the medical practitioners and the nurse practitioners; otherwise we wouldn't be requesting the secondary safeguard. If we have that lack of confidence, I think we should be looking at an enhanced safeguard that applies to all.

The final point I would make is the availability of these two additional — as Senator Day points out — medical practitioners to provide these opinions, and that's in addition to the two either nurse practitioners or medical practitioners prior to that, and on top of that a psychiatrist.

As has been pointed out by Senator Mercer, it might be something that looks good on paper, but when you take it to the field and apply it in the real world, the lack of availability of those resources in remote communities of this country is a reality.

I think what we have to do when we think of these things is make sure we are dealing with reality and not something that on the face of it, with the words used, would seem to give comfort. We have to go deeper than that.

Thank you.

**The Hon. the Speaker:** On debate, Senator Marshall.

**Hon. Elizabeth (Beth) Marshall:** Thank you, Your Honour.

I have heard a lot of speakers talk about the safeguards in relation to Senator Carignan's amendment and also within the bill itself. If you look at pages 6 and 7, there are almost two full pages which lay out the safeguards. I don't have any problem with them.

The problem is that if you go to clause 4 of the legislation, it sets out how the safeguards will work. I'm not going to get into the strength of the clause, but I did want to remind my colleagues that clause 11 of the legislation says that clause 4 is not going to come into force at the same time as the rest of the bill.

Effectively, the bill has been split in two. One part will come into force when we pass the bill, but clause 4 is not going to come into force. It stipulates oversight of the safeguards, and I think that is important.

When the Minister of Health appeared here, I did ask her the question with regard to clause 4 not coming into force. She didn't give me a definitive answer as to when she thought it would come into force.

We had an opportunity to meet with her assistant deputy minister at one of the Legal Committee meetings and I pressed it. I was looking for some idea as to how long we would wait. At that time, she indicated it would probably be 18 months.

Once the bill comes into effect, we're going to be waiting about 18 months before we get some idea as to how the safeguards are going to be carried out.

We're going to have individuals accessing medical assistance in dying — really, they are going to be euthanized — and we don't know who is going to be going through those individual cases to make sure all the safeguards have been complied with. We have been told it could be 18 months. Quite often governments don't meet their deadlines, so it might be more than 18 months.

I have a significant problem with regard to the safeguards, and I think that all senators should be aware that once we do proclaim the bill, clause 4 is not going to be severed from the bill. It's not going to come into force. That is going to be an issue.

**The Hon. the Speaker:** Senator Marshall, would you take a question?

**Senator Marshall:** Yes.

**Hon. Pierrette Ringuette:** Thank you, Senator Marshall.

You had the discussion at the committee level in regard to the issue that you just put forth. From my perspective, and I may be wrong, medical assistance in dying will be under the provincial health delivery system, so shouldn't it be the responsibility of the provincial health department? They already issue directives that they have to supervise. So shouldn't it be the responsibility of the

provincial and territorial health departments to supervise and do a yearly report on this so that there is transparency in the system too?

• (1610)

**Senator Marshall:** Thank you very much for the question, Senator Ringuette. There is merit in what you're saying, but clause 4 of the legislation gives the federal Minister of Health the prerogative to make regulations; but it does use the term "may," that she may make regulations. I realize that it is under provincial jurisdiction, but I looked at the guidelines that are being used now in the last few days by the provincial governments and I do not see anything in there with regard to how they are going to make the safeguards work. So that's an issue for me, and I'm also concerned about the consistency.

Right now under the legislation there is provision for the Minister of Health to take an overarching responsibility, but my own personal opinion is that for the sake of consistency, and to make sure that it's done right, I think that the federal Minister of Health should be responsible for the regulations and that her regulations should be mandatory. These regulations can be prepared in consultation with her provincial colleagues.

**Senator Ringuette:** Thank you.

**Hon. Serge Joyal:** Honourable senators, I want to come back to the question of judicial authorization, the definition of what judicial authorization means. I won't speak for the lawyers — my colleagues Senator Andreychuk, Senator Carignan, Senator Cowan, Senator Baker — or others in the room, but I think it is important to understand what we are requesting as a safeguard. In other words, what is the scope of judicial authorization? What does it mean for a layperson?

The second issue I would approach on debate is the cost, because like any of you, when you push the button for lawyers, you see the wheel machine begin to turn. You make a call and it costs $500. You call for 10 seconds, it's another $500, and we know the problems. The Chief Justice of the Supreme Court has embarked on a crusade against the expensive cost of justice, and it will have an immediate effect. So how much will it cost? Who will pay for it?

The third element is how will it work in practice? I have listened to you individually and realize that each of you is wrestling with this. As our colleague Senator Mercer said, psychiatrists are not in Flin Flon, Manitoba, or they are not available in Caraquet, and we can identify thousands of small cities across Canada where there is no psychiatrist on Main Street. How will this be managed?

Back to the first question: What does judicial authorization mean? Judicial authorization, honourable senators, was defined by the Supreme Court in relation to *Carter*. I want to give the definition from two decisions in the last four months that have looked into those 29 cases where citizens went to court to receive the authorization and what the court decided judicial authorization means. I am quoting the Court of Appeal of Alberta, the unanimous decision, at paragraph 71. Here is what the Court of Appeal of Alberta said about what is implied with the judicial authorization.

> Ultimately, however, the Supreme Court of Canada did not intend this to be an adversarial process.

It's not an adversarial process. That's important.

> It is the role of the motions judge to carefully review the evidence before her and determine, on a balance of probabilities, whether the criteria in *Carter 2015* have been met.

What does it mean? There is a decision in the Court of Queen's Bench of Alberta dated June 1, the last decision I have been able to review. I reviewed all of them to be sure there is consistency between how the various courts have interpreted their role. Last week in Alberta, the decision dated June 1, here is what the learned justice stated at paragraph 31:

> This Court is not called upon to conduct a full blown inquiry as to whether a claimant has established an individual case for personal constitutional exemption . . . .
>
> Rather, the job of the motions judge is simply to determine whether a particular claimant meets the criteria articulated in *Carter 2015*. The question that the Supreme Court has directed the superior courts to answer is whether the applicant falls within that group. Therefore the inquiry is individual and fact specific, though, as indicated in the *HS (Re)* decision, the motions judge must be mindful of the legal framework and overall constitutional context of the inquiry.

So what does it mean? It means, as Senator Andreychuk mentioned, that the judge who has to give his authorization doesn't sit in the court with his robe, with the parties for and against, or the Crown attorney and the accused and they fight in front of him and at the end of it he decides, "You're right, you're wrong; or you owe to this gentlemen that amount of money or that lady these damages." That's not at all the process. It's essentially an administrative process. The judge has to be satisfied that the written information that she — Senator Andreychuk, because she was former justice — or he has in front of him according to his role.

Honourable senators, there have been many instances whereby justices are called upon in what we call *le juge en chambre*, that is the justice in his office, to give approval to a request that according to the law he is charged to give. This is a procedure that is part of the function of a judge. A judge sits in the court and a judge also sits in his office, and his decisions are as binding in his office as in the court. Remove from your mind the fact that we must see the judge in court. That is not at all what we mean here.

I have quoted two decisions to you. The most recent one is pretty clear about this. To illustrate my point, I have a decision here from the Ontario Superior Court of Justice of May 24. It's about two and a half pages long. So it's not like the judgment

relating to Senator Duffy, 301 pages that the judge wrote. We're not at all in that kind of context. I apologize to you, Senator Duffy. I just wanted to rely on your experience to testify how costly and delayed the justice system can be. We are all mindful of that.

That's not at all what it is. It's a short procedure. I'm reading from the judgment, the first sentence a couple of paragraphs down in this decision. I.J. is the name of the party, due to privacy.

> I.J. has, on multiple occasions since March 2016, expressed a strong desire for physician-assisted death.

• (1620)

Paragraph 8 reads as follows:

> I.J.'s family physician attests to the fact that I.J.'s pain and suffering has increased significantly over time. . . .

Paragraph 9:

> Psychiatrist #1 attests that I.J. has tried many treatments to alleviate his pain but that none have been effective. . . .

Paragraph 10:

> Psychiatrist #2 states that it is her opinion that I.J. has grievous irremediable medical conditions . . . .

It's not complex piles of documents. It's factual. It's based on the information that has been given to the judge. So it's not at all the case where a person is in a bed in hospital, with tubes and all kinds of connections so that you have to bring the bed in front of the judge in the court to say: "Well, are you consenting?" I mean, we have seen the movie. That's not at all the process. Let's be clear about that.

The second point I want to touch on is who pays. Well, honourable senators, unless you have forgotten, we have a health care system that is free in Canada. We're talking here about medical assistance in dying. The word "medical" refers to health care, and health care is free. Each province has determined the list of services that are paid for by the health insurance plan. There are some that are not accepted. If you go for plastic surgery, the health care system won't reimburse you or the doctors. For a certain kind of dentistry work, they won't pay, either. Each province has determined the health care acts that are taken charge of by the public purse. That's part of the health care system. We are talking here about a health care procedure. In other words, it's a right that, according to the Supreme Court, a group of citizens have the benefit of enjoying at their own decision. It is like Bill 52, the end-of-life care act of Quebec. This is totally assumed by the Quebec government. It's not something where you say: "Oh, my God, I've decided that I'm going to request medical assistance in dying, and who is going to pay for the drugs? Who is going to pay for the doctors who will come to examine me? Who will pay for the nurse practitioner? Who is going to pay for the paperwork for all this?" This is totally assumed by the health care system of the province in question.

We are now legislating the right of a person to access medical assistance in dying, totally within the provincial framework. So how will it be managed? It will be managed essentially, honourable senators, the way that the bill in Quebec provides. I refer you to section 2 of Bill 52 entitled, "Fonctions particulières des agences de la santé et des services sociaux"— in other words, the responsibility of the provincial health agencies and social services. It establishes here what they have to do with the hospital, the palliative care centre and the social services, whereby a person requests the service. The request is sent to the agencies, and it is the agencies that have the responsibility after that to treat the request on the basis of what the person has identified as being the condition that meets the requirement.

It is certainly the provinces who will decide — if we agree that the psychiatrist has to be involved — to which services it will be directed. That's part of their responsibility. So we are not talking here of, as I understand the concerns of Senator Mercer, Senator Wallace, Senator Dyck and some other senators who have asked where the services are available. Those agencies exist because we live under the benefit of the public health care system.

That is centralized, with the responsibility of provincial agencies to get in the judicial district where that agency functions, where the patient is located, to be sent to the justice because it will be an administrative aspect of judicial authorization, just as in some procedures you seek to get the authorization of a justice in his office for all kinds of legal initiatives.

I humbly say to you get the lawyer out of this and make sure that the agencies have the proper administrative support to deal with this. I won't be liked by my fellow lawyers in Quebec, who will say that you have removed us from something we could seek to be paid for. This is essentially a health care service. That's why it is under the responsibility of provincial colleges of physicians and surgeons.

It will be up to the provinces to come forward with the kind of regime within their structure of delivery of services to include that need of a judicial authorization in the context that was provided by the Supreme Court, when it said that judicial authorization, as Senator Carignan stated, will be requested to be sure to protect the vulnerable.

I think we should not try to micromanage this at this stage. It is up to the health care ministers to come forward within their structure to make sure that the various steps included here are made accessible to their fellow citizens in their province to be sure that the system is functional. It will be functional the way it is described in Bill C-14. We should not fool ourselves. If Bill C-14 will remain as it is, they will have to do exactly the same — but not the judicial authorization.

That's why I think this proposal, as Senator Andreychuk has mentioned, is workable. At this stage of our understanding of the implication, I think it's worthwhile to have additional safeguards. If we would have been on the sailing cruise of multiple years of practice, maybe we would want to readjust on the basis of the conclusion of the experience.

May I have two more minutes, please, Your Honour?

**The Hon. the Speaker** *pro tempore*: Is that agreeable, honourable senators?

**Hon. Senators:** Agreed.

**Senator Joyal:** Maybe being from the province of Quebec and having read Bill 52 that they adopted in May 2014, I'm more familiar with how it's being delivered. I think it is possible to deliver this in a responsible way and with the minimum efficiency to be sure that patients will have access to it within the context of *Carter*, and with the safeguards that are needed to be sure that people feel protected.

I mean, politicians are not trusted by people. I won't quote statistics, as our friend Senator Bellemare likes to do, but the justices are the ones on top and then the doctors. People trust doctors, and people trust justices. If you say to Canadians, "You will have to trust your doctors on the evaluation of your competency and your health conditions, and you will trust a justice that will review this," I think people will have confidence in the system. This is part of what we are trying to establish here, which, no doubt, is a change in the system. But I think what Senator Carignan proposes is helpful to give Canadians the conviction that what we are doing is responsible.

So, honourable senators, that's how I understand the implications of what our colleague Senator Carignan is proposing, and why I think I should support it.

**The Hon. the Speaker** *pro tempore*: Senator Baker.

**Hon. George Baker:** Would the honourable senator take a question?

**Senator Joyal:** Yes.

• (1630)

**Senator Baker:** Could the honourable senator verify that the judicial authorizations that were sought by the provinces with the decision of the Supreme Court of Canada were mostly involved? When you looked at the original decisions, you had 20 pages. As you went on, it got smaller and smaller. Most of the print that you would read would be about the coroner's conflict in the province and about sealing orders and non-disclosure of people's names. The actual decision was very short, just a couple of short paragraphs based on affidavit evidence or letters. In the Quebec legislation it is based on forms, whereas in the other provinces where they didn't have a system, it was short affidavit evidence — as you say, just to fit within and there were no adjudications other than that required.

**The Hon. the Speaker** *pro tempore*: Was there a question in that? I didn't really understand the question.

**Senator Baker:** Yes. He has to answer the question, Your Honour.

**Senator Joyal:** I have the bunch of them here. I have reviewed them. It's quite true what you say, Senator Baker. The first ones were very lengthy because the judges were in unchartered territory but you know very well what happens. When the law provides a function that will be attributed to a judge, what happens? The chief justice of that court decides to locate one judge; that is the administrative function of the court. It is to that judge that all the information is sent. He looks at it and develops the competence, experience and the basis of capacity to look into it quickly. That's why I say don't try to micromanage the system. This is how it works.

You are totally right. If you don't know what to read before you go bed tonight, read those decisions and you will realize how efficient the court is in this situation.

**Senator Mercer:** Perhaps another question for Senator Joyal.

**The Hon. the Speaker** *pro tempore*: We are running out of time.

**Senator Mercer:** The issue is really the burden that you're putting on the provincial health system. For example, in Nova Scotia, 75.5 per cent of all the psychiatrists are located in Halifax.

**The Hon. the Speaker** *pro tempore*: Honourable senators, is it agreed to give Senator Joyal a few more moments? Senator Ogilvie wants to ask questions as well.

**Hon. Senators:** Agreed.

**Senator Mercer:** Seventy-five per cent of the psychiatrists in Nova Scotia are in Halifax which means even if there is a psychiatrist in one town, he or she is probably burdened with a number of patients and will have to tell them, "Excuse me, but I've got to go out and see a patient and approve a patient's application for assisted dying." Meanwhile, he has patients that are in desperate need to help them get better and recover from whatever malady they suffer from. Then you talked about forms. I don't know any really good doctor who will sign a form without doing one thing first: examine the patient. If you are a lawyer and I come in and ask you to sign a form, you will not sign that form without reading it and finding out the details of why I need the form signed, et cetera — and also if I can pay the bill.

The issue here really is you're putting extra burden on the provincial health care system and this system does not give access or service people in rural Canada. That's certainly not the case in rural Nova Scotia.

**Senator Joyal:** The case in the Alberta Court of Appeal raised the issue of a psychiatrist that was involved in the case to evaluate the psychiatric condition of the person. The psychiatrist came after two doctors. He was the third "evaluator" of the person. The psychiatrist developed a procedure among doctors to exchange information. They know those things. They know which questions to ask. If some doctors try to diagnose you of a certain disease, of course they will want to see you. But here we aren't in the process of checking, checking, checking; it's check, check and check and then the approval. I'm trying to simplify it.

The system has the capacity to do that. If we approve this proposal, I think the Ministers of Health have the capacity, as they did in Quebec, to determine that in the smallest village of Quebec of Saint-Léon-de-Maskinongé — as I said where there are 300 people in the Main Street — if there is a person who lives

there and needs the service, the capacity of the system the way that Quebec's Bill 52 has been established will be functional. I don't doubt that there is a capacity in the system to respond.

**Hon. Kelvin Kenneth Ogilvie:** Senator, would you accept a technical question?

**Senator Joyal:** With pleasure.

**Senator Ogilvie:** Thank you. My question to you is: In the amendment under paragraph 1.2(b) it states that "two independent medical practitioners confirm that the person was informed of. . . . " et cetera. Could those two medical practitioners be the same two that are involved in the first stage of getting the decision, the recommendation and approval to have medical assistance in dying? It refers to two medical practitioners, or is this amendment intended to have two additional? Can they be the same?

**Senator Joyal:** In my opinion they can be the same, honourable senators.

The important thing in the independent status is that there is no connection. We understand why they have to be independent. With two independents plus the psychiatrist, it seems to me that you are really covered, as we say in French, "wall to wall."

**The Hon. the Speaker** *pro tempore*: Senator Ogilvie, I think he has given you an answer.

[*Translation*]

**Senator Ringuette:** Could Senator Joyal clarify something for me? Yesterday evening, we adopted an amendment to Bill C-14 in order to ensure that there is no discrimination against people suffering from serious illnesses, whether the end of their life is expected to occur in the short term or the long term, to comply with the Canadian Charter of Rights and Freedoms. By adopting the amendment, are we not creating two levels of analysis and yet another charter-related conundrum regarding equality of treatment and procedures?

**The Hon. the Speaker** *pro tempore***:** Do honourable senators agree to give Senator Joyal one more minute to answer the question?

**Hon. Senators:** Agreed.

**Senator Joyal:** Senator, the question you raise is one that I, myself, asked. The Supreme Court said that it was up to Parliament to determine the parameters for the right to access medical assistance in dying. According to the definition of these safeguards, they can be adjusted depending on the person's vulnerability and level of risk. To use the example Senator Baker gave yesterday, if the safeguards raise the bar so high and make the conditions so difficult to meet that they effectively prevent people from having access to this assistance, the judges will say that we are trying to achieve indirectly what we cannot do directly.

• (1640)

If the measures seem reasonable in light of the vulnerability of the people who are not terminally ill, then the judges will assess the reasonableness of the proposed measures and will be able to determine whether they are justified as protections for these people. I carefully reread Senator Carignan's proposal, and I have concluded that it would pass the Canadian Charter of Rights and Freedoms test to which he referred and to which I am almost hypersensitive, as you know.

[*English*]

**Hon. Tobias C. Enverga, Jr.:** Honourable senators, I rise to speak in support of Senator Carignan's amendment. I would have liked to see it worded a little differently — not only to include those who are not at the end of life, but to include all cases. However, in the spirit of compromise, I will not move any subamendments at this stage.

During the debate on Senator Joyal's first amendment, on June 8, Senator Harder stated that this legislation will be under discussion and review for years to come. He said:

> 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.

Honourable senators, I stated in my second reading speech that I am concerned about reviews after the fact as a safeguard when it comes to mistakenly ending a person's life. In addition, what the honourable Government Representative in the Senate seemed to be alluding to is, in layman's terms, improvement by trial and error. I find this difficult to accept.

I spoke to the way similar legislation operates in Belgium and the Netherlands. In the former jurisdiction, where euthanasia has been legislatively sanctioned for 14 years now, grave errors, especially in cases where consent has not expressly been given, have occurred. Not including all persons seeking assistance to die, it still allows for grave mistakes.

Honourable senators, I want to remind you of some of the data that has come out of the Benelux countries. In the Netherlands, where nearly 5,000 people died with their physician's assistance in 2013, the system has a reporting mechanism in place.

Five thousand people? You want this to happen to Canadians? Why would you do this?

Five regional review committees assess each case after the fact to assess the legality of the procedure that took place. I quoted an article in the *British Medical Journal* from 2011 that reported 3,136 cases, of which 9 were found not to have met the criteria, with a further 500 cases awaiting a decision. Small statistics, but too much, if you're talking about killing someone.

As in many arguments against capital punishment that insist one wrongful death is too many, this should apply to our approach to medically assisted death. I say "medically assisted death"; when you look at it, it's MAD.

One wrongfully euthanized person is one too many. By not applying a test, independent of the medical profession, assessing all applications, it could lead to one wrongful death — one too many.

Honourable senators, I also highlighted the alarming statistics coming out of Belgium. The disturbing fact, found in a study published in 2010, shows that in the Flanders region of Belgium in 2007, only 52 per cent of euthanasia cases were reported to the Federal Control and Evaluation Committee.

Flanders fields; you know where it is. You know how much Canadians sacrificed to preserve the lives of people and the lives of Canadians. We should think about this again.

That, honourable senators, translates into every second case not being reported. How is it possible to ensure compliance with guidelines when one has such a severe lack of reporting? The study on Belgium references a similar study in the Netherlands for the same year, which shows that just over 80 per cent of the cases were reported there. I do not think that Dutch or Belgium doctors are any better or worse than Canadian doctors. What has happened there can happen here. These numbers are staggering, and this is the potential path that Canada, with our approval, is heading down.

I would like to answer some of the criticism with regard to the availability of justice. We always have this technology. We always have technological ways to be able to put the judges and patients together. What is so great about this is that it can be recorded and can be part of the reporting process.

This is why I am willing to support this amendment, although, as I said earlier, I would have liked to see it in place for all cases.

Thank you.

**Hon. Peter Harder (Government Representative in the Senate):** Thank you, honourable senators. I will be brief, but I do feel I owe it to the chamber to indicate how and why I will be voting on this amendment.

The bill, as it arrived yesterday before our amendment of last evening, was a carefully crafted, balanced act that was being proposed for our consideration — balanced in the sense of both eligibility and safeguards. Today we are debating safeguards, which is an important component of this process of medical assistance in dying.

The safeguards, as enumerated and described in the bill before us, were the product of six or seven months of broad consultations with the medical practitioner community, provincial governments and broad sectors of stakeholders, including those representing the vulnerable. When it came to bringing forward Bill C-14, it was gratifying to me, as I'm sure it is to Canadians, that the bill, with its safeguards, was endorsed by the Canadian Medical Association, the New Brunswick Medical Society, the Doctors of BC, the Canadian Nurses Association, the Canadian Pharmacists Association, Canadian Psychiatric Association, the Canadian Associating of Social Workers, and that was a product of a broad engagement on how do you craft guidelines on safeguards that can be operationalized and understood broadly.

Last night, the will of this chamber was to significantly alter the eligibility criteria. I very much appreciate the contribution by Senator Carignan to do what Senator Joyal called "make responsible" what was done in this chamber last night. But I cannot support it, because I cannot support the extension that was done last night and this hastily crafted safeguard mechanism, which has not had broad engagement with the community that actually has to administer and deliver this important feature of the amendment that was made last night.

• (1650)

Senator Lankin talked about a bridge. There was much merit in what she described as, in her view, complementary to the amendment, which is why she is supporting it. But I personally believe that the bridge to the issues that we dealt with yesterday is more appropriately done in clause 9 with respect to the studies, because obviously questions have been raised here, even on the offering of Senator Carignan, that require broader public policy engagement with stakeholders.

So I do not want my vote against this amendment to be interpreted as being harsh or otherwise not welcoming of safeguards. We must have safeguards. The safeguards that are in the original bill are entirely appropriate for the eligibility of the original bill. But I do believe, to be consistent with my vote of last night against the expansion, it would be entirely appropriate for me not to vote for the amendment before us.

**The Hon. the Speaker:** Senator Harder, would you take a question?

**Senator Harder:** Certainly.

**Senator Andreychuk:** Senator Harder, I have a different conclusion to the same conundrum you have. The bill was expanded yesterday and there were no safeguards. Today we are dealing with the safeguards, and I'm coming to the conclusion that the majority in this chamber will vote for the amendment. Without this additional safeguard, we're really going into uncharted territory. You're asking me to take a risk with lives of other Canadians without the safeguards that you're going to look at as soon as you finish studying them pursuant to section 9 of the bill.

I find that difficult, so I've taken the road to Senator Carignan, saying if the majority of this chamber has expanded the bill and disrupted the balance, I want an immediate safeguard, one that is not internal. I share Senator Enverga's conundrum that a system within itself, perhaps at this stage, is not what we want.

You've made me more nervous because you listed all the people who supported your bill, but that engagement was with associations and stakeholders, not the people who will be

affected: common Canadians. I know common Canadians say, "I don't want to suffer. I would rather die than have to do A, B or C." I don't think they have had a reflective, coast-to-coast discussion. The last one was in that chamber when we looked at euthanasia and palliative care, and we came out with palliative care first, then let's look at how we proceed for those who can't be helped under palliative care or don't want to be helped under palliative care.

**Senator Harder:** Let me say that I'm not asking you to vote any particular way. That's for you to decide. I just thought it was important for the house to understand why and how I am going to vote. I believe it would be inconsistent for me to seek to make legitimate or otherwise reasonable an action taken by this chamber last night.

**Senator Carignan:** Question!

**Hon. Mobina S. B. Jaffer:** Thank you very much. I want to thank Senator Carignan for the great work you have done on this bill and on all the work you do here. It has been amazing working with you in all the work you do here, but especially on this bill.

Honourable senators, I stand with great difficulty today in front of you. I don't want to speak. If my mother were alive, she would say, "Well, don't speak, then." My dad would say, "But if you believe in it, speak." So I'm going to speak. I'm listening to my dad.

God bless you, dad.

Honourable senators, the process we are talking about is a court process. We are saying, "Go to a judge." If you go to a judge, there will be lawyers involved. We are not talking about health tribunals. We are talking about going in front of a judge.

If we were talking about health tribunals, I would be in a different place than I am now. I want to say to you that everything that happened yesterday, when I read it today, I am absolutely troubled. I said to people who care about me in this institution, "After I've spoken, don't you dare leave me; you still have to be my friends."

Let me tell you what the B.C. Civil Liberties Association is saying will happen if we bring this amendment. Court applications will cost the critically ill $20,000 to $50,000. Canadians with rare diseases, those in rural and remote areas, will face the greatest cost barriers to access. Added cost barriers disproportionately impact seniors, women and racialized minorities who are more likely to be poor. Legal aid will not be available for low-income Canadians who are critically ill, and judicial pre-authorization could be a constitutional barrier to access.

I have their whole paper here. If anybody wants to read it, they are welcome. I will not read through it because I want to speak on this.

Honourable senators, I'm not the chief justice of my province, but as a lawyer who practises there a lot, this will be a chamber application. A judge will not go to a hospital. What will he do when he goes to the hospital? Look at the patient? He is not a doctor. He is not an expert. This will be a case that will probably go to the chambers. No, people will not be dressed as lawyers. They will not wear their black gowns, but they will still go to court.

If it was going to a health tribunal, I would not be speaking to you in this manner. I am finding it distasteful to speak because I don't want — I'm finding it difficult, let's put it that way.

Honourable senators, I am the first one who wants safeguards. I know they are needed, so I'm not against them. I also want this bill, so I'm not against this bill. But I want the bill for the immigrant woman, who is sleeping in a hospital, who has no access to funds and cannot get legal aid in my province. You can't get legal aid in my province if you have a child that's being abused. You can't get legal aid in my province in custody cases. Do you think that an immigrant woman sitting in the hospital is going to be looked at by legal aid? Forget it. It's not going to happen. Not in my province. I can't talk about anybody else. Legal aid is not available. All the legal aid is being used for criminal cases. You can ask anybody. There is no legal aid. Legal aid will not come into this.

Let me tell you, if I can do this calmly. I agree, it will not be an adversarial process, but you still have to put evidence in front of the judge. You still have to convince the judge as to the person's health.

So let's look at it. What kind of evidence will the judge have? Let's go through these amendments. Two medical doctors. I would respectfully suggest that we amend it and add "nurse practitioner" because the bill covers nurse practitioners as well. Two medical practitioners.

Senators, I practise in my province. To get even a one-page letter from a doctor costs between $500 and $1,000. This is not a one-page letter. This is setting out the medical health history of a person. A doctor would be making a very serious decision on somebody's life; they are going to be very careful as to how they draft it. We are telling them to include the medical condition, the prognosis, whether palliative care is available. I could write a book about palliative care from what I have gone through with my father. In a place that is very well-to-do, West Vancouver in British Columbia, palliative care does not exist. So the doctor, judge or lawyer will have to inquire as to what palliative care exists in the area.

• (1700)

Then there are all the risks associated with assisted dying. That's another thing a doctor has to put on the paper. That's more work.

I don't know about you, but in my province it's very difficult to get a psychiatrist. And the minimum you would have to pay a psychiatrist is $10,000. I'm not kidding you. I deal with this all the time, if I can find a psychiatrist.

We have heard a lot about the Alberta case — two doctors. The case is from Red Deer. There was one doctor from Red Deer. They couldn't find another doctor in all of Alberta. They went to Vancouver. The second doctor talked to and examined this

person via Skype. He was from Vancouver; he never saw this patient. This is the Alberta case that we are all very proud of. So there are not two doctors in some areas.

Senators, I ask you to look at this amendment very carefully. I want to support this amendment, but my conscience tells me that given everything we worked on, we are creating terrible barriers.

Senators, we can only do so much and have only so many resources in such a short time. I humbly ask you to look at this very carefully, because for an immigrant woman who desperately needs a doctor to look after and who has no resources, this bill is not going to help her. I don't even think it's funny to say bring in more immigrants if we have more and more assisted dying, because this will affect everybody.

Honourable senators, this is probably the toughest thing I have ever done in my life, besides fleeing from the army. I'm going against everything I have worked for in the last few days. But I have to be true to myself. If we pass this amendment, everything we worked for is gone.

Thank you.

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

**Hon. Senators:** Question.

**The Hon. the Speaker:** It was moved by the Honourable Senator Carignan, seconded by the Honourable Senator Martin:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 3,
>
> (a) on page 6 —

May I dispense?

**Hon. Senators:** Dispense.

**The Hon. the Speaker:** All those in favour of the motion in amendment please say "yea."

**Some Hon Senators:** Yea.

**The Hon. the Speaker:** All those opposed to the motion in amendment please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion the "nays" 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:** Fifteen minutes.

**The Hon. the Speaker:** The vote will be at 5:20 p.m., colleagues.

• (1720)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

| | |
|---|---|
| Andreychuk | Lang |
| Ataullahjan | Lankin |
| Baker | MacDonald |
| Batters | Maltais |
| Boisvenu | Martin |
| Carignan | McInnis |
| Cowan | McIntyre |
| Dagenais | Mockler |
| Eaton | Omidvar |
| Eggleton | Plett |
| Fraser | Pratte |
| Frum | Raine |
| Greene | Seidman |
| Housakos | Smith |
| Joyal | Tannas |
| Kenny | Tardif—32 |

NAYS
THE HONOURABLE SENATORS

| | |
|---|---|
| Beyak | Merchant |
| Black | Meredith |
| Campbell | Mitchell |
| Cordy | Moore |
| Day | Munson |
| Downe | Ogilvie |
| Doyle | Oh |
| Duffy | Patterson |
| Dyck | Poirier |
| Gagné | Ringuette |
| Harder | Runciman |
| Jaffer | Stewart Olsen |
| Johnson | Tkachuk |
| Lovelace Nicholas | Unger |
| Manning | Wallace |
| Marshall | Wallin |
| Massicotte | Watt |
| McCoy | White—37 |
| Mercer | |

ABSTENTIONS
THE HONOURABLE SENATORS

| | |
|---|---|
| Bellemare | Enverga |
| Cools | Sibbeston—4 |

**The Hon. the Speaker:** On third reading debate, Senator Cools.

**Hon. Anne C. Cools:** Honourable senators, I rise to speak to 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).

This bill is the new Liberal government's response to the Supreme Court's judgment in *Carter v. Canada (Attorney General)*. I thank new Attorney General Wilson-Raybould and Health Minister Dr. Philpott for their fine efforts to put this bill of such magnitude together in a short time. Sadly, for nine of the twelve months of the Supreme Court's one-year suspension of its Declaration of Invalidity, the previous government took little action to put before us, the Commons House and the Senate, in the court's words, "legislation consistent with the constitutional parameters set out in these reasons." Last January 15, the court granted the Attorney General a four-month extension of its declaration to June 6.

The issues before us are weighty and ponderous, matters of life and death, end of life and termination of life. The Supreme Court having considered Criminal Code sections 241(b) and 14, concluded that they were void insofar as they prohibit physician assistance to end human life. The court also considered whether these two Criminal Code prohibitions were consistent with the 1982 Charter of Rights and Freedoms, section 7, and ruled they were not. Section 7 says:

> **7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Honourable senators, in their reasons for judgment in *Carter*, the court wrote, at paragraph 126:

> [126] 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 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 choose, by enacting legislation consistent with the constitutional parameters set out in these reasons.

On its remedy, the court said, at paragraph 127:

> [127] The appropriate remedy is therefore a declaration that s. 241(b) and s. 14 of the *Criminal Code* are void insofar as they prohibit physician assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. "Irremediable," it should be added, does not require the patient to undertake treatments that are not acceptable to the individual. 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.

• (1730)

Colleagues, in 1993 in *Rodriguez v. British Columbia (Attorney General)* the Supreme Court previously ruled on assisted dying. The Court's five-judge majority found that these same Criminal Code sections did not violate the Charter's section 7, and upheld them. Bill C-14 is wholly new, uncharted ground that is the medical profession's assistance to administer lethal substances to cause death for Canadian persons who want it. This grave matter abounds in large, not easily resolved legal, moral, and ethical questions. The wilful termination of human life is a proposition that jolts our legal and human sensibilities, and invokes unease. This gravity is enlarged by the role that the Court and this bill have assigned to medical and nurse practitioners, which could foster mistrust about the members of the most esteemed medical profession, many of whom are quite anxious. I ponder the frequent use of the new phrases "physician assisted suicide" and "medically assisted death."

Honourable senators, now to these Criminal Code sections 241.(b) and 14., that the Supreme Court has declared void. Section 241.(b) says:

> **241** Every one who
>
> **(b)** aids or abets a person to commit suicide,
>
> whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Fourteen years is harsh, exceeded only by a life sentence. Section 14. says:

> **14** No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

For centuries, the criminal law held that no human person can consent to be killed. Not long ago, suicide, *felo de se*, was a criminal act by the Criminal Code section 225. which said:

> **225.** Every one who attempts to commit suicide is guilty of an offence punishable on summary conviction.

Difficult to prosecute the dead, this section was repealed by the 1972 Criminal Law Amendment Act and brought relief for living relatives of any deceased.

Honourable senators, since June 6, Criminal Code section 241.(b) and section 14. are void quote, "insofar as they prohibit physician assisted death for a competent adult person." By *Carter*, the Supreme Court had set aside centuries of British common law and Canada's Criminal Code, codified in 1892, that protected the lives of human persons, described in moral philosophy as the sanctity of human life. For centuries, the cast

of mind of the law and the courts have upheld this sanctity, as did the medical profession. I uphold the sacred and the need for the sacred in the souls and psyches of human beings. Life was always seen as the sacred grant to us from an Almighty Creator, the Abrahamic God, Allah or Jahweh. In his *Commentaries on the Laws of England*, learned seventeenth century jurist William Blackstone, wrote, at page 125:

> Life is the immediate gift of God a right inherent by nature in every individual.

This sanctity of human life was upheld by the law, the legal profession, and the medical profession's commitment to human life protection. Physicians once swore this in their ancient Hippocratic Oath, now not used. It said partly:

> I swear . . . that, according to my ability and judgment, I will keep this Oath and this stipulation . . . I will follow that system of regimen which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous. I will give no deadly medicine to any one if asked, nor suggest any such counsel; . . . With purity and with holiness I will pass my life and practice my Art. . . . Into whatever houses I enter, I will go into them for the benefit of the sick, . . .

The esteemed medical profession, physicians and doctors have always abhorred the thought of administering lethal substances. Many doctors are unclear just why this forbidding duty has been thrust upon them by the Supreme Court, and are rightly apprehensive. I repeat in *Carter*, at paragraph 126, the Court ruled that Criminal Code section 241.(b) and section 14. prohibitions:

> . . . infringe Ms. Taylor's section 7. rights to life, liberty and security of the person.

On June 6, these very sections were void by the force of the Constitution Act, 1982 section 52.(1), that says:

> **52. (1)** The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Honourable senators, I am unable to grasp how our highest right, the right to live, can mean a right to die with medical assistance. There is no right, nor law that can vest one person with a legal duty to end another's life. On this, I turn to the great masters of the common law wherein our rights and liberties were born. These masters guided us for centuries. I speak of the great seventeenth century lawyer-jurist Matthew Hale and the already cited William Blackstone. I shall again cite Blackstone's *Commentaries* Book I, *The Rights of Persons*. He wrote, at page 125:

> The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.

These words sound like our Charter section 7:

> **7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Blackstone says "The right of personal security . . . and uninterrupted enjoyment of his life," Section 7. says "the right to life, . . . and security of the person . . . ." Both sound like the U. S. *Declaration of Independence*:

> . . . , that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty . . .

These phrases sound alike because they are Blackstone's words. Our Confederation Fathers, like the Yankees enlisted his work, rights and liberties.

Honourable senators, Judge Mathew Hale, in his 1736 *History of the Pleas of the Crown Volume I*, republished by Sollom Emlyn in 1800, wrote, at page 411:

> No man hath the absolute interest of himself, but 1. God almighty hath an interest and propriety in him, and therefore self-murder is a sin against God. 2. The king hath an interest in him, and therefore the inquisition in case of self-murder is *felonice et voluntarie seipsum interfecit et murderauit contra pacem domini regis*.

The Latin says:

> . . . the felonious, willful killing, and murder of himself, contrary to the peace of the lord king.

No person's interest in their life is absolute. All people have interests in the lives of their loved ones and fellow humans. Her Majesty the Queen and her Canadian Crown Ministers, have interests in every Canadian life. So does God. We should not dwell on the sole consent of the person seeking life's end. Family members have a strong interest in the life of the one who seeks to die. We have always upheld the legal and moral maxim that no person's interest in their life is absolute. We are members one of another. As poet John Donne said:

> No man is an island entire of itself; . . . any man's death diminishes me, because I am involved in Mankind.

Honourable senators, Dr. Margaret Somerville of McGill University Centre for Medicine, Ethics and Law warns of modernity's dangers. In her March 3, 2014, *Calgary Herald* article headlined *Somerville: Euthanasia's slippery slope can't be prevented*, she wrote:

> The case against legalizing euthanasia is . . . difficult to present, . . . This is because the relevant risks and harms are intangible, inchoate at present, or in the future. They include risks of abuse of vulnerable people; harm to the ethos and ethics of medicine; to the law's capacity to enshrine and carry the message of respect for life; to important, shared, fundamental values through which we bond to form society - that we care for each other, . . . and don't intentionally kill each other; . . .

• (1740)

> Once we cross the clear line that we must not intentionally kill another person, there's no logical stopping point.
>
> When euthanasia is first legalized, the usual necessary and sufficient justification for breaching that line is a conjunctive justification comprised of respect for individual autonomy and the relief of suffering. . . .
>
> And if one owns one's own life and no one else has the right to interfere with one's decisions in that regard . . . then respect for the person's autonomy is a sufficient justification for euthanasia. That is, the person need not be suffering to have access, hence the proposal in the Netherlands that euthanasia should be available to those "over 70 and tired of life."
>
> And once the initial justification for euthanasia is expanded, why not allow some other justifications, for instance, saving on healthcare costs, especially with an aging population? Until very recently, this was an unaskable question. . . . It's anecdotal, but a final year medical student . . . became very angry because I rejected his insistent claim that legalizing euthanasia was essential to save the healthcare costs of an aging population.
>
> The practical slippery slope is unavoidable because familiarity with inflicting death causes us to lose a sense of the awesomeness of what euthanasia involves, killing another human being. The same is true in making euthanasia a medical act.

Honourable senators, on June 1 here in Senate Committee of the Whole, Health Minister Dr. Jane Philpott said:

> Before you today is a transformative legislative framework that we believe is the right —

Colleagues, could I have five minutes?

**The Hon. the Speaker:** Are you asking for five minutes? Agreed?

**Hon. Senators:** Agreed.

**Senator Cools:** Honourable senators, on June 1, here in Senate Committee of the Whole, Health Minister Dr. Jane Philpott said:

> Before you today is a transformative legislative framework that we believe is the right approach for Canada. . . .
>
> By including criminal exemptions . . . it provides Canadians with access to medical assistance in dying. . . .
>
> Medical assistance in dying will be available June 6 . . . . Therefore, medical aid in dying will be legal, but without Bill C-14's eligibility criteria and safeguards . . . .

This is a matter of some concern for me, colleagues.

Studying bills is instructive. It takes us to the drafters' cast of mind and conceptual framework, and to the bill's concepts, words, sentences, clauses, and to the mischief the bill will defeat. Criminal Code drafting is tough and has three intentions: they are, to defeat the bad and the deviance that allows evil to flourish, to uphold the good, and, to prescribe, regulate, prosecute and punish crime.

Bill C-14 was drafted with great care. I support it, and urge colleagues to do so. I uphold this bill's approach, which accords with our ancient caution not to grant nor vest in any person, a positive power to end another's life.

The criminal law does not admit of nor grant anyone such a positive power or right. Capital punishment has long been abolished on these grounds. This bill is ingenious and brilliant. It upholds the law, which has long denied such a positive right by refusing to set out such a power. It employs the federal criminal law power to protect doctors and other medical professionals, to whom it gives certainty and security of exemption from criminal prosecution. It sets out some 12 such exemptions to that end. This bill upholds the sovereignty of Parliament and our endeavours.

Colleagues, at the end of day, the issue before us is not what the court said or did not say. At the end of day, the sovereignty of Parliament insists and determines that we make our own decision here based on what we in due diligence see to be the appropriate and correct action to take.

Most important of all, colleagues, Parliament does not have to abide by every word and every statement set out by the Supreme Court. The Supreme Court has laid out an opinion and a judgment before us, but it is up to this Senate to make its own judgment and to make its own decisions. I do not think for a moment that the judgment of this Senate should just be a pure replica of what the court said. Certainly, we have some ingenuity, and some ideas, other considerations, and other thoughts to bring to the table.

I have to tell you that I do not understand how the Attorney General's people — the Department of Justice drafters — were able to put such a complete bill together in such a short amount of time. We should commend them for that. They set out to create a specific conceptual framework, and I think we ought to respect that and work within it. We ought to make amendments, but not amendments that, in essence, rewrite the bill or exceed the scope of the bill.

To that extent, I am supporting this bill. I will say again that this bill upholds the sovereignty of Parliament, the Senate and the Commons as the ancient High Court of Parliament, which, as I said yesterday, is a court of competent jurisdiction with every power to make determinations in accordance with the minds and the wishes of the members.

I have listened to many senators in the last few days. I cannot help but note the distrust and pain and anguish that I have felt and heard in many senators. I think that the distress and pain that we have seen and heard in them is very real because that pain is a manifestation and expression of the magnitude of the decisions that we are making here tonight.

I thank you very much, Your Honour, and I hope that I have made myself clear. The genius of this bill is that it does not set out a positive right to kill. That is a political, parliamentary and legal fact, and I commend the ministry for that. I salute the Attorney General, the Minister of Health and the Prime Minister. I will salute you too, Your Honour.

**The Hon. the Speaker:** On debate, Senator Eaton.

**Hon. Nicole Eaton:** You Honour, colleagues, I rise today to speak in respect of our study of Bill C-14 regarding provisions enabling medical assistance in dying.

As we do so, it is timely to recall the words of Cicero, a Roman senator, a great philosopher, constitutionalist and orator, who is credited with uttering the now famous axiom, "While there's life there's hope."

While many of the voices enjoined in the debate on this matter might say otherwise, I believe this notion to be the absolute truth.

While there is life there is indeed hope: hope for a mitigation of pain and suffering at the end of life, hope for clarity of thought in decisions around life or death, hope for the very best in all aspects of care for patients and their loved ones.

• (1750)

Hope can spring eternal, yet Cicero was equally wise when he said, "Freedom is a possession of inestimable value."

Herein lies the crux of this issue. The space and diversity of intent between these two phrases is representative of the magnitude of the challenge we have before us.

Unlike perhaps never before, we now encounter a perfect storm around this legislation: a head-on collision of morals, values, faith, ethics, conscience and rights, each competing to be the nexus of the law's provisions.

[*Translation*]

We have heard a lot of opinions from various quarters on this proposed legislation, its compliance with the Canadian Charter of Rights and Freedoms and its ethics.

[*English*]

Yet with each further argument heard, I am struck with the reality that we are dealing with much more than lofty ethical consideration of a profound intellectual construct.

Colleagues, this legislation's purpose really is a matter of life and death.

[ Senator Cools ]

[*Translation*]

As parliamentarians, we have been called upon by the highest court in the country to give advice on the development of legislation to responsibly guide and direct the practice of medical assistance in dying.

[*English*]

And so in this chamber of sober second thought we now study, debate and recommend either acceptance or improvement of the required legislation.

Therefore, how this law can achieve the balance between life through hope while respecting the freedoms of those with irremediable conditions is, I believe, the task before us. We have heard the arguments of our honourable colleagues regarding having the law mirror the broader perspectives around medical assistance in dying. They would have us match the proposals outlined in the special joint parliamentary committee's report deposited earlier this year and spoken to in this chamber by Senators Ogilvie and Cowan.

But I must caution colleagues that we must not by design or default allow or enable medical assistance in dying to become part of the norm of how Canadians die. It must only be employed in exceptional circumstances and as a very last resort for those who clearly qualify for its application.

Today I want to speak to the need in this legislation to ensure that all options are available to improve quality of life and to mitigate pain and suffering before the decision to end one's life is made. Let's face it, there is no dress rehearsal for death; there is no off-ramp on the road to eternity. This is particularly true in our modern disposable society in which things designed to become obsolete are consigned to the rubbish heap at the first hint of difficulty. We owe to society and to our younger generation to not present alternatives endorsing the false notion that suffering and hardship are not de facto reality of our lives.

Perhaps the most fundamental factor of eligibility for patients is ensuring that Canadians contemplating medical assistance in dying have access to high-quality palliative care.

We've heard much about palliative care in the debate around this issue, but my research has taught me that few truly understand the real nature of palliative care and its benefits. The World Health Organization defines palliative care as:

> . . . an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.

Far from being the fast track to end of life many consider it to be, palliative care can actually intend neither to hasten nor postpone death. Its aim is to enhance the quality of life. It affirms

life and regards dying as a normal process. It integrates the psychological and spiritual aspects of patient care and uses a team approach to address the needs of patients and their families.

Dr. Ignazio La Delfa is Medical Director of the Palliative Care Unit at Toronto's St. Michael's Hospital. It's his conviction that if there is to be medical assistance in dying there must also be education of doctors, nurses, health practitioners and specialists.

[*Translation*]

In his opinion, palliative care does not result in death. The purpose of palliative care is to provide all the care required so that patients can live out their final days without any unnecessary suffering.

[*English*]

It really is about death with dignity with a reduction in suffering and mitigation of other symptoms. This enables a feeling that the patient is in control of their situation.

Another thing Dr. La Delfa shared was that out of the literally thousands of patients he has treated over the years, remarkably few, less than 10, have called for medical assistance in dying. What is more, this number decreases even further after his patients receive a palliative care consultation.

Despite these realities, Dr. La Delfa maintains that people, including many health practitioners, fear palliative care because it's misunderstood. In fact, he commented to us that up until a decade ago palliative care was not taught in any formal way in under- or post-graduate health care institutions and medical schools. As a consequence, there are now two generations of doctors and medical professionals who know little about palliative care. They can forecast the onset of terminal illness but know little of how to render the care it takes for dealing with the suffering and its impacts until the condition claims its victim.

The Canadian Medical Association's vice-president of medical professionalism, Dr. Jeff Blackmer, would appear to concur with Dr. La Delfa's position. In a report in this week's *Hill Times*, Dr. Blackmer is quoted as saying, "as a profession, physicians need better training on palliative care for more patients than those with just one week left to live. There are patients with many different conditions that could benefit." He added that "they'd never want a situation where someone requests an assisted death because they couldn't receive palliative care."

Dr. Blackmer and the CMA research shows that between 1 and 3 per cent of Canadians will be the ones to pursue medically assisted deaths while the other 90 per cent could benefit from better palliative care. He added that the Canadian Medical Association will be advocating for the reinstitution of Canada's Health Secretariat on Palliative and End-of-Life Care and standardized national guidelines.

According to Dr. La Delfa, it is only recently that it is gradually becoming okay for society to talk about palliative care, to discuss how things can get better in the management of patients' conditions, to talk about improving conditions around patients' length of time on earth and to not merely prepare for their deaths.

This speaks to the real values of palliative care, and we should embrace its inclusions in this legislation and understand that its provisions can directly reduce the number of cases of requests for medical assistance in dying.

In short, palliative care can render hope, which can improve and positively prolong life, even in the face of irremediable illness. While there is life there is hope, and palliative care can deliver both.

Then, honourable senators, if palliative care is of such benefit, what has been done in Parliament to make its provision an integral component of health care in Canada?

Back in June 1995, the Special Senate Committee on Euthanasia and Assisted Suicide released its report *Of Life and Death*. It called for governments to make palliative care programs a top priority in the restructuring of the health care system.

**The Hon. the Speaker:** Honourable senators, it now being six o'clock, pursuant to rule 3-3(1) I am required to leave the chair until eight p.m. when we will resume, unless it is your wish not to see the clock. Is it your wish not to see the clock?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Agreed.

**Senator Eaton:** In June 2000, the subcommittee of the Standing Senate Committee on Social Affairs, Science and Technology released its final report updating *Of Life and Death,* entitled *Quality End-of-life Care: The Right of Every Canadian*.

[*Translation*]

It recommended that quality end-of-life care become an entrenched core value of Canada's health care system. The report stated that each person is entitled to die in relative comfort, as free as possible from physical, emotional, psychosocial, and spiritual distress.

• (1800)

[*English*]

In 2005, five years later, the Honourable Senator Carstairs released a report, *Still Not There, Quality End-of-Life Care: A Progress Report*. It contained a series of new recommendations aimed at bringing the efforts of the 1995 and 2000 endeavours to fruition. Add to this the efforts of the Special Senate Committee on Aging, which was in place over the 2007-08 period, and you can see that myriad efforts have been under way in respect of embracing palliative care as a pillar in Canada's health care.

In the other place, another key step in this journey was the unanimous adoption in 2013 of NDP MP Charlie Angus' motion M-456. This motion called for the establishment of a pan-Canadian palliative and end-of-life strategy in conjunction with the provinces and territories. Yet, in the 21 years since this plethora of parliamentary endeavour began, we are no further ahead in ensuring Canadians benefit from high-quality palliative care. That's not to say that the debate around palliative care is not

bereft of good intentions — far from it. During the meeting of the Senate Committee on Legal and Constitutional Affairs in early May, which Health Minister Philpott attended to defend this bill, she was emphatic about palliative care:

> Canadians have resoundingly told us they want to receive care at home, and we have listened and are prepared to make significant investments in the order of $3 billion over the course of our mandate to help deliver better home care for Canadians, including palliative care.

She then stated:

> I have already contacted my provincial and territorial colleagues to discuss the necessary changes to our health care system so as to allow home care, including palliative care, which is a shared priority.

When Minister Philpott appeared last week before us in the Committee of the Whole, she went on even further in promoting the critical importance of palliative care. She said:

> . . . studies show that less than 30 per cent — some studies show only 10 to 15 per cent — of Canadians have access to high-quality palliative care. That is not acceptable to me. So we have to do much more. I, as the Minister of Health, am firmly committed to that.
>
> As you know, though, the delivery of care is within the jurisdiction of the provinces and territories. I look forward to working with them. "We are prepared to make significant investments to make that possible, to find ways to scale up the programs that are working well across the country. . . .
>
> I hope that I will have your support in finding ways in which we can make sure that we do better by Canadians.

While I am heartened by such comments, there needs to be balance between the rhetoric and the reality. The Liberal government's federal budget delivered in March of this year contained no funding for palliative care, and neither do the Department of Finance 2016-2017 Supplementary Estimates (A), currently under study by the Standing Senate Committee on National Finance.

So while the government is all fired up to see Bill C-14 immediately passed, it certainly seems to be much less compelled to entrench funding for critical matters that underpin managing the pain and suffering of those covered under the bill's provisions.

Colleagues, we can change this. This is our chance to give credence to the tireless efforts of our colleague, former Senator Sharon Carstairs, whose 2005 report, as I mentioned earlier, *Still Not There, Quality End-of-Life Care: A Progress Report* rings as true today as it did a decade ago.

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

**Senator Eaton:** May I have five more minutes?

**Hon. Senators:** Agreed.

**Senator Eaton:** By including measures of palliative care in the body of the bill, we can insist that a component of providing fully informed consent for patients seeking medical assistance in dying would require them to you undertake a palliative care assessment. Through this, patients would be assured of being informed of treatment, technology, or support options available to relieve their suffering. I know that there are some who believe that inclusion of palliative care in this legislation is not practical, and is a panacea in end of life care. On the contrary, insisting that the government act in this regard is part of our role and mandate. Should we not aspire to compel the government to act? Indeed, we must. It is our job to do so.

[*Translation*]

Honourable senators, this very simple, albeit very important, measure will help put palliative care at the centre of the bill and thus bring it greater certainty.

[*English*]

Seeding such measures into this legislation can help make its provisions more evolving than final in nature, treading softly and gingerly into these matters, as suggested last week in this chamber by some of my colleagues. While choosing this path does not necessarily reflect my personal belief, I must err on the side of pragmatism in this matter of such final consequence.

Colleagues, poet Robert Frost wrote, "Nothing can make injustice just but mercy." Enabling the delivery of palliative care at end of life through this legislation is a merciful means to an unjust end for those whose suffering is exceptional.

MOTION IN AMENDMENT

**Hon. Nicole Eaton:** Therefore, honourable senators, I move:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 3, on page 6, by replacing line 5 with the following:
>
> "-sistance in dying after having had a palliative care consultation and having been informed of treatment, technology or support options available to relieve their suffering.".

Thank you.

**The Hon. the Speaker:** It is moved by Senator Eaton seconded by honourable Senator Unger, that Bill C-14, as amended, be not now read a third time but that it be amended in clause 3, on page 6 — shall I dispense?

**Some Hon. Senators:** Dispense.

**The Hon. the Speaker:** Senator Eaton, are you willing to take a question?

**Senator Eaton:** Yes.

[*Translation*]

**Hon. Claudette Tardif:** Like you, I am also concerned about the issue of palliative care. It is crucial that all Canadians have access to excellent quality palliative care. I agree that proper palliative care is lacking in this country.

However, palliative care is associated with the kind of care given to people who are dying, one or two months before the end of their lives. How can we reconcile the fact that the proposed amendment would allow palliative care for people who may be suffering from an irremediable disease and whose suffering is intolerable, but who are not in end-of-life situations and whose death is not immediately foreseeable? How could such a system be implemented in a practical sense?

[*English*]

**The Hon. the Speaker:** Senator Eaton, before you start, you will need more time. There are other senators who would like to ask questions. Can we grant another five minutes, colleagues?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Senator Eaton.

**Senator Eaton:** Thank you very much. I think, as you heard me quote Dr. La Delfa, most people do not understand what palliative care is. With palliative care, we instinctively think, "Oh, it's end of life." But palliative care is equally good for people suffering from a chronic disease. It can give you a better quality of life.

By forcing an assessment as part of the regulatory framework that you be given a palliative care assessment, that is, you're told what is possible for your particular ailment, by putting it in the legislation will force the provinces and the federal government as well as medical schools to take note that palliative care is not a luxury anymore. It's not just a specialty over in the corner. If we're going to adopt medical assistance in dying, the other option has to go along with it. We have to offer people this option.

**Hon. James S. Cowan (Leader of the Senate Liberals):** Would Senator Eaton entertain another question?

**Senator Eaton:** Absolutely.

• (1810)

**Senator Cowan:** Sorry, Senator Eaton, but I had to slip out during part of your speech. You and I had a conversation a little while ago about this. We share a concern about the need to ensure more palliative care and to make sure that people understand what palliative care can do. I appreciate the response that you just gave to my colleague.

One of the things that we heard in the discussions at our joint committee, where there was broad support as well for palliative care, was that at the moment — and I'm sure you agree — there is an uneven availability of palliative care access across the country. I'm sure we'd also agree that that needs to be fixed. We need to press government at all levels, as you just said, to improve, enhance and expand the availability of services.

The only concern I had — and I think in our previous conversation you addressed it — is that we are looking here to have a palliative care assessment and to have an informed discussion with the patient about the palliative care that is available, recognizing, unfortunately, that palliative care is not available everywhere in every community. So we're not looking at this as a bar. We had a lot of discussion earlier in the day about a bar to accessing medical assistance in dying. I wouldn't want the lack of availability of palliative care, through no fault of the patient who is seeking this, to be a bar to access. Would you agree with that?

**Senator Eaton:** I completely agree with you. Were you around in 1995 in the Senate?

**Senator Cowan:** No.

**Senator Eaton:** No; far too young.

**Senator Cowan:** I may look like it, but I wasn't.

**Senator Eaton:** That was when Senator Carstairs started a study on this and there have been three or four reports since.

I think that you're quite right. You would never want somebody stopped. As our esteemed colleague Senator Joyal said, it is not up to us to micromanage how the provinces will do this. I think it's up to us to try and force the governments to think about what they can do to make this more readily available.

Another issue that has come up in this chamber — and we haven't discussed this very much — is I don't think there will be hordes of people rushing towards the gates of eternity when this law is passed. There might be a small increase in every province and, perhaps slowly, they will learn to manage what is asked of them in this bill.

**Hon. Mobina S. B. Jaffer:** Senator Eaton, at committee you raised palliative care. I am really glad you did. As you said it's not just end of life. It can be chronic disease. It can be a lot of things. I'm hoping that from here we will look — whether it's you or a private member's bill — at doing a further study. This is so important. This is really what we're talking about. If people had good palliative care, it would be so effective.

The thing I'm struggling with, Senator Eaton — I'm sure you looked at it, as have I, but I haven't been successful — is how does this become part of the criminal act, because this is a criminal bill; and how does this become palliative care? How does it fit into the criminal act? I'm struggling with that.

**Senator Eaton:** If you're struggling, I'm not a lawyer, so it would be a huge struggle for me. I think it just becomes part of the criteria. If you ask for medical assisted death, part of the

criteria is two independent people assessing your competence. You are then given a palliative care assessment. It just becomes one box to check so the patient has all the options.

I guess if it was somebody I loved who wanted this, I would feel better if they were told how they could be medicated or supported in other ways before seeking death.

**Hon. Joseph A. Day:** Will Senator Eaton take another question?

**Senator Eaton:** Yes.

**Senator Day:** It flows from Senator Cowan's question. I am looking at your amendment to proposed section 241.2 on page 6. In fact, it's one of the prerequisites in subsection (1) to being able to access medical assistance in dying.

One of the tests that you have applied, which it says has to be done, is having had a palliative care consultation. "Consultation" is the word in the amendment. "Assessment" might be an interesting amendment, but the word is "consultation" here. We're talking about some communities that have no palliative care, or very little. If there is any, it's for end of life.

How do we avoid your amendment becoming a block for the individual to receive the care?

**Senator Eaton:** We have had three Senate reports recommending that palliative care be more widely available in Canada. We have had the present Minister of Health say that Canadians have spoken and that there will be up to $3 billion set aside for home care and palliative care. How do we make sure that gets done? How do we make sure that someday in Nova Scotia or Yukon or Northwest Territories a hospital and medical schools will start training doctors and nurse practitioners? Because it is an expertise. It's not something you can learn. How do we push people? How do we push the government into making palliative care more widely available if we don't use the instance of this bill, which is saying to Canadians, "You can have medically assisted death," and yet we don't push the government also to try and start building palliative care resources across the country?

**Senator Day:** I have a supplementary.

**The Hon. the Speaker:** No, Senator Andreychuk is next.

We are running out of time, Senator Day. We will come back to you if we have more time left, but I saw two other senators standing.

**Hon. A. Raynell Andreychuk:** The amendment talks about "palliative care consultation," whereas the word palliative care "assessment" has been used by you and by some of the senators. My understanding of "consultation" could be — and this is where the provinces and the doctors will have to pick it up — basically an explanation of what palliative care is and, contained therein, what is available. They have a right to take it or not to take it. An assessment leads to what you need as opposed to what might be available. Am I reading too much into your amendment?

**Senator Eaton:** If I have a terrible, chronic illness and require medically assisted death, I want somebody to come and say, "You know, senator, this is available, this is available and this is available," something your family doctor would not know anything about and your local nurse practitioner would not know anything about because it is an expertise. It's like being a neurosurgeon or an obstetrician. It's an expertise. And we don't have enough of them in this country.

My amendment to this bill is to try and force the government — and we have been talking about it since 1995 in this chamber — to spend the money to try and build up the expertise and the availability of palliative care.

**The Hon. the Speaker:** On debate, Senator Unger.

**Hon. Betty Unger:** Honourable senators, I would like to speak in support of Senator Eaton's amendment. When I was appointed to the Senate, I hoped that I might make a difference in some way — perhaps Senate reform, which Albertans have wanted for decades. I never, however, imagined this nightmarish scenario. I am dismayed that Parliament's gift to Canada on its one hundred and fiftieth birthday is going to be the dark scourge of physician-assisted suicide and euthanasia. I had hoped for so much better.

• (1820)

Today I stand in support of this amendment because I believe we must make certain that no one is ever forced to request a physician's assistance in dying simply because they have not received palliative care.

In my view, this amendment is imperative. Providing assistance to end a person's life without first providing assistance to alleviate their suffering is to deny the person the option of living. Such a situation would be incomprehensibly unjust, and yet this is exactly what will happen if we do not amend this bill.

We have never been on this path before. We do not know all the consequences that will arise now that the Supreme Court has launched us down the road of euthanasia and assisted suicide.

We are undertaking a dangerous societal experiment. Personally, I don't think this road will lead anywhere good. I believe that future generations will judge us harshly for our cavalier attitude toward the sanctity of life.

We must be certain that we do all we can to minimize the damage and unintended consequences. Safeguards around this legislation must be strong, sufficient and secure. If we are going to err, let us err on the side of caution, not on the side of ambivalence. Life is far too valuable to do otherwise.

The value and importance of palliative care have been widely acknowledged during the debate over physician-assisted dying. There is broad support for palliative care and an overwhelming recognition that more needs to be done.

In its report to Parliament, the External Panel on Options for a Legislative Response to *Carter v. Canada* said it this way:

> . . . a request for physician-assisted death cannot be truly voluntary if the option of proper palliative care is not available to alleviate a person's suffering.

The Special Joint Committee on Physician-Assisted Dying also underscored the importance of palliative care, noting that "there was an overwhelming consensus among witnesses that palliative care needs to be improved", and that "many Canadians do not have access to high quality palliative care when they need it." Their recommendation "to develop a flexible, integrated model of palliative care by implementing a pan-Canadian palliative and end-of-life strategy with dedicated funding, and developing a public awareness campaign on the topic" is an excellent goal.

In 2015, in a one-day House of Commons debate on physician-assisted dying, palliative care was mentioned 115 times. Conservative MP Harold Albrecht said: ". . . I could not agree more that we need a better palliative care system in this country."

Liberal MP Carolyn Bennett, now Minister of Indigenous and Northern Affairs, stated: "We have to know that real choice in end of life does not happen if people do not have optimal palliative care . . . ."

These are just a couple of examples.

Honourable senators, there is no debate over the importance of palliative care. The debate is over. The question is what are we going to do about it?

Ironically, it was our current Prime Minister who stated last year that: ". . . we cannot have any responsible conversation about physician-assisted death and not have a full discussion of palliative care in this country. . . . it should never be a conversation where we have one without the other." He promised that $3 billion would be invested in palliative care, and yet there was nothing in the budget and today we still see nothing. Was his promise fiction or reality?

We find ourselves here today being asked to consider a bill which contains no safeguard to ensure that palliative care services are available to those desiring physician-assisted suicide.

I am aware that the House of Commons Standing Committee on Justice and Human Rights added two amendments to the bill related to palliative care. One is found in the preamble and one is found in the body of the bill. Both are welcome amendments, but they do nothing to prevent the tragedy of a physician killing a person without first making them aware of their other options.

This is not an academic scenario, fellow senators. This is real life — and I would add death.

Allow me to illustrate this by reading from an e-mail sent to me by a registered nurse:

> I first heard of him from my colleague — the symptom control nurse at the cancer clinic.
>
> She was very concerned about his escalating symptoms which would likely soon be beyond what their outpatient clinic could control. She had encouraged hospice registration but the young man, and his loved ones would have nothing to do with hospice because they were focused on life, and despite assurances otherwise, they were certain that involvement with hospice meant hastened death.
>
> As feared, his symptom burden became such that they were desperate for help.
>
> This was certainly not a case for the emergency department, and the acute care wards are simply not trained and equipped to deal with this complex of a case.
>
> I had multiple telephone discussions with loved ones regarding how medications could safely be used to ease his distress, and that palliative care was not about hastening the death of this beloved boy.
>
> It was with fright and despair that they brought him to the hospice unit, but then something happened — something amazing. The medications worked!
>
> Although, he continued to deal with obstacles that any of us would have found horrendous, in a very short time, he was able to be out in the hospice lounge, hanging around with his ever present family and friends, playing music.
>
> This young man continued to be so full of life that soon they all felt that he was safe in our care.
>
> He was discharged home, and readmitted a few times over several weeks, when he wasn't with us he chose to "couch surf" with loved ones. One fine day he left the unit on a pass with his friends. They all came bustling back in the evening. And then, after some laughter and settling in, he suddenly, quietly, and naturally died.

This is a success story of hospice palliative care, and it underscores the need for this amendment. How can we, as a society, possibly endorse public policy which says to those who are suffering terribly: "Here, we have a doctor available to help you die. But, sorry, we have no doctors available to help you live." Or, "We have allocated resources and public funds to make sure that you can die prematurely, but unfortunately we are short on resources to help you live as comfortably as possible."

We must not allow such an injustice to happen.

Let me be clear: This is not an attempt to block access to a physician's assistance in dying; it is a necessary measure to make sure that no one chooses death due to pain or suffering which couldn't be alleviated.

Obviously, the person can refuse palliative care and that would not affect their eligibility for medical assistance in dying. To not alleviate someone's pain when it is entirely possible to do so would be terrible, but to offer them death without first offering pain management should be criminal.

I fully realize we have some distance to go before palliative care is available to all who need it, but I would suggest we have to start somewhere, and Senator Eaton had some excellent recommendations.

We have passed the expiry date of the Supreme Court's four-month extension. There is no need to rush. Let's take the time to get it right, and make sure that we get it right.

However, there is a misunderstanding. Effective pain management is available. Pain management in palliative care is making great strides. Let me give you an example.

Dr. Neil Hilliard is a palliative care consultant physician in Abbotsford, B.C., and the program medical director for the Palliative Care Program at Fraser Health. In 2014, Dr. Hilliard had a female patient with locally advanced cervical cancer and uncontrolled pelvic pain. As her disease progressed, the patient's pelvic pain intensified, despite many different treatments. However, when treated with a continuous subcutaneous infusion of dexmedetomidine, the patient's pain and delirium cleared. The treatment was successful in fulfilling the patient's goal of care, which was not to be deeply and continuously sedated but to be rousable and of clear mind while still having good pain control.

• (1830)

This is an example of how proper palliative care enabled an end-stage cancer patient with intractable neuropathic pain and delirium to be successfully managed during the last three weeks of her life, with no need to hasten her death. While this is just one example, it illustrates how proper palliative care can reduce suffering while improving the quality of living and dying.

Honourable senators, in its ruling, which legalized physician-assisted death, the Supreme Court of Canada said that the government should enact stringent safeguards to protect the vulnerable. There are many such safeguards that could and should be enacted but perhaps none as important as what this simple amendment provides, that the offer of palliative care must precede medical assistance in dying.

I support this amendment and I urge you to do so also.

**Hon. Salma Ataullahjan:** Honourable senators, I rise before you today in support of Senator Eaton's proposed amendments and to share some of my interrelated thoughts about Bill C-14.

As a Canadian senator of Muslim faith, I will speak briefly about what people in my community have said to me about this bill and touch upon some concerns expressed by the Canadian Council of Imams.

In Islamic faith tradition, neither euthanasia nor assisted suicide are supported or encouraged. However, the issue of physician-assisted dying has been decided by the Supreme Court of Canada, and the majority of Canadians, including many people of the Muslim faith who have spoken to me personally, agree that some form of physician-assisted dying legislation should be enacted, as do I.

From my own experience, I think back to when my husband's brother was in the hospital and his illness was at the stage where his lungs were failing. At that time, he made the decision to withdraw from treatment. The pain and suffering that he endured before his eventual death could have been avoided if he had the option of physician-assisted dying.

The concerns of Muslim faith leaders with regard to this bill centre around issues of patient vulnerability, safeguarding the interests of patients who are suffering, conscience protection for health care providers, as well as faith-based facilities, extended funding for medical research to find cures and improve pain management methods, and the availability and affordability of quality palliative care that meets national standards for all Canadians.

While I share all these concerns, the last two issues — specifically, access and funding for quality palliative care and investment in medical research, particularly in the area of pain management — are of great importance that I do not wish to be forgotten in this discussion. Every Canadian should have access to high-quality, affordable palliative care and the best pain management regimes possible.

I believe that both of these issues will form an integral part of the conversation that people will have with themselves and their families when considering whether the option of physician-assisted dying is the right choice for them. As such, people must be informed of their options.

Accordingly, I support the proposed amendment to include a provision that every patient be informed of all feasible palliative care options available to them through palliative care consultation, which include being informed about available supports, possible treatment plans and pain management options to relieve their suffering.

I know, personally, that I would never wish to be a burden to my family, as I'm sure many Canadians feel as well. So I want to have confidence that the choices people make about whether to live or die are not clouded by the fear of being a burden to their families for whatever time they have left to live.

I would urge the government to ensure that extended long-term funding is the place for both palliative care and medical research in pain management should this bill be passed.

Again, I reiterate my support for Senator Eaton's proposed amendments to include a palliative care consultation requirement and a provision that no person who wishes to avail themselves of medical assistance in dying may give informed consent to receiving such assistance without first being advised of all feasible palliative care options available to them.

**The Hon. the Speaker:** Question?

On debate, Senator Fraser.

**Hon. Joan Fraser (Deputy Leader of the Senate Liberals):** Honourable senators, I would like to thank Senator Eaton for bringing this amendment, and I intend to support it. But I would like to say why.

I'm not supporting it because I believe the goal you enunciated is feasible, Senator Eaton. I do not believe that the Parliament of Canada can or should force provincial governments to increase the provision of palliative care, and that is who would have to do it, provincial governments.

I believe they should do it. Absolutely. And I believe that passing this amendment would send a signal, a very important symbol of the fact that in adopting this legislation, Parliament is not in any way rejoicing in the prospect of people choosing death. Parliament is trying to help individual Canadians who are in situations of extreme, unendurable suffering.

To that end, sending a message that we know that palliative care would help some fraction of them, and that some fraction of those Canadians would choose palliative care if they knew about it, is very important. The provincial governments that have to do a great deal of the actual implementation of the medical system required in this bill will get that message.

However, that doesn't mean that we can force them to act. We can individually continue to put pressure on them to act, and I believe that we should, all of us individually. I believe that we should send this very serious message. Therefore, I truly, sincerely congratulate you. I just don't want to hold out false hope to anyone who may be listening to or reading these debates that somehow, magically, if we adopt this amendment it will all come true. It won't. We still have a long way to go.

I thank you also for recalling the work of Senator Carstairs in this field. For years and years she worked, and I believe continues to work, to advance this cause. I was very glad to hear you recognize that contribution.

Finally, on the matter of consultation versus assessment, which has been raised by a couple of senators, I am quite glad to see that you refer here to consultations, although in your speech you talked about assessments. But in the actual text before us, you speak about consultation. Given what I just finished saying about how we cannot force the provision of palliative care, if it is true, as I believe, that an assessment would be a far more rigorous and possibly difficult procedure for the patient to undergo, unless we can promise a positive outcome, I think it's asking too much. But a consultation, where that person may be properly informed about what is available, I think that is an excellent addition to this legislation.

• (1840)

**Hon. Jane Cordy:** I also want to thank Senator Eaton very much for bringing forward her amendment and for encouraging this dialogue that we are having this afternoon, because palliative care — I have spoken on it a number of times in the chamber in the past — is something we should have to continue to press on in this chamber. With the leadership shown by Senator Carstairs starting in the mid-1990s, this is an excellent place to continue the dialogue.

I listened to the speeches by my three colleagues, and I also commend them for their speeches today and the suggestions that they have made.

One of Senator Eaton's initial comments was that assisted dying should not become the norm in our country, that it should be done under exceptional circumstances. I think a lot of the speeches that senators have made yesterday and today indeed reflect that they have taken this very seriously and have spoken from the heart and passionately about why they felt that there was a need. In light of Supreme Court ruling, we know that that is the case, but I think that Senator Eaton's comment that it not become part of the norm is extremely important.

Regarding Senator Eaton's comment that we need more education about palliative care, she and I have spoken about this a number of times. Many people think that if you have palliative care, people are going to try to keep you alive with tubes and all kinds of things. As Senator Eaton said, palliative care doesn't hasten a death, nor does it prolong it or slow it down. I think that Canadians really have to get a better sense of what palliative care is, because palliative care allows Canadians to die with dignity.

As I said earlier, I'd like to thank Senator Carstairs for the work she has done. She has worked tirelessly to encourage medical schools to teach their students about the importance of palliative care. Before she started this work in the mid-1990s, medical schools were spending, I believe she said, an hour or a couple of hours over three years talking about palliative care. We know the importance of palliative care.

I had the privilege of working with Senator Mercer on a committee studying aging, and we visited palliative care units across the country, which was very informative for us.

I live in Dartmouth, and there is a palliative care unit at the hospital in Halifax. I was there and saw how effective it was.

I also travelled to Cape Breton because I had heard about what a wonderful palliative care centre they have. I met with Dr. Anne Frances D'Intino, who brought me through the palliative care unit. It was so moving to be there. It was like a second home not just for the patient in palliative care but for their families as well. They had a kitchen and living room. It was really wonderful.

One of the big challenges that they had in Cape Breton was because so many of the young people in the area were working in Alberta or in Saskatchewan, many of the people in palliative care didn't have any children living in the area. She said the challenge that they faced was when do you phone the children in Alberta and say, "I think that it's time to come home"?

The doctors and nurses that I met at that palliative care unit in Cape Breton really moved me, because they, in many cases, were the family for the people in the palliative care unit.

The people of Cape Breton don't have a lot of money, but they contributed significant amounts of money because they know how important it is to have a palliative care unit. In fact, they were, at that time, raising money to have a hospice centre in a different building on the same site.

When Minister of Health Jane Philpott was in the chamber, she said that she is fully supportive of better and more accessible palliative care. As a doctor, she understands the importance of it.

Leo Glavine, Minister of Health and Wellness in Nova Scotia, is fully supportive of better and more accessible palliative care. In fact, he established a palliative care commission to work on making things better in Nova Scotia. Dr. Anne Frances D'Intino is part of that commission. I know that she and the others who are on it are working very hard to ensure that palliative care becomes the norm across the province.

While I agree with the comments that my colleagues have made about palliative care — and I really want to thank you again, Senator Eaton, for bringing forward the amendment — I cannot agree with the amendment because I believe it infringes on provincial jurisdiction.

We should be encouraging the provinces to continue to invest in palliative care. Perhaps it would be a good issue to discuss with provincial and federal Ministers of Health. Perhaps we can work on a national strategy — not a federal but a national strategy — where all of the provinces and the federal government buy in to develop a strategy across the country.

Perhaps the Senate can have an inquiry, or perhaps we can bring forward a motion that one of our committees study it once again — because 1995 was quite a long time ago — to evaluate and update palliative care.

When I look at the amendment that you brought forward, which is very good, I have to say, as Senator Cowan said earlier, there are uneven levels of care across the country. There are uneven levels of care within my province of Nova Scotia.

If we're looking at a palliative care consultation, do we take somebody from Clark's Harbour in Nova Scotia and tell them, "You may not have palliative care, but we are going to bring you to Halifax for palliative care and for evaluation and consultation"? At that point in my life, I wouldn't want to be leaving my community where my family and friends are living.

While I thank you very much, because I think the discussion today on palliative care has been very helpful and perhaps will give us that little nudge to do more within the Senate, I cannot support it at this time.

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

**Hon. Senators:** Question.

**The Hon. the Speaker:** In amendment it is moved by the Honourable Senator Eaton, seconded by the Honourable Senator Unger:

> THAT Bill C-14 be not now read a third time, but that it be amended in clause 3, on page 6, by replacing line 5 with the following:
>
> > "-sistance in dying after having had a palliative care consultation and having been informed of treatment, technology or support options available to relieve their suffering.".

Those honourable senators in favour of the motion in amendment will please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Those honourable senators opposed to the motion in amendment will please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Do the government liaison and the opposition whip have a time on the bell?

**Senator Mitchell:** Fifteen minutes.

**The Hon. the Speaker:** The vote will take place at 7:04. Call in the senators.

• (1900)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

| | |
|---|---|
| Andreychuk | Marshall |
| Ataullahjan | Martin |
| Batters | Massicotte |
| Beyak | McInnis |
| Carignan | McIntyre |
| Dagenais | Mercer |
| Doyle | Mockler |
| Eaton | Ngo |
| Eggleton | Oh |
| Enverga | Patterson |
| Fraser | Plett |
| Frum | Pratte |
| Housakos | Runciman |
| Kenny | Smith |
| Lovelace Nicholas | Stewart Olsen |
| Lang | Tannas |
| MacDonald | Tkachuk |
| Maltais | Unger |
| Manning | White—38 |

NAYS
THE HONOURABLE SENATORS

| | |
|---|---|
| Baker | McCoy |
| Bellemare | Merchant |
| Black | Meredith |

| | |
|---|---|
| Campbell | Mitchell |
| Cools | Moore |
| Cordy | Munson |
| Day | Ogilvie |
| Downe | Omidvar |
| Duffy | Poirier |
| Greene | Ringuette |
| Harder | Tardif |
| Jaffer | Wallace |
| Johnson | Wallin |
| Joyal | Watt—29 |
| Lankin | |

ABSTENTIONS
THE HONOURABLE SENATORS

| | |
|---|---|
| Dyck | Seidman |
| Gagné | Sibbeston—5 |
| Raine | |

• (1910)

**Hon. Denise Batters:** Honourable senators, I rise today to speak to the matter of requiring terminal illness and end of life in Bill C-14. This is based on a recommendation that was passed by a majority of our Senate Legal and Constitutional Affairs Committee during our pre-study of Bill C-14.

As many of you know, I believe strongly that physician-assisted suicide should only be extended to individuals who are terminally ill and are at the end of their lives. I have maintained this position since I first became involved with this issue more than a year ago when I opposed private Senate Bill S-225, a bill which would have allowed a much more permissive regime of access to assisted suicide.

Some senators throughout this debate have spoken about physician-assisted suicide as though Canada is an outlier on the world stage by not already having an assisted-dying regime in place. In fact only nine jurisdictions worldwide permit euthanasia or assisted suicide. Of those, six jurisdictions, two thirds, require terminal illness for an individual to qualify for assisted suicide, including three U.S. states, and of course the Province of Quebec.

Now Quebec arrived at that decision after deliberating on the issue of physician-assisted suicide very carefully for six years. We have had this legislation in the Senate for about five sitting days. It would be interesting to note whether given the benefit of further time to study this issue we might not have come to a similar conclusion regarding terminal illness.

Canadians have repeatedly made their views on physician-assisted suicide known to Parliament, but the decision rests with us in this chamber to determine whether we will heed that call or not. Almost to a person, the hundreds of people I have personally spoken to on the topic of physician-assisted suicide are shocked to hear that terminal illness is not a requirement under Bill C-14. Evidence confirms that national polls reflect similar views. Polls show that Canadians overwhelmingly believe the terminally ill should be able to access assisted suicide, but support plummets when people are asked about non-terminal illnesses and conditions.

For example, in an Angus Reid poll earlier this year, 78 per cent of respondents said assisted suicide should not be allowed when a person has severe psychological suffering in the absence of terminal illness. Eighty-eight per cent also opposed extending assisted suicide to 16- and 17-year-olds with psychological suffering where no terminal illness is involved.

In a scenario where the patient is terminally ill and has six months to live, 76 per cent of respondents agreed assisted suicide could be extended. In contrast, that number fell to 36 per cent in a scenario where "a person with multiple conditions like arthritis and diabetes feels overwhelmed and wants to die."

Consultations conducted by the federal government's external review panel showed this as well. The panel's report indicated that:

> Respondents were more likely to agree physician-assisted death should be allowed when a person faces significant, life-threatening and/or progressive conditions.

Similarly, their large poll sample of more than 2,000 people also found:

> Participants were generally more concerned about risks for persons who are mentally ill, especially those with episodic conditions, and for persons who are isolated or lonely.

Canadians have indicated that they expect physician-assisted suicide will be accessible in situations where a patient is terminal or at the end of life, but they expect stringent safeguards if that is not the case.

Honourable senators, I have heard arguments in this chamber stating that we should disregard public opinion on this issue, that polls don't matter where rights are involved; but I think that argument misses the point. Assisted dying is an issue that impacts every single Canadian. We will all experience the loss of our loved ones, and we will all die ourselves. It is inevitable.

Canadians rightfully expect that they should get to have a voice in determining what is acceptable in their society, especially since physician-assisted suicide necessarily involves the state in ending people's lives.

We as parliamentarians need to consider the gravity of our votes on this legislation and what they represent. There are 1.1 million people in Saskatchewan but only 20 people from Saskatchewan will get to vote on this assisted suicide legislation: 14 MPs, and six senators. We should not lose sight of the enormity of that choice, and yes, I think we should take into account the wishes of Canadians before we make it. Who are we, honourable senators, to override the will of Canadians because we think we know better?

We have discussed at length the constitutionality of Bill C-14 and whether the bill goes too far or not far enough, depending on one's perspective. A significant number of renowned

constitutional lawyers and professors testified before our Senate Legal and Constitutional Affairs Committee that Bill C-14 does comply with the Canadian Charter of Rights. Highly respected constitutional law Professor Dwight Dean Newman declared:

> . . . 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.

Professor Newman continued:

> . . . 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 had this to say:

> . . . it may nonetheless survive a constitutional challenge as a justified limit on section 7 rights 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.

Constitutional lawyer Gerald Chipeur and Assistant Law Professor Tom McMorrow both reiterated Parliament's right and responsibility to legislate complex regulatory regimes. Professor McMorrow wrote in *Policy Options*:

> The Supreme Court did not draw the line at having a terminal condition, but that does not necessarily mean Parliament can't. What needs to be shown is that restrictions constitute "reasonable limits" — not what the Court may view as "optimal" ones.

Indeed, it is necessary to draw some of those reasonable limits in order to protect the vulnerable. Professor Trudo Lemmens has stated that in Bill C-14:

> . . . we have to balance autonomy with protection of vulnerable people and do the least damage to respect for human life. I believe that that requires that the provision of euthanasia be limited to people who are terminally ill.

Clearly the matter of whether to narrow the criteria for eligibility to access physician-assisted death is within the purview of the Liberal government. In fact, last month, at the same time when Bill C-14 was being debated in the House of Commons, federal government lawyers were before the Alberta Court of Appeal in the case of *E.F.* arguing for the inclusion of terminal illness in the interpretation of the Supreme Court of Canada's *Carter* decision.

It is the duty of the federal government to ensure that this law reflects the views of Canadians, that strict safeguards are implemented around the process of physician-assisted suicide and that this bill is amended accordingly.



MOTION IN AMENDMENT

**Hon. Denise Batters:** Therefore, honourable senators, I move:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 3, on page 5,
>
> (a) by adding after line 34 the following:
>
> "**(b.1)** they are at the end of life;"; and
>
> (b) by adding after line 36 (as replaced by the decision of the Senate on June 8, 2016) the following:
>
> "**(c.1)** their grievous and irremediable medical condition is a terminal disease or illness;".

Thank you.

• (1920)

**The Hon. the Speaker:** It was moved by the Honourable Senator Batters, seconded by Honourable Senator Tannas:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 3, on page 5,
>
> (a) by adding after line 34 the following:
>
> "**(b.1)** they are at the end of life;"; and
>
> (b) by adding after line 36 (as replaced by the decision of the Senate on June 8, 2016) the following:
>
> "**(c.1)** their grievous and irremediable medical condition is a terminal disease or illness;"

On debate.

Are senators ready for the question?

**Some Hon. Senators:** Question.

**The Hon. the Speaker:** Senator Fraser?

**Hon. Joan Fraser (Deputy Leader of the Senate Liberals):** This is actually by way of a question to Senator Batters.

I think we're all frantically flipping through our copies of the bill because you, as was your right, chose not to share these amendments with us ahead of time. I wonder if you could give us a little explanation of exactly how it all fits in and what it does.

**Senator Batters:** Absolutely. I have been speaking about this issue of terminal illness, end of life for quite some time so it won't come as a surprise to probably anybody in this chamber that this is something I felt strongly about.

This has been modified slightly to take into account what occurred last night so that it's appropriately worded, but what it requires is that someone who wants to access assisted suicide it

will be an eligibility requirement that they be at the end of life, as is the case in Quebec, as is the case in six out of the nine jurisdictions worldwide where this exists and, as well, that it is a terminal disease or illness.

**The Hon. the Speaker:** Point of order, Senator Fraser?

POINT OF ORDER

**Hon. Joan Fraser (Deputy Leader of the Senate Liberals):** Your Honour, I have not had time to check the authorities, and I hope that you have, but it seems to me that this amendment is in direct contradiction to the amendment that this house adopted 24 hours ago. And I did believe that it was not in order to reconsider decisions that had been made in a given session of the Senate.

I hope other senators can contribute to this. I am not in a position to produce authorities, but this, to me, feels like something that is out of order.

**The Hon. the Speaker:** Thank you for raising the point, Senator Fraser.

Rule 10-5 allows for any senator at any time to move reconsideration of any clause previously moved before the actual adoption of the bill. So according to rule 10-5, the amendment is in order.

**Senator Batters:** Could I respond to that as well?

**The Hon. the Speaker:** Question or on debate? Senator Raine?

**Senator Raine:** Do you want to respond?

**The Hon. the Speaker:** There was a point of order; the point of order has been dealt with. Are you asking a question or would you like to speak on debate, Senator Raine?

**Hon. Nancy Greene Raine:** I would like to ask a question of Senator Batters.

**The Hon. the Speaker:** Are you prepared to answer a question, Senator Batters?

**Senator Batters:** Yes, of course.

**Senator Raine:** On Page 6 of the bill, subsection 2(d), it says that the criteria include that:

> (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.

I would like to know, does your amendment square with that clause?

**Senator Batters:** Senator Raine, actually last night what happened with Senator Joyal's amendment, that entire subsection 2, grievous and irremediable medical condition, was struck out with his amendment. He removed the entire part of it and only a small portion was put into the previous section, so the reasonably foreseeable natural death is no longer a part of this bill. That's why mine was slightly amended and indicates in the amendment, as replaced by the decision of the Senate on June 8, 2016.

That's why my particular amendment will go into the previous page, page 5. There is a new (b.1) that says "they are at the end of life." Then there is a new (c.1) on that same page that says, "The grievous and irremediable medical condition is a terminal disease or illness."

**Senator Raine:** I would like confirmation that you realize this tightens up the parameters of those who qualify much tighter than it was in the original bill where the bill was without a prognosis necessarily having been made as to the specific length of time that they have remaining.

**Senator Batters:** I do realize that, and that is why I'm bringing it. I have indicated for quite some time that Canadians expect terminal illness end of life to be required. Whenever I speak to any Canadian that I've talked to about it — and as I say it has been hundreds, just in personal speeches that I have made or individual conversations with people — they are always shocked to find out that this particular bill, assisted suicide in Canada, does not require terminal illness end of life. That is what they expect and that's why I thought it was important to bring this particular amendment.

If I can just say as well, I note that yesterday, hours before the Senate voted on the particular amendment last night, Justice Minister Wilson-Raybould indicated that if that was the particular amendment, the one that was brought last night, the House of Commons would be sending that back to us and not accepting it.

Therefore, I want to make sure that we have an amendment that has a reasonable chance of passing, and the Liberal government of supporting.

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

It was moved by the Honourable Senator Batters, seconded by the Honourable Senator Tannas:

> That Bill C-14, as amended, be not now read a third time but that it be amended in clause 3 on page 5, (a) —

Dispense? May I dispense?

**Some Hon. Senators:** Dispense.

**The Hon. the Speaker:** All those in favour of the motion please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** All those opposed please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Do we have an agreement between the government liaison and the opposition whip?

**Senator Plett:** Fifteen minutes.

**The Hon. the Speaker:** How long?

**Senator Plett:** Fifteen minutes.

**The Hon. the Speaker:** We have a 15-minute bell. The vote will be called at 7:42. Call in the senators.

• (1940)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

| | |
|---|---|
| Ataullahjan | Mockler |
| Batters | Ngo |
| Beyak | Oh |
| Eaton | Patterson |
| Enverga | Plett |
| Housakos | Runciman |
| MacDonald | Tkachuk |
| Manning | Unger—17 |
| Marshall | |

NAYS
THE HONOURABLE SENATORS

| | |
|---|---|
| Baker | Lang |
| Bellemare | Lankin |
| Black | Lovelace Nicholas |
| Campbell | Massicotte |
| Carignan | McCoy |
| Cools | McInnis |
| Cordy | Mercer |
| Cowan | Meredith |
| Dagenais | Mitchell |
| Day | Moore |
| Downe | Munson |
| Doyle | Ogilvie |
| Duffy | Omidvar |
| Dyck | Poirier |
| Eggleton | Pratte |
| Fraser | Raine |
| Frum | Ringuette |
| Gagné | Seidman |
| Greene | Stewart Olsen |
| Harder | Tardif |
| Jaffer | Wallin |
| Johnson | Watt |
| Joyal | White—47 |
| Kenny | |

ABSTENTIONS
THE HONOURABLE SENATORS

| | |
|---|---|
| Andreychuk | McIntyre |
| Maltais | Sibbeston |
| Martin | Smith—6 |

**The Hon. the Speaker:** On debate, Senator Plett.

**Hon. Donald Neil Plett:** Colleagues, I want to state again that this is an extremely difficult issue for me, as I know it is for many of my colleagues.

I promote the sanctity of life, from one end of the spectrum to the other, and I, as others, have had many sleepless nights considering how I will vote on this legislation when it gets to a final vote.

• (1950)

I was reminded of a close friend who, as a young mother in her forties, was suffering from ALS. She was eventually laying in a state where she could only move her eyebrows. As her illness progressed, she was conflicted. On one hand, she wanted to be around for as many momentous occasions her children would experience as possible. On the other hand, she desperately wanted to die. The decision to access assistance in death was clearly not available to her. However, she was disconnected from life support and died within minutes. Even while I stand here, opposed to the principle of assistance in suicide, I have not walked in her shoes or in the shoes of people like her, so I have no idea what I would have wanted if I was in that state.

However, that said, the Supreme Court of Canada has put us into a position, and we as parliamentarians are required to act responsibly.

We need to keep in mind, colleagues, that we are not voting on the legalization of assisted suicide. That is not what this vote represents. Assisted suicide is legal in Canada and has been so since June 7. We are voting on a set of eligibility criteria and safeguards, and whether we believe the safeguards and eligibility criteria are better or worse than the guidelines the provinces have put in place.

Colleagues, there has been much discussion about the constitutionality of this legislation, for example, whether the legislation is narrower than the *Carter* decision, and whether that, in and of itself, makes this legislation unconstitutional.

I believe that the bill in its present form is constitutional, both before and after the amendment that was passed last night. While there was disagreement in the chamber about the amendment last night, I am of the opinion that amendments to strengthen the legislation are not only necessary but will be upheld by the courts.

As Justice Sinclair said in this chamber last week — and we all heard him — on any given case, half of the lawyers are wrong. Allow me to make reference to the opinion of the half of the lawyers who I believe are right on this subject.

Paragraph 97 of the *Carter* decision reads:

> At this stage of the analysis, the courts must accord the legislature a measure of deference. Proportionality does not require perfection. . . . Section 1 only requires that the limits must be "reasonable." This Court has emphasized that there may be a number of possible solutions to a particular social problem, and suggested that a "complex regulatory response" to a social ill will garner a high degree of deference.

In response to this, Gerald Chipeur, a constitutional expert and lawyer, stated:

> If you give to the court, and to the country, a complex system that regulates this issue, in your opinion, in the best way possible based upon the words of the Supreme Court of Canada, it is likely that that court will respect your response in this dialogue with the court. So I encourage you to make a decision that is, in your opinion, the correct one. You're not in handcuffs, you're not in shackles and your opinion is important.

Professor Tom McMorrow, of the University of Ontario Institute of Technology, agreed that narrower eligibility criteria than those set out by the Supreme Court does not make the legislation constitutionally invalid. Professor McMorrow referenced the 1990 Supreme Court case of *R. v. Mills*. Parliament had made a law strikingly similar to the one struck down. However, the court said that this did not automatically render the legislation unconstitutional. In this case, the court stressed that complex regulatory regimes are better created by Parliament than by the courts.

Lawyers John Sikkema and Derek Ross had a piece published in *Policy Opinions* yesterday stating:

> Contrary to what some suggest, Parliament would be well within its constitutional authority to enact a regime that is different from and narrower than the regime created by [*Carter*].

They later state:

> Uncertainty undermines what the Supreme Court found in *Carter* to be the important objective of the prohibition on assisting in someone's suicide: namely, protecting the vulnerable people from being pressured to commit suicide in a moment of weakness.

All in all, colleagues, because of expert opinions attesting to or denying the constitutionality of this legislation, this will more than likely face a challenge at the Supreme Court level. Many constitutional experts are certain we are within our rights to strengthen this legislation in the context of creating sound social policy. And, colleagues, on a bill that is quite literally dealing with "life and death," we need to act responsibly and get this right. Crafting social policy is exclusively at the discretion of Parliament.

As Senator Baker stated yesterday:

> . . . section 118 of the Criminal Code . . . 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.

Mr. Chipeur's final point in his testimony at committee was with respect to conscientious objection. He stated:

> . . . it is within your power to simply create an exception for all health care providers and institutions that choose not to participate in providing death, just like you do, as Parliament, with respect to the Income Tax Act and the issue of charitable organizations. Parliament could not legislate with respect to charities if it just did so vis-à-vis charities alone, but it was free to carve out charities from the Income Tax Act.

Colleagues, in the same way, what we are doing, in essence, is carving out an exception in the Criminal Code to murder. As I have stated before, we, as the federal Parliament — and we alone — determine the parameters with which assisting someone in dying is legal. That is exclusively federal jurisdiction. What the provinces do to regulate that beyond the parameters set out in the Criminal Code is their prerogative.

With that said, I have spoken before in this chamber about the importance of protecting practitioners' conscience rights on the shift in ethics that has been imposed upon them, directly in contradiction to the Hippocratic oath they took as physicians.

While this is certainly not restricted to objectors for reasons of faith, that certainly needs to be a consideration. Religious leaders of Muslim, Jewish and Christian faith testified at committee, citing the need for conscientious protection for physicians of their respective faiths.

Dr. Blackmer of the Canadian Medical Association, when testifying at the Legal and Constitutional Affairs Committee, said that a referral is effectively an endorsement of a procedure, and that is morally problematic for many practitioners.

A survey of 1,201 Canadians conducted by Abingdon Research asked this question: How should a physician whose religious beliefs would forbid them from referring for assisted suicide be required to act when a patient requests the procedure? Honourable senators, 86 per cent believed in a practitioner's right to conscientious objection.

When Dr. Dawn Davies of the Canadian Paediatric Society stated, quite fervently, that this has been imposed upon physicians, she stated:

> I would agree that in almost every other case there is a duty to refer or a duty to transfer care. I think that at a provincial level they're collecting lists of physicians willing

to perform this procedure and that patients will navigate their own way.

To say there is a duty to refer makes people that may not be comfortable with this in any way, shape or form feel complicit in part of it. There's enough of a groundswell of change that people will be able to navigate themselves.

• (2000)

Honourable senators, I cannot introduce this amendment without, once again, making reference to Dr. Sephora Tang. Colleagues, her powerful testimony struck a chord with every person in the room.

I am going to read some of her response to a question I asked about how it might impact her work as a psychiatrist if she was forced to refer patients requesting suicide to a willing practitioner, as some of her patients, she stated, have physical conditions that would qualify for assisted dying under this bill. She responded in this way:

In my work as a psychiatrist, I deal every day with patients who have either tried to commit suicide or are chronically suicidal, very depressed, suffering immensely. It is my job, as a psychiatrist, that they are able to come to me, in a place that is safe, like the hospital, and I give them hope in a moment when they have lost all hope. They need to see that I remain consistent in this. . . .

With the whole issue of conscientious objection, it's almost as though my professional judgment has been stripped . . . .

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

I wish to be able to do my work, which I honestly love. It is the most rewarding thing to be able to work with my patients and journey with them and to see them come out of a very dark place.

Colleagues, if this amendment does not pass, Dr. Tang, as a psychiatrist in Ontario, will be forced to refer her depressed patients to a willing practitioner, and we would be stripping her and other objecting practitioners like her of their professional judgment.

Some provinces have protected objecting practitioners from participating, including with respect to referrals, but most will require a referral, to remain consistent with their policies on other medical procedures. This is the furthest departure from standard medical practice that we have ever seen in this country, and we need an explicit protection for our practitioners.

Colleagues, mechanisms will be put in place to ensure there is a robust, comprehensive self-referral mechanism, and it was made clear in committee that there will be no issues in terms of access, even in rural and remote areas.

We need to ensure strong protection for our physicians, and it needs to be more than a generic statement, because the provinces have been clear: The statement that came from the House of Commons Justice Committee has no practical significance, and they will regulate around it.

Colleagues, there are many areas where we will disagree on the issue of assisted suicide in general, and specifically with provisions in this legislation. Canadians are divided on this; and because Canadians, including practitioners, are so passionately conflicted on this, we must protect them. I believe we can all agree that is the right thing to do.

MOTION IN AMENDMENT

**Hon. Donald Neil Plett**: Therefore, honourable senators, I move:

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

(*a*) on page 8,

(i) by replacing lines 32 and 33 with the following:

"**(9)** No person shall compel an individual or organization to provide or assist in providing medical assistance in dying or to provide a referral for medical as-", and

(ii) by replacing lines 35 and 36 with the following:

"**241.3** Everyone who knowingly fails" and

(*b*) on page 9, by replacing line 2 with the following:

"graphs 241.2(3)(b) to (i) and subsection 241.2(8) and to comply with subsection 241.2(9) is guilty".

Thank you, colleagues.

**The Hon. the Speaker** *pro tempore***:** Honourable senators, in amendment it is moved by the Honourable Senator Plett, seconded by the Honourable Senator Martin:

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

Shall I dispense?

**Some Hon. Senators:** Dispense.

**The Hon. the Speaker** *pro tempore***:** On debate.

**Hon. Joan Fraser (Deputy Leader of the Senate Liberals):** Your Honour, we don't have copies of this amendment resolution yet, so it is very difficult to engage in informed debate on it.

**The Hon. the Speaker** *pro tempore***:** It is being distributed as we speak, honourable senator.

**Hon. Yonah Martin (Deputy Leader of the Opposition):** Honourable senators, I rise in support of Senator Plett's motion to amend Bill C-14 so that it includes protections for Canadian health care professionals who wish to conscientiously object to participating in any aspect of medical assistance in dying.

This amendment addresses one of the most critical gaps in Bill C-14 — namely, their rights, which are equally as important as the rights of the patients requesting their assistance.

I'm relieved to see that Senator Plett has sought to correct this oversight by proposing that "No person shall compel an individual or organization to provide or assist in providing medical assistance in dying or to provide a referral for medical assistance in dying." This language appropriately offers legal protection to any health care professional who may object to participating in medical assistance in dying for reasons that justify their objection.

Given what they are being asked to do — assist in someone's suicide or be the person to end another person's life — it remains unfathomable that the rights of medical practitioners and health care workers were not protected in Bill C-14.

Health care workers should not be forced to choose between compromising their career or compromising their core personal principles or religious beliefs in fulfilling their duties. Being allowed to object conscientiously must be within their rights, and that is why it is essential that Senator Plett's amendment is included in the final version of this bill.

Leaving the matter of conscientious objection to the provinces and territories will most likely result in a loose, piecemeal approach that results in a scenario where a health care professional in one province has their right to conscientious objection protected, while a friend or colleague in a neighbouring province is left without that same critical right.

Also, if conscientious objection is a matter that varies by provincial jurisdiction, that could actually force health care professionals and their families to move out of their province and into one that would not compel them to participate in ending another person's life.

With the June 6 deadline now passed, medical assistance in dying is now permissible in Canada. It is just a matter of whether there will be federally mandated safeguards in place to protect vulnerable Canadians and to ensure that our front-line health care professionals are consistently protected across all provinces.

I urge honourable senators to join me in supporting Senator Plett's motion because it adds an essential safeguard for Canada's health care practitioners, who, since June 7, 2016, are adjusting to the new reality they face in their professional lives since the *Carter* judgment has come into effect. Simply stated, Bill C-14 should not force anybody to do something that is counter to their core principles.

Just as requesting medical assistance in dying is entirely voluntary for patients, its administration by Canada's health care practitioners should be as well.

Thank you.

**The Hon. the Speaker** *pro tempore***:** Senator, would you accept a few questions?

**Senator Martin:** Yes.

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

**Hon. Anne C. Cools:** Yes. I would like to ask Senator Plett a question.

**The Hon. the Speaker** *pro tempore***:** Senator Martin, would you accept a few questions?

**Senator Martin:** She said "Senator Plett."

**Senator Cools:** Senator Martin, a question. Well, I could ask both of you, if you want.

I fail to understand the proposed amendment, because when I look at subsection 241.2(9), as it stands in Bill C-14, I am following the amendment — "on page 8, by replacing lines 32 and 33 with the following:" So the current lines 32 and 33 say — this is at subsection (9):

> **Clarification**
>
> (9) For greater certainty, nothing in this section compels an individual to provide or assist in providing medical assistance in dying.

• (2010)

So I do not understand your proposal to replace this with your amendment, which says:

> 9. No person shall compel an individual or organization to provide or assist in providing medical assistance in dying or to provide a referral for medical assistance in dying.

Maybe I do not understand. It seems to me that the proposal in the bill is pretty clear and complete, that nothing "compels an individual to provide or assist in providing medical assistance in dying." Maybe I am reading from an outdated version of the bill. I do not know. Or maybe I do not understand.

**Senator Martin:** Senator Cools had started by saying she wished to ask Senator Plett a question. However, it is not my motion, so I wonder if it is the will of the chamber to give leave for —

**Some Hon. Senators:** No.

**Senator Martin:** In replacing the lines, what this motion is asking is that "No person shall compel." So it is sort of certainty in the language and to assure those who are asked to administer, who for very clear reasons wish to object, it is their right to do so. So it's a clarity of language, to ensure that that is articulated in the bill.

**Senator Plett:** Could I ask her a question?

**The Hon. the Speaker** *pro tempore*: Senator Cools, please sit down.

**Senator Cools:** No, I will not sit down. I have the floor.

**The Hon. the Speaker** *pro tempore*: Please sit down.

**Senator Cools:** You sit down.

**Some Hon. Senators:** Order, order!

**Senator Cools:** You're out of order. She is out of order.

**The Hon. the Speaker** *pro tempore*: Senators, we're going to take names. I understand Senator Cools has another question.

Senator Manning, did you have a question? I saw your hand go up.

**Senator Manning:** No. I'm just fixing my glasses.

**The Hon. the Speaker** *pro tempore*: Senator Joyal has a question, then Senator Plett can ask his question.

Senator Cools —

**Senator Cools:** I have decided I do not need to ask any questions. I will just vote against the amendment.

**Hon. Serge Joyal:** Honourable senators, I will direct my question to Senator Martin, but in all fairness it should have been addressed to Senator Plett.

I excuse my — I wouldn't say inattention, but as you know, Senator Plett, we didn't have the text of your amendment after you just sat down. By the time we received the amendment, Senator Martin was up on debate.

So I will address my question to Senator Martin, but I think it would essentially be unfair because it is on Senator Plett's amendment.

**Senator Martin:** I actually wish to apologize to the chamber because I was not thinking about the importance of the time that would be required for honourable senators to ask Senator Plett questions, and I rose on debate, so I actually interfered in the ability for all senators to ask such questions.

I'm not sure what to do other than apologize to the chamber. As deputy leader I was mindful of time, and all I was thinking about was moving the debate forward. So I do apologize to the chamber for jumping up on debate rather than allowing time for questions.

**The Hon. the Speaker** *pro tempore*: I think that Senator Plett can ask a question. He might be able to answer Senator Joyal and Senator Cools by asking the question.

**Senator Tkachuk:** If we all agreed —

**The Hon. the Speaker** *pro tempore*: Senator Tkachuk, I think we've found the solution. Senator Plett is going to answer Senator Joyal's question to Senator Martin.

**Senator Joyal:** I certainly didn't want in any way to qualify the swiftness with which the Deputy Leader of the Opposition was on her feet to speak.

Senator Martin, when I carefully look at the text of Senator Plett's amendment, it crossed my mind that the second part of the amendment, especially the one that mentions — I will read the text:

> No person shall compel an individual or organization to provide or assist in providing medical assistance in dying or to provide a referral for medical assistance in dying.

It's the second part of the proposal that concerns me, ". . . or to provide a referral for medical assistance in dying."

Of course, I heard the arguments of Senator Plett, but I had on my desk the provincial guidelines for each province and one territory, the Yukon, in relation to doctors who may refuse to provide MAID. I'll give you the specific guidelines.

In Alberta it states:

> Doctors may refuse to provide MAID but have "an obligation" to provide patients with timely referrals to doctors who will perform the service.

British Columbia:

> Physicians may refuse to provide MAID but they must provide "an effective transfer of care."

Manitoba, the province of our colleague Senator Plett:

> Physicians may refuse to provide MAID or to refer a patient to another doctor but must provide "timely access to a resource" that will provide the necessary information.

Same in New Brunswick:

> Physicians may refuse to provide MAID or to make a direct referral but must provide patients with information on accessing MAID.

Newfoundland and Labrador:

> Physicians may refuse to provide MAID but should provide "timely access" to another doctor or information resource that is available and accessible to the patient.

It is the same in Nova Scotia and Ontario. In Ontario:

> Physicians may refuse to provide MAID but must make an "effective referral" of the patient to an available, accessible physician or agency that will.

Prince Edward Island:

> Physicians may refuse to provide MAID but must provide, or arrange to be provided, the patient's chart to other physicians.

Quebec:

> Physicians may refuse to provide MAID but must immediately notify authorities who will take steps to find another doctor.

Saskatchewan:

> Physicians may refuse to provide MAID but must arrange "timely access" to another doctor or resource.

Yukon:

> Physicians may refuse to provide MAID but must arrange "timely access" to another doctor or resource.

I know that the Northwest Territories, looking at our colleague Senator Sibbeston, more or less copied the Yukon guidelines and Nunavut is in the process of drafting.

So one could say that throughout Canada, in all the provinces and territories, the obligation of the doctor has been established when they refuse to provide MAID. Of course, that has also been approved by the College of Physicians and Surgeons in each and every province. So if we legislate the way this is proposed, we will make an offence out of something that is currently part of the practice of medicine.

How do we wrestle with that at this stage, when I am informed there was never a challenge in any province that this is against freedom of conscience in the context that Senator Plett has explained to us?

**Senator Martin:** Senator Joyal, you raise a very good question. I agree with you in terms of how to wrestle with these existing regulations and laws within provinces with what we pass federally. This entire debate and process is one that has really forced us to do the same.

• (2020)

I understand what you're saying. We are behind some of the provinces in terms of how this is being regulated, because health is a provincial jurisdiction, and provinces have gotten ahead of the federal statute that will then provide this federal framework.

I hope the question will come from Senator Plett, but on a personal level, what I can say is on this particular matter is that I'm supporting this amendment because I'm really focusing on the rights of the health practitioners and every person whose rights should be protected. There are those health practitioners who may absolutely object to administering certain services, but also making a referral would be against their core principles.

I understand this is incongruent, and there will have to be discussion if this were to be passed.

On a personal level, I'm focusing on the rights of those we are asking to assist in suicide or assist in the ending of someone's life.

I welcome the next question from whoever in this chamber will be recognized.

**The Hon. the Speaker:** Senator Martin, your time has expired. Are you asking for a further five minutes for questions?

**Senator Martin:** Yes, I am. For one more question, Your Honour.

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

Senator Plett.

**Senator Plett:** I would like to ask Senator Martin just a couple of questions, if I could. The first one is in relation to why we change a clause when it says "nothing in this section." It doesn't even say "the bill." It says "nothing in this section compels" someone to do something. So the section doesn't say you have to do it.

My amendment says that no person shall be compelled to do something, which is very clearly an instruction that nobody can come along and say, "You have to do something."

Would you not agree, Senator Martin, that those are two entirely different scenarios?

**Senator Martin:** Yes.

**Senator Plett:** Would you take another question, please, Senator Martin?

**Senator Martin:** Absolutely.

**Senator Plett:** Thank you. In reference to the provinces, we have heard that if certain things don't happen, we can do suicide shopping. Senator Joyal has quite rightly pointed out a number of different criteria in different provinces. They are not all the same. When I asked the College of Physicians and Surgeons of Ontario, they said that clearly they would expect that doctors would give effective referrals.

Now, Senator Martin, I'm not sure whether you've heard this — I've heard this many times — doctors are still concerned about this. I spoke with my doctor in Manitoba two days ago, and he was very concerned. He said, "Please, give us some protection, or some doctors in our city will be retiring because of this."

The Minister of Health — and I am hoping you will agree with this, Senator Martin — was quite clear when she stated that we need something uniform. As a matter of fact, right here in our chamber she stated that we need something uniform across the country.

By doing this, we are creating something uniform across the country. It is within our right to create an exception, which is what we're doing in the Criminal Code. The provinces can then regulate around that exception, but we need a uniform policy.

When I asked the Minister of Justice at committee if the federal bill would override the provincial jurisdictions, she was quite adamant that it would, which is maybe one reason why they didn't to want deal with it, but it would override that.

Would you agree with that Senator Martin?

**Senator Martin:** Thank you for raising good points.

**Senator Plett:** Thank you.

**Hon. Frances Lankin:** Thank you very much. That was unorthodox, innovative and amusing.

I rise to speak against the amendment. It's not because I don't understand the intent of where Senator Plett is coming from. I understand it, and I respect it.

The right to conscientious objection on the part of health care practitioners is one that is well established. Their Charter rights are established; they have these rights. We have seen this with respect to other health care procedures, such as the procedure of abortion. I believe that provinces have respected that.

I believe the area that Senator Plett is focusing in on is the area of referrals. His amendment speaks broadly to the protection of the right to refuse to provide medical assistance in dying, but I believe the major concern is around the colleges and the guidelines that were referred to that would provide for a patient-centric delivery of health care that ensures that if a doctor doesn't continue with the treatment of a patient, they make an effective referral or an effective transfer of care.

This concern has been raised by a number of practitioners. Senator Plett is very correct about that. It is not a concern that the provinces are blind to or that they are turning a deaf ear to. The provinces have begun to respond and are in discussions with each other and the federal government about how to build the right protections.

For example, this week in the province of Ontario, the Minister of Health, Dr. Eric Hoskins, announced that the province will establish a central referral service for medical assistance in dying. This is similar to what Senator Plett spoke to us about when he was reading someone else's words, that they thought there would be a way for patients to navigate, to find the assistance and that they wouldn't be left without care.

You never want to leave that to chance if, in fact, the absolute requirement to refer would be the default position, so the Province of Ontario has stepped out and said, "No. We are building the central capacity. People will come to us, and we will do the referral to a practitioner from a list of practitioners in their area who will be willing to see the patient and to provide assistance in determining their eligibility and/or alternative treatment."

The other provinces have begun the study of this as well, and some have indicated their interest in this model and in proceeding with it. In addition to that, the federal Minister of Health indicated to us that this is an area of active discussion that she would continue to have with the provinces so that the solution of this issue becomes a national or pan-Canadian approach with standards.

The concern I have with the actual amendment is twofold.

First, it so very clearly steps into provincial jurisdiction. The regulation of health care practitioners and what health care practitioners must or must not do, within the respect for their rights under the Charter — and conscientious objection is already an acknowledged right within that — rests at the provincial level.

We have heard sensitive response from both the federal Minister of Health and from provincial jurisdictions that they understand the very seriously and deeply held concerns of health care practitioners with respect to potentially having to be engaged in referrals, and they are setting up alternative processes for patients.

That's where the alternative processes belong, not in a Criminal Code amendment. I respect what you're trying to achieve. Your attention to this has helped bring the provinces and the federal government to a sensitive treatment and an appropriate treatment.

The second problem I have with this is I believe it is completely inappropriate to set up an offenses section within this. For a matter that is a provincial jurisdiction and will be determined on a provincial level, to set up a federal offence in a Criminal Code amendment about the provision and regulation of health care professionals, which is a provincial matter, is a very convoluted approach and one that is not supportable. So for that reason I would urge honourable senators not to support this particular amendment.

• (2030)

**The Hon. the Speaker:** Senator Lankin, will you take a question?

**Senator Lankin:** Sure.

**Senator Plett:** You are quite correct that these organizations will be set up. As a matter of fact, my doctor told me that the Regional Health Authorities in Manitoba would be setting one of those up, which is exactly what they want.

However, the College of Physicians and Surgeons of Ontario has said they will require effective referrals. They have not said that they will simply let people go to a regional area. I'm not sure if you were at the committee meeting when I asked the question. You heard them say they would require effective referral.

Senator Joyal has said that is what the Province of Ontario requires. Very clearly, they will require this.

You say that we are stepping in provincial jurisdiction here. The fact of the matter is we could simply say that the federal government accepts the fact that the court says that assisted

suicide in some way, shape or form shall be legal, so provinces should set their own guidelines. We're not doing that. We're setting guidelines every step of the way in the federal legislation, and now in one area we are not allowed to do that? How do you square that we're stepping on provincial toes in that area but in all other areas it is okay to do that?

**Senator MacDonald:** Hear, hear.

**Senator Lankin:** Thank you very much, Senator Plett, for the question.

There are two parts to the response that I want to give. There is already effective protection for health care professionals for conscientious objection within the Charter of Rights. It already exists. That's very unlike what we are seeing with trying to put the protections in place around a very new medical procedure being brought into play with medical assistance in dying. That's my first answer.

With respect to Ontario, I need to say that the world evolves, and you are talking about testimony that was made before us in the pre-study of this bill; and Senator Joyal is talking about a regulation that was produced by the Ontario College of Physicians and Surgeons before the pre-study of this bill.

In the consultations around this bill in pre-study and in the House of Commons hearings and in further hearings here, people heard a lot of things from stakeholders. And I submit to you we heard, the federal government heard when I listened to the minister respond, and the provinces have heard the concerns that have been raised by health care professionals about the issue of referrals.

In Ontario they put in place, subsequent to the testimony you heard from the Ontario regulators, an alternative system to deal with that issue and make referrals effective from a centralized Ministry of Health supported and funded process, as opposed to leaving it to the usual procedures that are in place.

They are taking action to address your very concern and the concerns that health care practitioners have raised. My contention is that that's the appropriate place for the concern to be addressed. Therefore, I believe that time has overtaken your argument and statement that the psychiatrist you referred to would be forced to refer. In fact, we now know in the Province of Ontario that is not the case.

**Senator Plett:** In all fairness, Senator Lankin, this was a few days or a week ago when they did this. We all know the wheels of government in Ontario may turn faster than they do in the federal government or in Manitoba, but I don't think so.

A week ago, the College of Physicians and Surgeons in Ontario said that you will be required to give an effective referral. That means you will have to refer somebody to another physician to do the job.

Yes, they're setting up a regional place, which is exactly what I want. Why don't you amend this to say that they have to send or give the patient the name of a regional institution? I would be happy to accept that amendment. That would do what I want. You seem to see this as somehow a bad thing. Even if they do that, what is the harm in having this here to make sure? Not every province is the same. Senator Joyal had a number of provinces — and I read this in the newspaper yesterday — and they are all different. Why would we not want a guideline across the country that is the same, instead of having every province doing their own thing?

In the province of Manitoba the doctors said, "Yes, please give us an amendment that says that the federal government will support this." What is the problem with having this legislation? If it's unnecessary — I don't think it is — it certainly is not harmful.

**Senator Lankin:** Thank you for the question.

I don't believe that legislation that is not necessary is legislation we should go forward with. I believe an offence provision put in there could be harmful, and I don't believe it is appropriate within federal Criminal Code amendments.

I will say once again that measures are being developed province by province right now, with a focus on coming together and creating a pan-Canadian national set of standards of how this will apply. These include, in your home province of Manitoba, the creation of referral centres which the doctors feel are an appropriate way; they send the patient there, and that entity does the referral to a doctor.

It is happening in Ontario. How to bring it about in other provinces is being talked about. It is being encouraged by the federal health minister. It is a matter of health jurisdiction, which is a provincial jurisdiction where the federal government can play a leadership role. The federal health minister is doing that in federal-provincial discussions about this.

The discussions took place before the college was in front of us, but the announcement took place after the college was in front of us. So the issue that you heard and the points that were brought forward have been overtaken by a system which alleviates doctors of the need to do a referral because they will have the alternative of referring to a centralized structure which will do the referrals for them.

**Senator Plett:** Senator Lankin, were you in the government of Ontario?

**Senator Lankin:** Yes.

**Senator Plett:** We all know that when we have 12 governments that want to get together to strike a common law, it is not an easy thing to do.

Here we have federal legislation, and they're setting guidelines. Let them set the guidelines, instead of saying, "The provinces are going to get together at some point and do this." In the meantime, doctors are quitting their jobs because they have to do this. Dr. Tang is quitting. Why would we not want to protect these doctors?

**Senator Lankin:** Senator Plett, I understand the concern that you are raising, and I respect the passion with which you are raising it.

It may not make any difference to you, but, yes, I was in fact in the government in Ontario. In fact, I was for a period of time the Minister of Health in Ontario, and I worked very closely with the regulators. There is certainly a responsibility that the regulators have back to the Ministry of Health, and the Minister of Health has made a very clear statement of the initiative that they are proceeding with to set up a centralized referral.

It is happening in Manitoba, and I believe another province is about to announce. It is a discussion taking place across the provinces.

I took part in many federal-provincial health ministers' meetings as well as other portfolios that I held. I can tell you that it is not as abysmal in terms of cooperation and collaboration, particularly in health.

• (2040)

The table I sat at had health ministers from provinces where there were Conservative governments, Liberal governments, New Democrat governments and Nellie Cournoyea, who was unaligned in the North government. We reached a number of very significant agreements about how to move forward the interests of Canadians and their concerns about the health care system.

Once again I say this is a provincial jurisdiction. It is not something we should be embedding in a federal Criminal Code.

**The Hon. the Speaker:** Before we go any further, colleagues, it is up to Senator Lankin whether, first of all, she wants to answer a question; and, secondly, whether or not in this case she wants to ask for extra time because her time has expired.

Do you want extra time, Senator Lankin?

**Senator Lankin:** I don't, thank you very much.

**Hon. Tobias C. Enverga, Jr.:** Honourable senators, I know that this is a hard question for everybody. However, I am forced to reply to Senator Lankin in debate.

In response to Senator Lankin and other senators who raised the concern of provincial jurisdiction, I want to raise a concern.

We always hear that we as federal parliamentarians cannot and should not infringe on the provinces' constitutionally entrenched jurisdiction over health care. This is something that many Canadians have difficulty understanding when they reach out to their federal representatives for support. However, we have to respect the Constitution and allow for the provinces to manage this.

What we are doing in this chamber at the moment, however, is something unique. We are making allowances for provincially controlled medical practitioners to be exempt from our federal Criminal Code. We want our practitioners to be exempt from our federal Criminal Code.

While not being a constitutional expert myself, I think that we can, in return for allowing such exemptions to our federal law, put certain conditions on the provinces and the provincially governed professions. Essentially, what we as federal lawmakers can do is say, "Yes, you can be exempt from our law, but only if you do it according to our framework."

This is why I supported the amendment moved by Senator Eaton. We are not imposing how the provinces will regulate their health care service delivery. We are sending them the message that if you want to break our federal law, you have to meet a minimum standard.

I have heard many senators quote Peter Hogg. He touched upon this. He suggested that by using an equivalence provision, we should be able to put in place explicit minimum protections that are beyond doubt, and this is the reason why I am supporting Senator Plett.

Thank you.

**Hon. Betty Unger:** Honourable senators, I have a short statement to make as well. As we know, the only reason this entire debate is taking place is because of a Supreme Court ruling on the Charter rights of Canadians. How tragic it would be if, in response to the Supreme Court ruling on the rights of a few, we trample on the rights of many.

I am referring to conscience rights. As we all know, conscience rights appear in the Charter as well. And while there is no debate over the importance of conscious rights, there is a debate over how far this protection should go.

I propose to you fellow senators that we do not need to sacrifice one right for another. In fact, we must not sacrifice one right for another. Although the bill currently contains a clear expression of support for conscience rights, there remains significant uncertainty in the minds of many and in my home province of Alberta.

Additional clarity and reassurance is necessary. For this reason, I will be supporting this amendment. I believe it provides the reassurance that people of faith and communities of faith are anxious to receive, that they will not be forced to participate in an act which violates their personal conscience or the purpose of their institution.

Dr. Neil Hilliard from Abbotsford, B.C., who is a palliative care consultant and the Program Medical Director for the Palliative Care Program in Fraser Health, which is a secular organization, expressed his serious concern about being forced to perform this life-ending procedure in their institutions.

Thank you.

**Hon. Michael L. MacDonald:** Honourable senators, I want to speak to this amendment for a few minutes. I won't take up too much time. Before I do, if you would indulge me, I just want to reflect a bit on what I have observed and listened to over the past 10 days in this debate.

Last week, when this was introduced to the Senate, I was out of town, but I was keenly interested in this debate, so I got online and followed all the speeches. I don't know how they sounded, but when you read them online, you all read very well online. I want to compliment my colleagues for the seriousness and the depth of discussion they gave the subject matter.

I would be remiss if I didn't single out Senator Ogilvie for his work on this file. I think we should all be grateful that we have a man of Senator Ogilvie's probity, discipline and intelligence to carry this file and to give it the due diligence it deserves.

Thank you, Senator Ogilvie.

**Hon. Senators:** Hear, hear.

**Senator MacDonald:** Yesterday, Senator Joyal introduced his amendment. I heard a lot of discussion here about constitutionality. Everybody has a constitutional opinion. Well, I respect constitutional opinions. I have constitutional opinions. But, quite frankly, how relevant is our opinion of what constitutional is when it comes to this debate? We do not determine constitutionality. The courts do. We're supposed to be focused on how the law should read, so I have a lot of trouble with the constant arguments over constitutionality. I appreciate them, but I have reservations on how relevant they are in this discussion and debate.

I listened to Senator Joyal yesterday when he spoke, and as usual, Senator Joyal is a reasonable, articulate man who makes a very good argument. I have to confess, until about half an hour before the vote yesterday, I wasn't quite sure what I was going to do. On a personal level, when I'm not quite sure what I'm going to do, I usually say no. It's probably the reason I'm alive today and certainly the reason I never ended up in jail at one time or another. You have to learn to say no.

One of my problems with this bill is a problem of principle for me. And the best analogy I can use is the one with capital punishment. I believe people commit crimes so heinous, so outrageous, that they deserve to be hanged. In fact, I think people commit crimes so outrageous that they can be drawn and quartered and disemboweled for all I care.

However, I don't believe in capital punishment, and the reason I don't is because I don't want to put my life in the hands of the state. I don't trust the state with my life. You can trust the state with your life if you wish, but I can assure you I don't trust the state with any of your lives. The state has no conscience, the state has no remorse and the state is impersonal. That's why I voted against that amendment yesterday, not because it wasn't reasonably argued, not because Senator Joyal didn't make arguments and bring up discussion that we all had to reflect upon, but because in principle I wasn't comfortable with it.

In regard to this conscience protection, I support this amendment because I believe in the primacy of Parliament. We hear it all the time: the unelected senators, the appointed, unelected, unanswerable senators.

• (2050)

But all the judges in this country are unelected. They're all appointed but they're appointed to be judges, not legislators. We are appointed to be legislators. My province of Nova Scotia released its set of guidelines that practitioners must follow in providing medical assistance in dying. They have been very clear. They will force physicians to refer to a willing practitioner if their patient requests assistance in dying.

That reference is essentially an endorsement of this procedure. There's no other way around it. I think this is morally problematic for many of these objectors. I have health care professionals in my family who are very, very uncomfortable with this. They do not trust the way they're going to be treated.

So this will put self-referral mechanisms in place in order to balance the rights of the patients and the physician. I believe this protection is necessary, and I believe this protection is fully within the purview and the rights of Parliament.

I respect the courts. I respect the rule of law in this country. We are a civilized country. That's why we respect the rule of law. But Parliament determines the law in this country, not the courts. That's the fundamental question we have been handed here.

I support this amendment and I intend to vote for it. I encourage all of you to vote for it. Thank you.

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

**Some Hon. Senators:** Question.

**Hon. Daniel Lang:** I would like to make a couple comments on the proposed amendment. I, too, would like to say that I believe that this particular amendment goes into the area of the constitutional responsibility of the provinces and the territories. I think we have to be very careful when we are bringing legislation forward that's going to intrude into their day-to-day responsibilities and where we as Canadians expect them to exercise their authorities.

I want to make one other point in respect to the amendment before us that concerns me, and that's the question of not requesting a referral be made by a physician if he or she does not want to proceed with a medical procedure.

What hasn't been discussed in this particular section is what happens to the patient who isn't provided with a referral. That would be my question.

I understand the debate, and I appreciate the passion behind the debate, but from a common sense point of view, if I am a doctor and I do not feel that I can conscientiously perform a medical

procedure, I have every right to say no. But at the same time, I would say that I have a responsibility to my patient, and if I have to refer him or her to a central registry or to another physician, I don't think that that is too much to ask.

I cannot see any physician leaving a patient all of a sudden and leaving them with no referral and no attention if they decide they can no longer provide them with their expertise.

I have to say I do believe that the proposed section does intrude into the responsibility of the provinces. I go back to my initial position when we first started to deal with this bill, which is that the provinces and the territories are doing what we expect them to do, and that is putting into place a system that will allow them to put in the necessary medical procedures for the purposes of medical assistance in dying, if requested, and they have done that. I think we have to respect that. It would be very improper for us to intrude on it, and I won't be supporting the amendment.

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

**Some Hon. Senators:** Question.

**The Hon. the Speaker:** Senator Batters, on debate.

**Hon. Denise Batters:** I have a very brief question for Senator Lang, if he would accept a question.

**Senator Lang:** Yes.

**Senator Batters:** Senator Lang, you spoke about the need to be careful about intruding into provincial-territorial jurisdiction. Are you aware of the fact that, with the regulatory frameworks that came out from the provinces and territories on this particular issue, now that we're in a bit of a state of limbo with this legislation not passed, that Yukon, your home, has come forward with a regulatory framework proposal that they're going through with that allows mature minors to have access to assistance in dying?

**Senator Lang:** Colleagues, just to clarify for the record, in the Yukon, it states two doctors must agree that the patient meets criteria set out by the Supreme Court, and the Yukon Medical Council notes that it is uncertain if aid could be legally available to a minor. Obviously, it was an outstanding question while they were putting the regulations and the guidelines together, and obviously as time goes on, they will be modified because, as we have all said, this is new to everyone.

I can assure you and I want to assure the senator from Saskatchewan, not unlike the senator from Ontario, or the senator from Nova Scotia, that there is consistency throughout the system from the point of view of the procedures. Sure, the language is somewhat different in a few places but the principles are all the same.

**The Hon. the Speaker:** Are honourable senators ready for the question? It was moved by the Honourable Senator Plett, seconded by Honourable Senator Martin:

> That Bill C-14, as amended, be not now read a third time but that it be —

Dispense?

**Hon. Senators:** Dispense.

**The Hon. the Speaker:** All those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** All those opposed please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the nays have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Do we have an agreement between the government liaison and the opposition whip?

**Senator Plett:** Fifteen minutes.

**The Hon. the Speaker:** The vote will be taken at 9:12.

Call in the senators.

• (2110)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

| | |
|---|---|
| Andreychuk | Marshall |
| Ataullahjan | Martin |
| Batters | McIntyre |
| Beyak | Mockler |
| Carignan | Ngo |
| Dagenais | Oh |
| Doyle | Patterson |
| Eaton | Plett |
| Enverga | Poirier |
| Frum | Runciman |
| Housakos | Stewart Olsen |
| MacDonald | Tkachuk |
| Maltais | Unger—27 |
| Manning | |

NAYS
THE HONOURABLE SENATORS

| | |
|---|---|
| Baker | Massicotte |
| Bellemare | McCoy |
| Black | McInnis |
| Campbell | Mercer |
| Cools | Merchant |
| Cordy | Meredith |
| Cowan | Mitchell |

Day
Downe
Duffy
Dyck
Eggleton
Fraser
Gagné
Greene
Harder
Jaffer
Johnson
Joyal
Kenny
Moore
Munson
Nancy Ruth
Ogilvie
Omidvar
Pratte
Raine
Ringuette
Seidman
Smith
Tannas
Tardif
Wallace
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(The Senate adjourned until tomorrow at 9 a.m.)

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