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(HANSARD)

Friday, June 10, 2016

The Honourable GEORGE J. FUREY
Speaker

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Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
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THE SENATE

Friday, June 10, 2016

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

Prayers.

SENATORS' STATEMENTS

THE LATE HONOURABLE LEN MARCHAND, P.C., C.M.

TRIBUTE

Hon. Jim Munson: Honourable senators, last week, Canada lost one of its most accomplished First Nations leaders. Len Marchand, our former colleague, died at the age of 82. Today, I would like to pay tribute to his remarkable life and many years of public service.

Let me begin by saying that few Canadians have had such groundbreaking careers. Len was the first status Indian to graduate from his public high school, and he was one of the few indigenous students enrolled at the University of British Columbia in the late 1950s.

He was the first status Indian to work as a ministerial aide in Ottawa, be elected to the House of Commons, become a parliamentary secretary, and serve in the federal cabinet. I like to think of him as the original Aboriginal in Parliament.

I covered his political career as a journalist on the Hill in the 1970s and got to know him well. After all, Len was a little guy like me. He had a strong voice and understood both sides of every issue. He would speak about the pride of First Nations but also of the many challenges they faced. These discussions could be difficult, but Len, as you always saw him walking with that smile, always kept his sense of humour. It was one of his finest qualities.

In 1984, he became the fifth Aboriginal Canadian appointed to the Senate of Canada. Honourable senators, Len was a great storyteller and he continued to tell the story of Canada's indigenous peoples when he arrived here.

While I did not have the privilege of serving alongside him in the Senate, here is some history for you. The Standing Senate Committee on Aboriginal Peoples is a daily reminder of his legacy. The committee was created in 1990 through a motion introduced by Senator Marchand. He later became its first chair. What a rich history we have because of Senator Marchand.

His legacy can also be seen in the organization of the Liberal Party of Canada, where he helped found the Aboriginal Peoples Commission, which was established in 1990. Known today as the Indigenous People's Commission, it remains the only such entity within a federal political party. He had wonderful accomplishments.

Upon his retirement from the Senate in 1998, our dear friend, former Senator Joyce Fairbairn said, "Len was a person who broke down barriers and charted new courses for himself and for the people whom he always represented, the Native people and the status Indians of this country." Wonderful words, again, by Senator Fairbairn.

Len has been described by many as a trailblazer. He was, but more than that, he was a good soul. His determination, achievements and commitment to Canada will continue to be an inspiration to us all.

Thank you, honourable senators.

Hon. Mobina S. B. Jaffer: Honourable senators, I also rise today to honour our dear friend and colleague, Senator Len Marchand. Senator Marchand was a visionary public servant and a trailblazer in all aspects of his life. He was the voice of the Aboriginal people of Canada for many years when there were very few Aboriginal people in leadership positions.

Few Canadians today may recall that Senator Marchand was the first status Indian to ever graduate from public high school in Vernon, B.C. Indeed, the tremendous barriers Senator Marchand broke through during his time are often assumed today to be relics of a distant past in Canada.

Senator Marchand first entered politics in 1968, when he was elected as the Liberal Party candidate for the British Columbia riding of Kamloops—Cariboo to the House of Commons under the then-Prime Minister Pierre Elliott Trudeau.

Senator Marchand and my law partner, the Honourable Tom Dohm, were both men from Kamloops, B.C. They both had tough childhoods and both worked hard to achieve great things. Most importantly, I learned from Mr. Dohm that Senator Marchand never forgot his roots and always worked hard for the welfare of Aboriginal people.

As you heard from Senator Munson, Senator Marchand held many posts in Canada, from parliamentary secretary to minister. During his time of public service, Senator Marchand persuaded the Right Honourable Pierre Elliott Trudeau to begin land settlement negotiations between the federal Government of Canada and the First Nations. He never forgot to express the needs of Aboriginal people.

In 1984, Prime Minister Pierre Elliott Trudeau appointed Senator Marchand to serve in the Senate. He was the fifth Aboriginal Canadian to serve in the Senate. Senator Marchand, as you heard from Senator Munson, was responsible for the

establishment of the Standing Senate Committee on Aboriginal Peoples, an important committee which he chaired and continued to work on.

Honourable senators, when I first became a senator, Senator Marchand sat me down and said, "You represent a group of people who have not had a voice on Parliament Hill. When you speak about them, it will be lonely, but never forget why you are in the Senate. You are the voice of the people who do not get a chance to be in the Senate."

Honourable senators, I often remember his words, but I am not sure I can often follow his words.

On behalf of all of us assembled here, I wish to extend our heartfelt condolences to Senator Marchand's wife, Donna, his daughter, Lori, and his son, Len Jr. His son is proudly continuing his father's work.

On behalf of all Canadians, I wish to express our gratitude for Senator Marchand's exemplary record of service to Canada. He truly articulated the voice of Aboriginal people.

Rest in peace, Senator Marchand.

THE LATE HONOURABLE ROD A. A. ZIMMER

TRIBUTE

Hon Donald Neil Plett: Honourable senators, last Tuesday morning, our nation lost an accomplished parliamentarian and an exceptional Manitoban. Senator Rod Zimmer passed away early Tuesday morning due to an enduring battle with esophageal cancer.

Senator Zimmer graced this chamber for eight years as an eloquent senator and good friend. Although the senator and I sat opposite in the four years that we worked together in the Senate, that will never change the fact that Senator Zimmer was a revered and accomplished public servant.

In his early career, Senator Zimmer played an integral role in his community in Manitoba in more ways than one. From working as a marketing consultant in his business life, to organizing the 1999 Pan American Games in Winnipeg, to managing the Royal Winnipeg Ballet, Senator Zimmer was serving the public long before he became a public servant.

The senator was also an accomplished athlete in his time. He won championships in swimming, diving and water-skiing. Beyond the water, Senator Zimmer played in many other sports in his free time, including tennis, soccer, baseball, golf, basketball and volleyball.

In his political career, Senator Zimmer successfully served as a fundraiser for the Liberal Party of Manitoba, to the frustration of many of us. For many years, he worked to raise millions of dollars for numerous federal elections and played an instrumental role within the Liberal Party of Canada for the latter part of the 20th century. His brilliant intellect and extraordinary work ethic led to his appointment to this chamber in 2005.

Honourable senators, Canada lost a great man last Tuesday. Senator Zimmer led a life dedicated to the values of democracy and to the people of this great nation.

• (0910)

Senator Zimmer's service to his province, his party and his country cannot and will not be forgotten.

Colleagues, at this time I ask that you please join me in offering our deepest condolences on behalf of Canadians everywhere to the Zimmer family.

THE LATE HONOURABLE LEN MARCHAND, P.C., C.M.

TRIBUTE

Hon. Nancy Greene Raine: Honourable senators, I, too, would like to pay tribute to our colleague Senator Len Marchand. He was more than a trailblazer. He was a wonderful, warm, compassionate human being who all his life reached out and built bridges between people. He and his wife, Donna, had friends, as they say in Kamloops, on both sides of the river. He was particularly good at listening carefully and giving wise advice, especially to a newly minted senator. I spent a fair amount of time with Senator Marchand in the last few years and really benefited from his wisdom.

Tomorrow, I will be attending a service for Senator Marchand in Kamloops. If you agree, I will speak on your behalf to extend our appreciation for the deep roots he had in the Senate and for how he was able to bring all his life together through a life of service right until the end, when he was still beloved by all the people.

One other thing I would like to say is that Senator Marchand was not a member of what was called the Kamloops Indian Band, now the Tk'emlúps Band. He was a member of the Okanagan Indian Band, having grown up outside Vernon on the other side of the divide in the Okanagan Valley. It is a tribute to the people of Kamloops that they supported him through his political career and everybody voted for him, loved him and related to him.

To me, this is a man who is truly special and his legacy will live on.

SASKATCHEWAN

FIRST NATIONS PROVINCIAL SPELLING BEE

Hon. Lillian Eva Dyck: Honourable senators, the first-ever First Nations Provincial Spelling Bee took place on April 8 in the Saskatchewan city of North Battleford's Don Ross Centre. Chief Poundmaker School hosted the event which drew approximately 140 students from 20 Saskatchewan First Nations schools. The First Nations Provincial Spelling Bee had three categories of competition — primary for ages 6 to 8, junior for 9 to 11, and intermediate for 12 to 14. First place finishers in each category competed at the Spelling Bee of the Canadian national event in Toronto on May 15.

Eleven year old Makayla Cannepotato, a Grade 5 student from Onion Lake First Nation, represented Saskatchewan and First Nations' people in Toronto because she correctly spelled the word "economics." She happily ran into her father's arms in victory after a tense hour of competition.

Approximately 150 students travelled to North Battleford to compete. Eight year old William Kaysaywaysemat from Kahkewistahaw First Nation will have his first opportunity to travel outside Saskatchewan as the winner of the primary competition by successfully spelling the word "resolve."

Event organizer Pauline Favel, a student support worker at Chief Poundmaker School, said sending a team of First Nations students to the national spelling bee breaks stereotypes and sends a strong message to the rest of the country that First Nation kids are just as capable and able to achieve the national level as any other student in Canada.

Ms. Favel believes the spelling bee is about far more than spelling. It teaches kids study skills, gets them to try their hands at public speaking, fosters self-confidence and allows them to interact with friends, siblings and parents with a love of learning.

"The theme of this literacy event is Believe and Achieve, which speaks to the aspirations and dreams of these young Aboriginal students, their teachers and proud families," according to Saskatchewan Government Relations Minister Jim Reiter.

Senators, please join me in congratulating all our competitors at the Spelling Bee of Canada nationals.

ROUTINE PROCEEDINGS

CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—SIXTH 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:

Friday, June 10, 2016

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

SIXTH REPORT

Your committee, to which was referred Bill S-225, An Act to amend the Controlled Drugs and Substances Act (substances used in the production of fentanyl), has, in obedience to the order of reference of May 12, 2016, examined the said bill and now reports the same with the following amendments:

1. *Clause 1, page 1*: Replace lines 8 to 10 with the following:

26 1-Phenethyl-4-piperidone and its salts

27 4-Piperidone and its salts

28 Norfentanyl (N-phenyl-N-piperidin-4-ylpropanamide) and its salts

29 1-Phenethylpiperidin-4-ylidenephenylamine and its salts

30 N-Phenyl-4-piperidinamine and its salts

Your committee has also made certain observations, which are appended to this report.

Respectfully submitted,

BOB RUNCIMAN

Chair

(*For text of observations, see today's* Journals of the Senate*, p. 591.*)

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

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

THE SENATE

NOTICE OF MOTION TO AFFECT QUESTION PERIOD ON JUNE 14, 2016

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting, I will move:

That, in order to allow the Senate to receive a Minister of the Crown during Question Period as authorized by the Senate on December 10, 2015, and notwithstanding rule 4-7, when the Senate sits on Tuesday, June 14, 2016, Question Period shall begin at 3:30 p.m., with any proceedings then before the Senate being interrupted until the end of Question Period, which shall last a maximum of 40 minutes;

That, if a standing vote would conflict with the holding of Question Period at 3:30 p.m. on that day, the vote be postponed until immediately after the conclusion of Question Period;

That, if the bells are ringing for a vote at 3:30 p.m. on that day, they be interrupted for Question Period at that time, and resume thereafter for the balance of any time remaining; and

That, if the Senate concludes its business before 3:30 p.m. on that day, the sitting be suspended until that time for the purpose of holding Question Period.

ADJOURNMENT

NOTICE OF MOTION

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

That, when the Senate adjourns today, it do stand adjourned until Monday, June 13, 2016 at 5 p.m. and that rule 3-3(1) be suspended on that day.

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

Hon. Senators: Agreed.

• (0920)

[*Translation*]

ORDERS OF THE DAY

LA CAPITALE FINANCIAL SECURITY INSURANCE COMPANY

PRIVATE BILL—THIRD READING

Leave having been given to proceed to Other Business, Private Bills, Third Reading, Order No. 1:

Hon. Claude Carignan (Leader of the Opposition) moved third reading of 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.

He said: Honourable senators, I am pleased to speak once again to Bill S-1001, this time at third reading. I'm the opposition's critic on this file, but since our honourable colleague and sponsor of the bill, Senator Dawson, is ill, I've taken over as sponsor of the bill as well. As Senator Campbell demonstrated with Bill C-7, the line between sponsor and critic can be a thin one in the Senate. This time, the critic will be supporting the bill and will be speaking in favour of it as sponsor.

As I said in my speech at second reading, this bill must be passed. This is about efficiency for the La Capitale group. The bill will bring the La Capitale Financial Security Insurance Company under Quebec's financial authority, like all the other companies in the La Capitale group.

I urge you all, esteemed colleagues, to pass this bill immediately. This will enable our colleagues in the House of Commons to pass it before they conclude their work.

Before I close, I would like to congratulate Senator Dawson for the work that he and his team have done on this file. I have witnessed the quality of their work first-hand, particularly yesterday. I would also like to wish Senator Dawson a speedy recovery.

[*English*]

Hon. Jim Munson: As Senator Baker always says, I have just a few words, but I have a lot of things to talk about. Just joking. It's Friday morning.

We like this bill. It makes sense. I'm very happy that you have replaced Senator Dawson on the bill, which means a lot to La Capitale insurance, and we agree with moving forward.

Hon. George Baker: Honourable senators, just to point out why this is being done, it happens from time to time under the Insurance Companies Act. We would suggest to the other place — the government — that they amend the Insurance Companies Act to allow for this procedure to take place.

In the Insurance Companies Act, to my recollection, section 39 of the act allows for a company to continue operations when moving from one province to another. There are some five ways in which a company can do that, but it can only do it if it comes under the authorization of the Bank Act in one case and the Corporations Act in another case. Applications can be made in writing to the ministers of those particular departments.

However, section 39(5), as I recall, says that they will only allow a transfer of operations of a company if it meets the five requirements of the first portion of the section of the act, which is restrictive in nature and does not apply to the company that we're talking about here today.

A simple amendment, a suggestion to the government, would prevent this complex procedure these companies have to go through. After this passes here, it has to be passed in the House of Commons. It is a cumbersome procedure. All that is required is a change to the act in order to allow the Minister of Finance, on application, to do what this complicated procedure is presently doing.

I would make that suggestion, and I'm sure that the Leader of the Opposition, Senator Carignan, who has perhaps litigated similar instances in the past, would agree that we need this procedure to prevent tying up both houses of Parliament to do a legitimate thing that is normally done with other companies if they meet the five strict requirements of the first section of the act.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read third time and passed.)

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. Nick G. Sibbeston: Thank you, colleagues. I'm grateful for the opportunity to speak on this bill at this time, in part because I'm trying to catch a plane at 11:20, so I won't be too long.

I have followed the debate in the house for the last few days, and I've found it interesting. Despite all the arguments and the concern people have for suffering, and so forth, I'm not convinced that the bill is appropriate for our country at this time.

I noticed this morning that we start with a prayer to God, asking God to be with us, to guide us, as it were. But in the last few days, since we've been talking about life and death, I have not heard anybody say anything about God and the role that the spiritual realm plays in people's lives, particularly the suffering and the eventual death that people go through.

The role of suffering in one's spiritual life, in refining the soul, is an idea and a concept that has been with us ever since man has existed. The possibility of physical and spiritual healing with prayer and pleadings to the almighty God is a very common and central aspect of the meaning of our faith. It seems to me this bill will give the whole issue of whether to live back to man, back to doctors and back to specialists, instead of leaving it to the Creator. Rather than God being a factor, it seems that the final determination of life and death will now be put in the hands of people, and I object to that. I do not agree with this approach.

I will speak for the people of the North, particularly the Aboriginal peoples of the North, who have views on this subject. Everyone knows that weather in the North is harsh. Life has always been a struggle for people there because of the severity of the elements and the land. There's just land and snow and water, and a lot of life comes from water.

Life has always been a struggle for people in the North, so people revere and respect life. It is not like them to agree to death, to have humans do something to people so they can die. That's the general basis of the Aboriginal peoples of the North, that they revere life. They struggle to live, so they want to live as long as possible.

Their lives have often centred on the existence of the caribou that migrate through the area. While there was an abundance of food during those times when migrations occurred, there were years when migrations didn't follow the same route. There was starvation and death in some cases because the animals didn't go by.

• (0930)

My grandmother and my uncle talked of life, of times when food and animals were scarce. If you were by a lake or river, you got by catching fish, rabbits, squirrels, porcupine, ptarmigans and grouse because the big animals were not readily available.

The North has moved from existence on the land. In the case of the Inuit, the Inuvialuit, they moved from life on the tundra by the frozen seas to communities, and the Dene people, Metis people have moved from living in the bush, in the mountains, along lakes to small communities in the North. Life has changed from a time when they depended primarily on animals and the land.

I recognize that life has changed, yet, the philosophy, the culture of life and the treasure of life still remains as a basis for the Aboriginal people of the North. Because of this I don't think that I could support the bill which would give man the ability to terminate one's life. That is my position.

I'm familiar with the Dene traditional way of dealing with elders who were too old to follow the group in their movements as they went to different areas depending on the seasons. By mutual understanding, the elderly, when unable to keep up, would become a burden and threat to the group's continued survival and existence, so would be left behind to die. That was the approach the Dene took to elderly people a long time ago.

My uncle often told me the story about an old woman who was left to die. The family group moved on, trekking through the bush. It was springtime and the geese were flying North, and she called to them, and the geese flew down and landed by her. The old woman told them her story and said, "My relatives must be far away because they moved on quite a while ago," and the geese said, "No, as we were flying, we could see them. They're just ahead, not very far away," and so the geese offered to show her and flew ahead. The old woman gathered all of her energy and began to walk and eventually caught up with her family members, and she lived a number of years more.

I remember this story being told by my uncle and by my grandmother about the way elderly people were left in the old days and this instance where geese helped a woman get back with her family. This tale or legend epitomizes the life of the Dene and the way they dealt with the elders. To be left behind to die was a natural way, mutually agreed upon and accepted.

The Dene and Aboriginal people in the North treasure life and would not do anything to jeopardize or end it prematurely, even if they were sick. The answer is good palliative care and health care. I know that society has changed and those early days of the Dene, the Inuit people, have changed, but this experience and culture remains with them and remains the basis of their thinking about death.

In my life experience, just like everyone else, I've seen many people get sick and die. I've never heard anyone say "I want to die. Help me to die." I never heard of anyone saying this. It's always about wanting to get well, wanting to continue living with their families and relatives. Life is relished and well-remembered, and people are glad to have lived as long as they have. When life ends, natural death is accepted.

My grandmother lived to be over 100 years old, and she was very contented and happy, though she had a very tough life during the years they really lived in the bush, travelling and living an existence that was always a struggle for life. My mother died just last year. She was 94 and a happy person right to the very end.

Catholic and Anglican bishops in the North dealt with this issue, and I can say that most of the communities in the North are either Catholic or Anglican. Missionaries in the 1800s came along the Mackenzie River from the South. If a Catholic missionary landed in a community, the community became Catholic. If it was an Anglican minister, the community became Anglican. That's the way the North is. They have communities that are, for the most part, Catholic; others that are, for the most part, Protestant. Most people today still retain that religion and have a very strong religious basis to their life.

Both the Catholic bishop and the Anglican bishop, in January, wrote to the Premier of the Northwest Territories when they knew this issue was going to be prominent on the national scene. They wrote saying:

> We also want to be absolutely clear that the Catholic and Anglican communities do not support suicide, assisted suicide or euthanasia. We are strongly committed to honouring all human life, and are very concerned about the threat to human dignity by the prospect that it can be taken at will.

They went on to say that good palliative care is the most practical and ethical way to ensure that all people in our northern lands can die in a manner that respects human dignity.

So that's the position of the churches in the North and the position of most of the Aboriginal peoples in the North.

I am very honoured to be able to say that on their behalf. Maybe at a time in the future when people become more like the southerners, whether you call it civilized or more sophisticated, they will change their views, but at this time they are wholly against any bill that would give man and doctors the decision as to whether to terminate one's life as opposed to a natural and God-given approach.

I am very much opposed to this bill and will not vote for it. That's the reason I abstained in the last few days on all the amendments because I just inherently don't agree with the bill. I want to reflect the view of particularly the Aboriginal people's in the North. Thank you very much.

Hon. Senators: Hear, hear.

Hon. Donald Neil Plett: Honourable senators, I rise to speak to an amendment that I will propose which deals with an issue I have spoken about before in this chamber. The amendment primarily deals with section 241(5), the exemption for a person aiding the patient.

As honourable senators know, the legislation allows an individual requesting assisted suicide to choose between having the death administered by a medical professional in a medical facility or taking the medication as a prescription.

• (0940)

There are a number of concerns when a person takes the medication as prescription. First, there are no safeguards in place. There is no restriction regarding when an individual can take the prescription. It can be immediately or years down the road.

There is no person able to assess consent at the time the person takes the prescription, let alone assessing the competency to consent.

There are no mechanisms in place to ensure the individual is not being coerced or forced into taking the prescription. The list goes on.

Many of us believe that a procedure of this gravity should only be taking place in a medical facility where safeguards are in order, and where they are prepared and equipped to deal with a person's remains.

The following clause in the bill is extremely troubling. Proposed subsection 241(5) reads as follows:

> No person commits an offence under paragraph (1)(b) if they do anything, at another person's explicit request, for the purpose of aiding that other person to self-administer a substance that has been prescribed for that other person as part of the provision of medical assistance in dying in accordance with section 241.2.

Colleagues, this subsection allows virtually any person to assist a person in death as long as they say they were asked to do so by the patient.

I cannot state strongly enough, no jurisdiction in the world that has legalized assisted suicide allows for any person, other than the patient or the physician, to administer the substance.

We, in this bill however, have opened it wide up to allow for any person to assist the patient in dying. There are no constraints in place. This is wide open to potential abuse, and, colleagues, we need to put in some reasonable parameters.

In the independent witness clause, namely 241.2(5) it states the independent witness can be:

> Any person who is at least 18 years of age and who understands the nature of the request for medical assistance in dying may act as an independent witness, except if they
>
> > **(a)** know or believe that they are a beneficiary under the will of the person making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that person's death;

The ministers were right to include this exception. In doing so, they have acknowledged that, sadly, there are people out there who would take advantage of family members in a situation like this for financial gain.

The same principle must apply to section 241(5), the most wide open provision of this bill. It is the exemption for the person aiding the patient. While I personally do not believe that anyone

should be aiding the patient other than a medical practitioner, I believe that this restriction is a reasonable compromise and the government would be acting irresponsibly not to accept this proposal.

I also propose to add the same language to proposed subsection (4), the "Unable to sign" clause, which again provides no limitation on who is able to sign for a patient who is unable to do so themselves.

The recommendation to amend these two clauses was passed unanimously at the committee with the support of independents, Conservatives and Liberals, including both the sponsor and the critic of the bill.

This is an extremely important exception, and I hope I can count on all honourable colleagues to support this amendment.

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 4, by replacing line 24 with the following:
>
> "ance in dying in accordance with subsection 241.2, except if they know or believe that they are a beneficiary under the will of that other person, or a recipient, in any other way, of a financial or other material benefit resulting from that person's death."; and
>
> (*b*) on page 7, by replacing lines 33 and 34 with the following:
>
> "who is at least 18 years of age, who understands the nature of the request for medical assistance in dying and who does not know or believe that they are a beneficiary under the will of the person making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that person's death —".

The Hon. the Speaker: It is moved by the Honourable Senator Plett, seconded by the Honourable Senator Frum that Bill C-14 as amended be not now — shall I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: Senator Plett do you accept a question?

Senator Plett: Yes.

Hon. André Pratte: Senator Plett, I'm wondering, this difference in phrasing, maybe there is something I'm not getting because of my poor mastery of English. In the second part of the amendment, it says, "the nature of the request for medical assistance in dying and who does not know or believe." And the first part of the amendment reads, "except if they know." Why does it say "and who does not know?"

Do you understand the question?

Senator Plett: I'm trying to read the amendment, Senator Pratte.

Senator Pratte: In part (b) of the amendment on page 7 replacing lines 33 and 34, "who understands the nature of request for medical assistance in dying and who does not know or believe."

Senator Plett: I think the terminology is "does not know or believe that they are a beneficiary." I understand it. I guess that is the only way I can answer. They should not believe that they are a beneficiary or in any other way a recipient of any material benefit.

Senator Pratte: Maybe I'm just not getting it.

Senator Dyck: Would the honourable senator take another question?

Senator Plett: Yes.

Hon. Lillian Dyck: I would like to follow up on that question. Could you explain a little more about the intention of the amendment? I know you have had the benefit of attending all the meetings. You indicated to us that there was unanimous support at the joint committee stage. Could you flesh it out so we could have a better understanding of why the beneficiary aspects were put into that amendment?

Senator Plett: Certainly, Senator Dyck.

In the section where a person has to be a witness, it is quite clear and explicit that this person needs to be, as I said in my speech, 18 years of age or older and they cannot be a beneficiary. It has to be somebody completely independent so as not to take advantage of mother or father.

If the person decides that they want assisted suicide but they don't want to do it today — they might want to do it down the road when their illness gets worse and it's unbearable — they ask the doctor or the physician for a prescription. They get the prescription and take it home.

If they take it home, one of a few things may or may not happen. Their mental state could deteriorate to the point where they can no longer make a proper decision. I am suggesting that son or daughter should not be making that decision for them. There should still be independent people involved in making the decision. Possibly the person is just not moving along quite as fast as son or daughter would want them to, and they want to encourage this process to happen a little faster.

Let's be clear that it does not exclude the loved ones from being around their parents if that's what we're talking about. Clearly that person would want his or her family with them, so it does not

exclude that. It just means that there must be independent people. Clearly the government realized there is a problem out there, so they put it in. I believe strongly it should be in this clause as well.

I also strongly believe it shouldn't be done somewhere other than in a hospital, but that's not the amendment.

Hon. George Baker: As a matter of clarification, at what point in this process is the honourable senator talking about? Is this after the person has been approved for physician-assisted death and has the drug for self-administration? Is this what he is talking about? Somebody goes home and they have the particular substance with them. That is, it has been authorized that at their particular moment in time at home, this can be self-administered. Is he saying that there must be then somebody completely independent who must be with that person at all times while they're home, just in case the person needs somebody else to assist them to self- administer the particular substance? Is that what he is talking about? Could he give us an example of the reasonableness of that?

• (0950)

An example was given before the committee when I believe Senator Batters asked how long somebody could have the substance at home — I think she said in the refrigerator — before it's administered. I think the answer was two to three years, wasn't it, Senator Batters? Yes, the person could have it for two or three years.

Is the honourable senator suggesting, then, that there must be some independent person at home with the person who has already been given the substance for physician-assisted death and that an independent person would be at home with that person for two or three years until the person wishes to self-administer?

Senator Plett: Well, Senator Baker, of course that's not what I am referring to. I'm referring exactly to what I said in committee when you supported it. Let me explain it to you again to refresh your memory.

This is a person aiding somebody. So, no, I do not believe that the person should have to be there 24 hours a day for three years. First of all, I was told the other day that the prescription would have very little kick to it anymore by that time. Nevertheless, if a person wants to die at their home, or at their cottage, or wherever they want to the die, I don't think, again senator, that this is something where we make a decision on the spur of the moment like we would when going to have a tooth pulled. This is the final decision.

I think if I were to choose this, I would say to my son or daughter, "Okay, the time has come. I'm ready to go," and they would get an independent person to come and aid — that's what this amendment is saying, "to aid that person." If I want to do it by myself who is going to stop me? If I have the needle or the pill — I'm not sure what the prescription would be — I can do it myself. No one is going to throw me in jail after I've done this myself. This is aiding the person and that was what was approved at committee.

Senator Baker: So the decision has already been taken. The approval has already been given. It's up to the person who has been given the approval, namely the person who has requested physician-assisted death, but they want to self-administer at home and at the time that person wishes to be self-administered.

Now a couple of senators likened this to an advance directive or an advance request. This was another way of saying that built into the legislation you're actually approving an advance request.

Are you saying that there must be an independent person? That is, there cannot be somebody in the room with that person at the time, like a member of that person's family?

An Hon. Senator: Oh, oh.

Senator Baker: Oh, that's not what you're saying. You're saying, then, that at the appropriate moment that the person has been authorized to self-administer their drug, they must then get someone who is completely independent to come to the home to assist them with the drug? Is that what you're saying? I'm trying to understand what you're saying.

Senator Plett: No, Senator Baker, I think you do understand.

Senator Baker: No, I don't.

Senator Plett: Let me explain it again to you, as I did at committee and you agreed with me.

When the person asks for assisted death in the hospital a physician is there to administer it. An independent witness has witnessed it but the physician helps administer it. I am saying if, in half a year from now, the person's mind has deteriorated, and so on, I want an independent person there at the last minute —

Senator Baker: At home?

Senator Plett: — whether it's at home, or at the cottage, or wherever — to aid in that process. It cannot just be a beneficiary to do that. There has to be an independent person there aiding in it.

The government saw clearly that was very important at the start. This is another process. I believe that there should also be somebody who is not directly related to the person aiding that person at home.

Senator Baker: At their home?

Senator Plett: Yes, at home.

The Hon. the Speaker *pro tempore***:** Senator Wallace, is it a question or debate?

Hon. John D. Wallace: Yes, a question. Would you accept a question, Senator Plett?

The Hon. the Speaker *pro tempore*: Senator Plett, do you request another five minutes?

Senator Plett: Yes, I do.

Senator Wallace: Senator Plett, as I understand the proposed amendment, anyone who knew they were a beneficiary, or believed they were a beneficiary, could not aid the person to self-administer the medically assisted death.

If they did know, or believed they were a beneficiary, then they would be committing a criminal offence. That's the consequence. I just don't know how we would determine whether someone believed they were a beneficiary. How would you prove that? In the case of family members who never discussed the will, you may have a thought but you don't know what dad's going to do with the estate. It's never been discussed and you don't actually know. You could be excluded.

How would you determine, after the fact, whether the person acted reasonably in concluding that they didn't believe they would be a beneficiary if it turned out they were? How would you determine that? It seems pretty vague to me.

Senator Plett: I suppose we should ask the ministers that question because that is exactly the wording they are using in the first part where it said "if they believe or know." I am using the same terminology in this part. If they do not know that they are a beneficiary, then they would not be committing a crime. It's if they know or believe that they are a beneficiary. That is the exact wording that is used in the first part. I have not changed that. I'm using the same wording in the second part.

Senator Wallace: Senator Plett, that's fine; I understand that. However, as the mover of this amendment, is there any uncertainty in your mind? Just because it's in another clause of the bill, the bill hasn't been approved — obviously it hasn't been passed. Is there any uncertainty in your mind, as the proponent of this amendment, about what that actually means and how it would be proven if it became an issue after the fact whether someone believed they were a beneficiary and acted reasonably in arriving at that belief? Do you have any uncertainty in your mind what the uncertainty of that means for the purposes of your amendment? Forget what other provisions are contained in the bill. For the purpose of your amendment, are you comfortable with that?

Senator Plett: Well, senator, as I stated in my speech, I am very uncomfortable with the fact that somebody can even do it away from the hospital. So, yes, I'm very uncomfortable with it. My amendment, I suppose — and I really felt strongly that it would probably not receive the support it needed — is to say you can't do it at home. It has to be done in hospital. I am using the same wording they are using. Yes, I'm uncomfortable with the entire idea of administering this drug at home.

• (1000)

Hon. Denise Batters: Would Senator Plett accept another brief question?

Senator Plett: Yes.

Senator Batters: With respect to the matter just raised by Senator Wallace, given that this is a criminal provision, wouldn't it be the case that the standard of proof in showing that knowledge would be guilty beyond a reasonable doubt, that that would be the determination of it; and determination of belief would be what the person's reasonable beliefs may have been, something that the court of law would be determining all the time?

The Hon. the Speaker *pro tempore*: Senator Plett, you have 30 seconds.

Senator Plett: You are absolutely right, Senator Batters. I believe that in the case of children or relatives, probably most times you would believe that you may well be a beneficiary.

Hon. Serge Joyal: Honourable senators, I am supportive of this amendment. I supported it at committee stage, during the exercise of pre-study of the bill that the chamber asked us to perform. I will tell you why I think it is important to support the amendment.

The bill is structured in a way that a patient or a person who has a grievous and irremediable condition and is suffering intolerably must have the right to refuse up to the last minute, to change his or her mind. That is contained in paragraph (3)(h) on page 7, "Safeguards."

It is important that we do everything we can to ensure that there is nobody around the person who could exercise influence. We know how a person, at the last minute — I will use the expression "pushes the button" — psychologically, is making the most important decision of his or her life, namely, to end it.

If we want to protect that ultimate right at the last minute, it is important that the patient, or the person who is in a condition of intolerable suffering, is not surrounded and aided. This does not mean the other person cannot be in attendance. As Senator Plett has said clearly, if you read it, it says "aiding" the person. It means the person has a role to play, making a gesture of some sort — giving a glass of water or a needle or whatever, as Senator Plett has said.

This doesn't mean that loved ones, those who might benefit or will benefit from the death of the person, cannot be in the room. That's not at all what it says. Literally, it is an offence, so the court will interpret it on its very specific wording.

The loved ones, the friends, the people who have been taking care of the individual for X number of years — the patient might be completely alone, without any relatives, having only the person caring for the patient. That person might expect that, being the only one, they will have a certain benefit following the death of the patient. That person cannot be the one providing the glass of water, as I said, or any other elements involved in the passage to death.

This is the fundamental argument. That's why I supported your amendment, Honourable Senator Plett, and that's why I'm still supporting it. It is to protect the will of the person in that very dear moment. There cannot be any doubt that the person was not coerced in any way to make the final gesture.

Again, this doesn't preclude the family being present, but the person who administers or aids to administer must be totally separated from the integrity of the will of the person. That's why, Honourable Senator Plett, I support the amendment you have put forward, and I invite other senators to do so.

Hon. Kelvin Kenneth Ogilvie: Honourable senators, my voting pattern during this debate has been based on the tremendously extensive information and analysis we did on the special joint committee.

I have said several times that one of our principles — perhaps our overriding issue — was to look at protection for the vulnerable. There are a number of ways that we recommended that could be done. One of them, of course, was to ensure that nobody with a direct potential of benefit or other conflict of interest should have an active role in granting or executing the decision.

Yesterday an amendment was put on the floor that would have modified our decision from the night before. I couldn't support that amendment on the grounds that I'm articulating today. I felt that the number of presumed safeguards that were put into that amending motion caused a problem and a hardship to the patient that exceeded the value of the totality of the modifications therein. Had that amendment been one that I had seen earlier, I certainly could have supported it, but elements were added which, in my mind, disrupted the balance.

I want to repeat that our primary objective was to ensure protection for the vulnerable, provided those protections did not further lead to a likelihood of enhanced vulnerability or pain and suffering.

In this particular case, it is my opinion that this amendment fully meets our objective of ensuring that no one with a conflict of interest or a potential benefit is in a position to make a decision or to actually carry out the benefit intended by the law. Therefore, I will be supporting this amendment.

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

Senator Baker: I have a question. The section being amended only includes self-administering. The example given before the committee was somebody who wishes to administer the drug at home or, as some people said, at the cottage.

This has already been approved. This is not in a hospital; this is in somebody's home. The example was given that that could be over a two- or three-year period.

When the committee looked at this, did it actually suggest that an independent person, not connected to that person's family, must be present when the drug is self-administered, just in case that person needs some assistance in self-administering the drug? Was that considered by the committee?

The Hon. the Speaker *pro tempore***:** Senator Ogilvie, will you accept a question?

An Hon. Senator: Yes, he will.

Senator Ogilvie: Honourable Speaker, I'm always so overwhelmed by the eloquence of my colleague across the floor; I never think for a moment that he may be addressing me. In the random access part of my memory, I may have caught enough of his question, and if I have, I will attempt to answer and he can clarify for me.

Senator Baker: Yes. The eloquence obviously put you to sleep.

• (1010)

Senator Ogilvie: I will just come back to our overriding concern, the active point of administering any part of assistance in dying by a third person, that person should be free of conflict of interest involving the individual receiving the benefit.

In effect, that's why we recommend that no relative could, for example, be a witness, even to the first decision in the case. If that is the essence of your question, you have my answer.

Senator Baker: Just for clarification, the approval has already been granted. You will notice that in all of the instances in North America, in all the states in the United States, there's a requirement that the physician be there and stay there until it is administered in a hospital setting.

The provision in this bill says that the persons who are assisting or administering the drug in a hospital setting must be arm's length. But the bill goes beyond that and says the person, after it has been approved, can then go home and self-administer the drug, and the evidence was shown that it could take a two or three-year period. This is the example given by the department.

Do you mean to tell me that after all of that has been approved and somebody goes home or goes to the cottage, as somebody suggested, and that if by chance any member of that person's family assists the person while self-administering then they will be criminalized and open to a jail term under the provisions of this act?

If those are not the consequences of what the honourable member is suggesting, then could he clarify that point?

Senator Ogilvie: Thank you for coming right to the point but, as the honourable senator just said at the end of his question, the individual is self-administering, nobody else is administering. The intent, as I understand it, is that the individual in this amendment is identified as somebody who is actually helping to administer the final medication in this particular case.

In many of the circumstances you've described, the great benefit to the individual of having the medication available is to give them the comfort so that when their life does really reach that point — it's unpredictable — and they are still competent to administer the drug, they can self-administer.

That's one of the great reliefs that is shown by studies in the countries where this authority is allowed; it gives great comfort to people who are suffering intolerably. It actually gives them the

added motivation and character to continue to resist their disease for a longer period of time, knowing that at the moment they simply can't handle it anymore they can deal with it themselves.

Now, if they have lost their ability — their motor ability — to administer that drug for any reason and somebody else has to administer, it is, in my opinion, critical that that person have no conflict of interest or potential benefit from the death of the individual I think that's one of the things Senator Plett is attempting to ensure with this amendment.

[*Translation*]

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): I am not as eloquent as the senators who spoke before me, but I would like to say that I feel a bit uneasy about the context in which this amendment was presented.

Under the Quebec law, medical assistance in dying must be administered by a doctor. My question is for Senator Ogilvie. In the context of Senator Joyal's amendment, which we adopted, medical assistance in dying is made available to people whose natural death is not reasonably foreseeable but who are suffering terribly.

We all know that suffering can be physical or psychological and that the notion of suffering can be subjective. Doctors will have to attest to the fact that the physical or psychological suffering of a person without a terminal illness diagnosis was apparently intolerable.

Do you think that the measure that we are discussing, this safeguard for cases of assisted suicide, is sufficient, given Senator Joyal's amendment? I feel very uneasy when I think about people in remote communities who have not been diagnosed with a terminal illness having medication at home that could kill them if they decide to take it.

Do you think that this safeguard is sufficient? You were a member of the external committee and heard from many witnesses. Do you think that the countries that offer medical assistance in dying, where the right to that assistance is as broad as ours, allow assisted suicide? I am thinking of Belgium, whose legislation is as broad as ours will be if Senator Joyal's amendment is implemented in Canada.

Would you please share your opinion on the nature of the safeguard and whether you think it is adequate? How does it work in Belgium, where the availability of medical assistance in dying is similar to what we will have once we have voted, ultimately?

[*English*]

Senator Ogilvie: First, I will deal with the issue of Belgium. I won't comment on Belgium. There's far too much misinformation in the ether with regard to the Belgium experience. One of the most highly referred to analyses was clearly dismissed by the Supreme Court as not having sufficient validity to consider in the context that it was presented. I'm not going to discuss Belgium further because, as I say, the press is full of very conflicting arguments with regard to what is going on in Belgium.

Senator Ogilvie:

I will come to your question, however.

First, I will make a clear distinction between the Quebec situation, which requires end of life, as we know, and that is not what we're dealing with in the circumstance in the amendment to the bill in this case.

As I briefly responded earlier, our committee examined a great deal of evidence with regard to persons at the end of their lives. For those persons who have a foreseeable period of time of several years or more, I keep referring to the Alberta example. It is just a good example of a person who is in that circumstance. The issue with regard to the psychiatric condition and so on is dealt with in that example as well. So I would remind you, first of all, that the individual who has — to take your example — the medication at their bedside is somebody who has already gone through all the approval stages to be granted the right to medical assistance in dying. They've gone through all those steps, were shown to be competent at the time of the decision and met the other conditions of an irremediable illness that is intolerable to the individual in their circumstances.

Medical history is full of such examples of when a person faces a circumstance, whether it's divine intervention in their mind or otherwise, it often has a very calming effect on how they are within themselves in dealing with their circumstance. That state can in fact prolong the time with which they are able to deal with suffering that neither you nor I would want to have to experience.

As far as I'm concerned, this provision is a humanitarian provision that in fact is helpful to a vulnerable person, in a way, to perhaps maintain their optimism for a slightly longer period than they would have if they didn't have the medication available to them.

• (1020)

The fact that that is there, and perhaps for other reasons, they may reach a point where their physical condition does not allow them to administer it. It is at that point that this amendment kicks in and says that the person that helps them under those circumstances cannot have any benefit from their death.

I have tried to cover a number of things around your question, senator. I hope I have touched on the central core of your issue.

[*Translation*]

Senator Bellemare: Senator Ogilvie, you did not say anything about the provisions in Belgium. That's fine, but can you comment with respect to the United States?

[*English*]

The Hon. the Speaker: Senator Ogilvie, your time has expired. Are you asking for time to respond?

Senator Ogilvie: No.

Hon. James S. Cowan (Leader of the Senate Liberals): Honourable senators, I want to rise briefly to associate myself with Senator Ogilvie's remarks not only in his intervention but also in the responses I believe he's covered.

I share his views about the work that we did in the joint committee and the evaluation that I suggest we all ought to apply when we have amendments, which are characterized as safeguards.

I will support this amendment because I believe it is an appropriate safeguard. It will provide comfort to people who are concerned about these issues. But we have to be very careful when we're evaluating these, as I said yesterday in my intervention on Senator Carignan's amendments. It is a fine line between a proposal which is a legitimate safeguard and another which becomes a roadblock or a barrier to access. That's the test I'm applying. I think it is the test that Senator Ogilvie is applying.

If Senator Bellemare wishes to know more about the Belgium or American experience, I commend the decision of Justice Smith in the British Columbia Supreme Court, which goes on for some 380 pages. She reviews the evidence at great length.

I agree with Senator Ogilvie; there's a lot of misinformation about what happens or doesn't happen in other jurisdictions. I would remind colleagues that we are designing legislation for Canada. If there are problems in Belgium or Oregon or some other place, that's for the Belgians and Oregonians to worry about. Our job is to get it right for Canadians.

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

On debate, Senator Wallace.

Senator Wallace: The question that I put to Senator Plett earlier, I certainly agree that having independence associated with the witnesses and an individual who would be aiding in the administration of medically assisted death certainly is reasonable.

The point that I want to draw to your attention, so that we appreciate the significance of this amendment if it is approved, is the manner in which it differs from the way that these same words apply to an independent witness as is described in the bill.

The witnesses are to be independent, meaning that they know or believe they are not a beneficiary. If that's the case, you are not a beneficiary.

Using those same words in this amendment, if an individual who is aiding is later found to have believed — if it was determined they didn't act reasonably in concluding that they did not believe they were a beneficiary, the difference in this provision is it creates a criminal offence with very serious consequences.

That is certainly a difference from the inclusion of those same words in relation to the independent witness provision. That's important, and I wanted to draw that to the attention of the chamber, unless somebody has a differing opinion of it. It is a serious consequence.

We're creating a new Criminal Code offence for anyone who aids and who, in hindsight, may not have properly believed that they were not a witness.

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

Senator Wallace: Yes.

Senator Baker: When you read the section that this will amend, it refers to a person who does anything — it says "anything" — in aiding somebody to self-administer at home. Two years after they have been prescribed the medication, if somebody does anything to aid — gives somebody a glass of water to swallow a pill, with family members around, and that person is self-administering — and if any of the family members do anything — that's what the clause says that we're amending. That's exactly what it says, "do anything."

Senator Raine: Could you read the clause?

Senator Baker: I will read it, yes.

> No person commits an offence under paragraph (1)(b) if they do anything, at another person's explicit request, for the purpose of aiding that other person to self-administer a substance that has already been prescribed . . . .

Two years down the road, if any of the family members does anything and somebody wishes to bring a charge, that person, if they did anything to aid the person two years after they have been prescribed the medication, then they will be liable for a jail sentence or prosecution. It may not end up in a jail sentence, but prosecution. It could end up in a jail sentence.

Is that the senator's interpretation of what we're talking about here?

Senator Wallace: Thank you, senator.

I would not go beyond simply saying that that section does clearly state, as you say, "if they do anything, at another person's explicit request for the purpose of aiding," then the consequences would flow from that.

I would agree it does say "if they do anything." I would not express an opinion beyond that.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Plett, seconded by Senator Frum:

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

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 to the motion will please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do the government liaison and opposition whip have a recommendation for time?

Senator Plett: Fifteen minutes.

The Hon. the Speaker: The vote will be held at 10:43. Call in the senators.

• (1040)

The Hon. the Speaker: Honourable senators, the motion is as follows:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 3,
>
> (*a*) on page 4 —

Shall I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: All those in favour of the motion will please rise.

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	MacDonald
Ataullahjan	Maltais
Batters	Manning
Beyak	Marshall
Black	Martin
Carignan	McIntyre
Cordy	Mockler
Cowan	Munson
Dagenais	Ngo
Doyle	Ogilvie
Dyck	Oh
Eaton	Patterson
Eggleton	Plett
Enverga	Pratte
Fraser	Raine
Frum	Runciman
Gagné	Seidman
Greene	Smith
Housakos	Stewart Olsen
Jaffer	Tannas
Joyal	Tardif
Kenny	Tkachuk
Lang	Unger
Lankin	White—49
Lovelace Nicholas	

NAYS
THE HONOURABLE SENATORS

Baker	Mercer
Bellemare	Meredith
Boisvenu	Mitchell
Campbell	Moore
Cools	Nancy Ruth
Day	Omidvar
Downe	Poirier
Harder	Ringuette
Massicotte	Wallace
McCoy	Watt—20

ABSTENTIONS
THE HONOURABLE SENATORS

Johnson	Merchant—2

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

Hon. Denise Batters: As parliamentarians and as legislators, honourable senators, we have the responsibility to consider the implications of widespread access to assisted suicide.

• (1050)

I am concerned when I hear certain safeguards being dismissed because they would limit access to assisted dying, for when we begin to view safeguards as mere "barriers to access" for ending a life, I think we have lost perspective on the entire question.

In no uncertain terms, physician-assisted suicide is the taking of a life. It should not be easily obtainable. It should be a last resort. Given what is at stake, surely it is not unreasonable that we pause and reflect a few times during the approval process. I am concerned that in our haste to deal with this legislation, we are failing to ensure that the necessary safeguards are in place to properly protect the vulnerable.

There are a number of basic safeguards that are not spelled out in Bill C-14. The usual response when the question of safeguard is raised is that the federal government will leave it to the medical regulators in each province and territory to figure it out, yet the regulations vary widely among the different regions.

For example, at the Standing Senate Committee on Legal and Constitutional Affairs on Monday, we learned — and I find this highly disturbing — that three jurisdictions — Alberta, New Brunswick and Yukon — all now have medical regulations that could potentially allow children to access assisted suicide. Other provinces and territories have minimum adult age limits in order to qualify.

In the interests of clarity, the Liberal government should clarify these types of situations in legislation so that there remains no confusion about what is acceptable under the law.

Honourable senators, I am particularly concerned about the lack of safeguards for the mentally ill in this legislation. Proponents of Bill C-14 point out that the preamble excludes those people with psychological suffering as a sole basis for accessing assisted suicide, as if that were an adequate safeguard for those who are mentally ill. I submit that it is not.

People who have mental illness in addition to a grievous and irremediable physical condition will still be considered for assisted suicide under this legislation. There are no specific safeguards for that additionally complicated situation, and I believe there should be.

When Minister Wilson-Raybould was speaking in our chamber last week, she referred to the recent E.F. assisted suicide court case in Alberta, where one of the doctors had evaluated the patient over FaceTime. The Justice Minister was shocked to hear this, of course, but failed to mention that her bill, Bill C-14, does not even require that much of an evaluation before determining a patient with mental illness is fit to die. That is simply not acceptable.

As I explained in my speech at second reading, the Senate Legal Affairs Committee heard a great amount of evidence from mental health experts on this issue. They indicated that mental illness merits special considerations in the face of the devastatingly final choice of assisted suicide.

The head of the Canadian Psychiatric Association told us at the Legal Committee:

> The very symptoms of mental illness may thus make individuals particularly vulnerable to be induced to end their life at a time of weakness.
>
> Symptoms of mental illness can affect a person's emotional resilience, making even normal life stresses seem unbearable, and can lead to cognitive distortions, including negative views of oneself and the future. Thus, symptoms of mental illness not only lead to suffering but may also independently affect the person's decision-making process regarding their will to live or die.

Honourable senators, I am all too aware of what the reduced capacity of one suffering with mental illness looks like. As many of you know, my husband, former member of Parliament Dave Batters, struggled with severe anxiety and depression and died by suicide in 2009. Unfortunately, I have first-hand knowledge of the different decision-making capacities of someone with mental illness and their suicidal thoughts. For someone who is mentally ill, there can be a tunnel vision that makes that person want to end his or her life, even when there are many other viable options obvious to all around them.

Mental illness is not a terminal condition. It is often treatable, and many of the symptoms of psychological illnesses may ebb and flow somewhat, depending on the circumstances of an individual's life — problems, stressors, et cetera. One of the primary symptoms of many mental illnesses is the lack of perspective about one's own life and its worth. Clearly, medical assistance in dying should not be extended to someone in that altered mental state.

Furthermore, it is true that a number of psychiatric illnesses can significantly increase one's risk of suicide. The mental health professionals at our committee explained that some psychiatric medications may also have the side effect of increasing the frequency of suicidal thoughts. Again, this is something I have unfortunately witnessed first-hand.

Knowing this, I think it would be unfair for us to ignore the special considerations of mental illness where it is present in assisted suicide cases. We must establish strong safeguards to ensure that no person struggling with mental illness can ask the state to end his or her life if there is hope that life could get better. How do we determine whether a patient with mental illness is capable of providing informed consent on the matter of his or her own death? At least one psychiatrist or psychologist should be required to assess a patient as part of the eligibility approval process.

As Dr. K. Sonu Gaind, President of the Canadian Psychiatric Association, told us during our deliberations on Bill C-14 at our Legal Committee:

> A psychiatrist. . . . needs to be involved in part of the capacity assessment when mental illness is present, largely because some of the cognitive changes can be quite subtle and they can be missed unless you are expert in the area.

Currently, Bill C-14 would allow a nurse practitioner in to fulfill this role. While nurse practitioners may have training and experience in a lot of different areas, they are not experts in psychiatry.

Another expert witness who appeared at our committee raised the issue of difficulties for assessing capacity for people with psychiatric illnesses. He stated:

> . . . I would state emphatically that anyone who is not worried about the difficulties associated with assessing the capacity of persons with severe psychiatric disorders who are requesting PAD is not basing that view on existing data.

For this reason, it is imperative that a mental health professional is responsible for conducting this assessment.

Furthermore, in cases where mental illness resides along with a patient's grievous and irremediable physical condition, a longer waiting period should be required. Currently, Bill C-14 states that the waiting period between the date that the request for assisted suicide is made and the date the assisted suicide is provided should be at least 10 days. Clearly, this is woefully inadequate in the case of someone suffering from mental illness.

In Canada, the average waiting period to see a psychiatrist spans from months to years, depending on your region. As I mentioned earlier, the nature of mental illness is such that it can fluctuate in intensity, and when circumstances change, often the symptoms of mental illness can be affected as well.

Psychosocial factors must also be taken into consideration. A patient's relationships, employment, emotional issues, support network or lack thereof, knowledge of all of these things would better inform a clinician of a patient's capacity and capability to consent to his or her own death. A week and a half is not even long enough to fully observe a patient's mental illness over multiple appointments.

A number of the mental health professionals who testified at our Senate Legal Committee testified to the importance of having a longer wait time in cases where mental illness is present.

Psychiatrist Dr. Padraic Carr stressed the importance of "adequate wait time between assessments to ensure that interviews are not unduly influenced by immediate circumstances." He referred to the then 15-day waiting period as "inadequate if mental illness is present or suspected."

The Mental Health Commission of Canada advocates a waiting period of three months between the request and receipt of medical assistance in dying. Psychologist Patrick Baillie told our Legal Committee that the Mental Health Commission of Canada supported a longer waiting period:

> . . . not only to allow for further assessment but also to allow for the opportunity for the individual to perhaps be informed about other forms of treatment that are available beyond those pharmacological interventions, for example, that have previously been tried.

Honourable senators, these are words of mental health experts in the field, people who work with mentally ill and suicidal patients every day. They will tell you that a week and a half is not long enough to fully evaluate someone suffering with psychiatric issues who claims they want to die.

This is why our Senate Legal Affairs Committee — a committee with Conservatives, Liberals and an independent — unanimously agreed to recommend a 90-day waiting period in our pre-study recommendations.

There are those who maintain that requiring additional safeguards in assisted suicide for the mentally ill is discriminatory. As someone who has devoted considerable time advocating for mental health and suicide prevention in the past several years, and as a suicide loss survivor, I completely reject that argument.

I will be moving an amendment, so perhaps the pages could start to pass it out now.

Mental illness presents a unique set of challenges and circumstances for any regime that allows the mentally ill to access physician-assisted suicide. In the words of Dr. Gaind:

> "Equity" does not mean everything is the same; it means treating things fairly and impartially. Failure to consider the particular circumstances of mental illness, as it could impact MAID processes, would itself be stigmatizing or discriminatory, as it would fail to acknowledge the realities of mental illness on people and their lives.

• (1100)

This is exactly it, honourable senators. As legislators we need to recognize the particular needs of Canadians living with mental illness and respond sensitively with a cautious and considered approach in any legislation that affects them.

There is no more fundamental issue than the one before us today, honourable senators. It is truly a matter of life and death.

The Senate of Canada was groundbreaking in undertaking the first major national study on mental health issues *Out of the Shadows at Last* chaired by former Senator Michael Kirby. Some of you who are here today I know served with him in that excellent endeavour.

We have a great history in this place of protecting the vulnerable, and people living with mental illness are among some of our most vulnerable Canadians. As senators, we have the responsibility to stand up for them and to protect their interests in this assisted suicide legislation. Let's use our collective sober second thought to increase the safeguards for mentally ill Canadians.

Whether you think Bill C-14 is too broad or too restrictive, I respectfully ask you to support me in calling for a psychiatric assessment and a 90-day waiting period in cases where mental illness is present alongside a grievous and irremediable physical condition.

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,
>
> (*a*) on page 5, by adding the following after line 26:
>
> "***psychiatrist*** means a medical practitioner who is entitled to practise psychiatry under the laws of a province. (*psychiatre*)

psychologist means a person who is entitled to practise psychology under the laws of a province. (*psychologue*)";

(*b*) on page 6, by adding the following after line 26:

"**(a.1)** ensure that, if the person has a mental illness, the person has been assessed by a psychiatrist or psychologist as being capable of making decisions with respect to that person's health;";

(*c*) on page 7,

(i) by replacing line 11 with the following:

"**(g)** subject to subsection (3.1), ensure there are at least 10 clear days between", and

(ii) by adding after line 30 the following:

"**(3.1)** If the person requesting medical assistance in dying has a mental illness in addition to the grievous and irremediable medical condition referred to in paragraph (1)(c), the period referred to in paragraph (3)(g) is increased to at least 90 clear days."; and

(*d*) on page 9, by replacing line 2 with the following:

"graphs 241.2(3)(a.1) to (h) and subsection 241.2(8) is guilty".

Thank you.

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

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

(*a*) on page 5 —

Shall I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: As honourable senators are seeing this amendment for the first time, I believe we should take a few minutes for senators to review it and see how it fits into the structure of the amended bill before continuing debate.

Hon. James S. Cowan (Leader of the Senate Liberals): Honourable senators, might it be in order for me to suggest to colleagues that in order to expedite and ensure we give the proper consideration to amendments, that it would be helpful for amendments to be circulated to colleagues in advance. I think it diminishes the quality of the debate when serious amendments are proposed but we do not have an opportunity to see them in advance. Many of us have circulated them, and I would ask Your Honour to commend that to colleagues.

The Hon. the Speaker: Senator Cowan raises an interesting point, but whether or not amendments are distributed ahead of time is entirely up to the discretion of the senator proposing the amendment.

Senator Cowan: I understand.

The Hon. the Speaker: We're taking a moment for senators to review it and then we will move to questions.

Are honourable senators ready for questions? Senator Plett.

Hon. Donald Neil Plett: Thank you, Your Honour. I thank Senator Batters very much for introducing her amendment. I think it is imperative that mental health professionals assess competency to consent in a situation of this gravity. I also remember Dr. Patrick Bailey making a compelling case for an extended time in accessing assisted suicide, yet the government shortened it instead of lengthening it.

Can the honourable senator explain why she has included both psychologist and psychiatrist as being able to conduct this assessment?

Senator Batters: I thank the honourable senator for the question and for all of his support on these types of issues.

First of all, Patrick Bailey from the Mental Health Commission of Canada made a very compelling case at our Legal Committee talking about the length of time it takes in Canada to see a psychiatrist. As well, something just raised with me earlier today, a reminder of how long sometimes some of these particular medications can take to even start working. It can be six weeks or more for them to start working, so to really give people a chance for some realistic help, and that may be the first time they seek help. Too many people in Canada do not seek help for mental health issues, and I always encourage people to get to a doctor, to deal with things at an early stage.

Dealing with the issue of psychiatrists and psychologists, the reason I decided to add psychologist into this particular portion, to allow people to access that as an avenue as well, is to simply recognize that in Canada we have significant mental health gaps and many areas of the country have very few psychiatrists but perhaps more psychologists. It provides the opportunity for people and does not take it away as an option, and often it takes less time to get in to see a psychologist, and it's a less-costly situation as well. Some places even offer those types of services through different service organizations. The amendment is to provide more access and allow people to get better help.

Senator Plett: Just one more question. Last evening when I presented an amendment that unfortunately didn't pass, part of that amendment at 241.2(3) where it says "to (h)," the bill has a correction where they added clause (i).

This may be a housekeeping issue, but I had corrected that in my amendment, that it was (a) to (i), but you still have in your amendment (a) to (h) and there is a clause (i). I assume, Senator Batters and Your Honour, that this may be a housekeeping error but there is a clause (i).

The Hon. the Speaker: Senator Batters, your time has expired. Are you asking for more time to answer the question?

Senator Batters: Yes, Your Honour, to be able to answer Senator Plett's question.

Hon. Senators: Agreed.

Senator Batters: Yes, that is a housekeeping matter that was not caught. Thank you for bringing that up. We caught it earlier adding (a).1, but it was a housekeeping thing, so perhaps the legislative drafting people could insert that and it could be considered an acceptable friendly amendment. I'm not sure how that is properly worded but I would definitely be accepting of that. Thank you.

• (1110)

The Hon. the Speaker: Senator Batters, are you asking for more time to answer more questions?

Senator Batters: Yes, if I could have five more minutes.

The Hon. the Speaker: Agreed, colleagues?

Hon. Senators: Agreed.

Hon. Jim Munson: I want to know why you chose 90 clear days, is 90 a magic number? Did you choose that for a reason as opposed to a 100 or 60 days?

Senator Batters: First of all, the wording "clear days" is in the bill currently, where it refers to the regular waiting period of 10 clear days. That's not new, magical language.

Also, the 90-day period was chosen because the Mental Health Commission of Canada requested that period. They're a widely known organization that has done good work for people across the country on this issue. They talked to us in committee about the lengthy waiting periods for psychiatrists in Canada, so they suggested a three-month waiting period. They provided justification for that. That's why I came up with 90 days in my amendment.

Hon. Carolyn Stewart Olsen: Would you accept a question?

Senator Batters: Absolutely.

Senator Stewart Olsen: Some people would think that the bill we're looking at actually covers this amendment by saying that you have to be mentally competent and an adult. In the definition of "mental competency," is it not correct you could be severely depressed but still be mentally competent?

That clarification might make a difference.

Senator Batters: Yes. That is true, that you still can have mental illness and be mentally competent. For someone with mental illness, it is more appropriate that the assessment of mental competency be made by someone with professional mental health experience, a psychologist or psychiatrist, rather than a medical practitioner or a nurse practitioner. It is also to ensure that person is requesting medical aid in dying because they really want to die, not just because they're mentally ill and they have tunnel vision and can't find their way out. They may just need better help and support in their situation.

Hon. Jane Cordy: When I look on page 13 at section 9.1 of the bill, it says there will be an independent review, and it says:

> The Minister of Justice and the Minister of Health must, no later than 180 days after the day on which this Act receives royal assent initiate one or more independent reviews of issues relating to request by mature minors for medical assistance in dying, to advance requests and to requests where mental illness is the sole underlying medical condition. . ."

And it continues

> . . . and to requests where mental illness is the sole underlying medical condition.

I'm not sure I understand all the ramifications of somebody who is mentally ill requesting assisted dying. I would prefer that the minister do the study on the whole issue of mental illness to determine things that we may not even be thinking about today. What do you think about the aspect of the bill that provides for an independent review of mental health and where it stands in relation to assisted dying?

Senator Batters: I have been opposed to that particular issue for some time. I have consistently spoken about it in national media and speeches for the last six months. I do not believe those whose sole underlying condition is mental illness should be eligible for assisted suicide. I understand the government has chosen to do that study.

This aspect is not implicated in that possibility. That study may take two or three years. In the meantime, we want to make sure that people who have mental illness, in addition to a grievous physical condition such as cancer, are seeking assisted suicide for the right reasons. You could have someone with depression and cancer. We want to make sure they are receiving the proper care and help and they have decided they want to access assisted suicide, not simply because they have mental illness and mental illness is making them decide they want to die, but that that has been independently assessed by someone with the qualifications to do so.

The government study will be undertaken at some point for those other particular issues. I want to make sure that the date this law goes into effect we have the proper protections we need to ensure those safeguards are in place for those with mental illness.

Dealing also with mental illness as a sole underlying condition, when I outlined my concerns to Canadians, they were adamantly opposed. I received a flood of emails, calls and letters thanking

me for standing up for people who may find themselves without help or resources. They didn't think the proper reaction was to provide them with a devastatingly final choice of suicide and nothing else. Thank you.

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): As I was rereading the amendment, I was trying to come up with practical situations where this could happen, and I thought of quite a few. A person close to me has Alzheimer's disease. It seems to me that it would be discrimination to prolong the suffering of a person with a mental illness that affects or may affect judgment for an extra 90 days simply because these mental illness elements were added. I don't see the logic in prolonging the suffering of a person with a mental illness for 90 days if that person was competent when the request for medical assistance in dying was made. I don't understand.

[*English*]

The Hon. the Speaker: Your extended time has expired. Are you asking leave to respond to Senator Carignan's question?

Senator Batters: Yes, please.

The Hon. the Speaker: Granted, colleagues?

Hon. Senators: Yes.

Senator Batters: Senator Carignan, I would never want to in any way someone to consider that I was discriminating against people with mental illness. It is something I have been advocating for strongly for several years, and I'm always very careful about that.

As I indicated in my speech, treating people differently because of different situations they have doesn't necessarily mean that it is discriminatory. We're just trying to provide people with a different decision making capacity while they have mental illness. We received a lot of information about that in evidence at our legal committee. We want to make sure that people who really need help are receiving it, and that they're not seeking suicide as a means out when what they need is proper treatment for mental illness.

Perhaps what they need is to be able to see a doctor, get some proper medication, get some treatment, see a psychologist who can do talk therapy, consult their family and friends, have that time to make sure that they're properly being cared for, For so many of these people what they have lost in their lives when they have mental illness is hope. We want to provide them with help and resources and hope, not just simply the means to kill themselves.

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

Hon. Senators: Question.

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:

Is there an agreement between the government liaison and opposition whip?

Senator Plett: Fifteen minutes.

The Hon. the Speaker: The vote will be called at 11:33. Call in the senators.

• (1130)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Martin
Ataullahjan	McIntyre
Batters	Merchant
Beyak	Mockler
Doyle	Oh
Eaton	Plett
Enverga	Raine
Frum	Runciman
Gagné	Stewart Olsen
Housakos	Tannas
MacDonald	Tkachuk
Manning	Unger—25
Marshall	

NAYS
THE HONOURABLE SENATORS

Baker	Kenny
Bellemare	Lang
Black	Lankin
Boisvenu	Lovelace Nicholas
Campbell	McCoy
Carignan	Mercer
Cools	Mitchell

Cordy	Moore
Cowan	Munson
Day	Nancy Ruth
Downe	Ogilvie
Eggleton	Omidvar
Fraser	Pratte
Greene	Ringuette
Harder	Seidman
Jaffer	Tardif
Johnson	Watt
Joyal	White—36

ABSTENTIONS
THE HONOURABLE SENATORS

Dagenais	Maltais
Dyck	Smith—4

(On motion of Senator Bellemare, debate adjourned.)

ADJOURNMENT

MOTION ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I move:

> That, when the Senate adjourns today, it do stand adjourned until Monday, June 13, 2016 at 5 p.m. and that rule 3-3(1) be suspended on that day.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Monday, June 13, 2016, at 5 p.m.)

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