



# DEBATES OF THE SENATE

---

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 41

---

OFFICIAL REPORT  
(HANSARD)

Wednesday, June 1, 2016

The Honourable GEORGE J. FUREY  
Speaker

This issue contains the latest listing of Senators,  
Officers of the Senate and the Ministry.

## CONTENTS

(Daily index of proceedings appears at back of this issue).

*Debates Services:* D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756  
*Publications Centre:* Kim Laughren, National Press Building, Room 926, Tel. 613-947-0609

---

Published by the Senate  
Available on the Internet: <http://www.parl.gc.ca>

## THE SENATE

Wednesday, June 1, 2016

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

Prayers.

[*Translation*]

### CRIMINAL CODE

#### BILL TO AMEND—CONSIDERATION ON SUBJECT MATTER IN COMMITTEE OF THE WHOLE

On the Order:

The Senate in Committee of the Whole, after Prayers, pursuant to the order adopted on May 31, 2016, in order to receive the Honourable Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada, and officials, followed by the Honourable Jane Philpott, P.C., M.P., Minister of Health, and officials, for the consideration of the subject matter of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying).

(The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Nicole Eaton in the chair.)

---

**The Chair:** Honourable senators, rule 12-32(3) outlines procedures in a Committee of the Whole. In particular, under paragraph (b), “senators need not stand or be in their assigned place to speak.” I would also remind everyone that, under paragraph (f), “arguments against the principle of a bill shall not be admitted.”

[*English*]

Honourable senators, the Committee of the Whole is meeting pursuant to the order adopted by the Senate regarding the subject matter of Bill C-14. Pursuant to this order, both the ministers of Justice and of Health will appear accompanied by officials. Each minister will be with us for a period of up to two hours.

I would now ask the Honourable Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada, and her official to enter.

(Pursuant to rule 12-32(4) of the *Rules of the Senate*, the Honourable Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada and her official were escorted to seats in the Senate Chamber.)

**The Chair:** Minister, welcome to the Senate. I would ask you to introduce your official and to make your opening remarks.

**Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada:** Good afternoon, honourable senators. It is indeed my great pleasure to be in this house. I am joined by my deputy minister, William Pentney.

**The Chair:** Welcome to the Senate and thank you for your time.

Would you have any opening remarks, minister?

**Ms. Wilson-Raybould:** I do. Thank you.

Again, acknowledging all of the honourable senators, it is indeed my great pleasure to be here today to address you all on a sensitive and complex matter, medical assistance in dying.

I would like to begin by thanking the senators who participated in the Special Joint Committee on Physician-Assisted Dying and those who sit on the Legal and Constitutional Affairs Committee, which concluded its pre-study of Bill C-14 a few weeks ago.

This issue has captured the attention of Canadians. Each and every one of us has had personal stories that have helped shape our thoughts and feelings. As parliamentarians, we will be influenced by our personal histories and our individual fears about the future, but we must legislate for all 36 million Canadians on whose behalf we are privileged to come to this place every day.

Bill C-14 reflects a reasonable, balanced approach to the criminal law dimensions of medical assistance in dying where Parliament’s jurisdiction primarily lies.

Medical assistance in dying is different from all other forms of medical care in that in the absence of an exemption, it is otherwise criminal conduct of the most serious nature.

Bill C-14 creates a series of exemptions from otherwise applicable criminal offences so that physicians and other medical providers can help, without fear of criminal prosecution, suffering individuals who have chosen to have a peaceful medically assisted death.

It builds in clear statutory parameters around the types of individuals who are eligible. Indeed, it was carefully crafted to provide as much flexibility as possible to medical practitioners to determine when and how a person’s death has become reasonably foreseeable.

Unlike some U.S. states that require specific prognosis and fatal disease, Bill C-14 does not require a strict temporal or causal relationship between any single medical condition and the foreseeability of death. This purposeful flexibility recognizes circumstances such as those of Kay Carter, who was in the final stages of her natural life even though she did not suffer from any single condition that was causing her death.

Bill C-14 also includes a critical set of safeguards that are designed to give Canadians confidence that life will be ended only where there is a genuine and firm wish of the person.

Yesterday, a coalition of over 30 disability rights groups from across the country highlighted the need for these safeguards in order to protect vulnerable persons.

Bill C-14 would also create the framework for a national monitoring system which will produce the information necessary to assess its effectiveness and safety.

Bill C-14 was developed with due consideration of what Canadians have had to say during the many consultations that have taken place. It strives to respect the diverse interests that are implicated by this issue, which include those individuals who might seek medical assistance in dying, those individuals who may be put at risk by legalization, and the medical providers who, in the name of compassion, are being asked to take actions that have been legally prohibited and contrary to their professional ethics until very recently.

In charting our course forward, our government followed the road map set out by the Supreme Court of Canada in its *Carter* ruling. While the court found that an absolute prohibition was unconstitutional, and thus Canadians should be permitted to request medical assistance in dying in certain circumstances, it also said that the autonomy of individuals who seek medical assistance in dying must be balanced against other competing values, the protection of the vulnerable and what the court called “sanctity of life.” We may refer to this more plainly as respect for life, the value of life or the equal and inherent value and dignity of every person’s life.

The court acknowledged that giving someone the ability to legally end human life creates risks for vulnerable individuals, risks which did not exist under the previous absolute prohibition.

• (1410)

Parliament’s duty is to listen not just to the voices of those who are asking to have access to the new service, but it’s also our duty to listen to those expressing fear for their safety in their interactions with the medical community, fear for the safety of their communities and fear that their lives are being devalued.

As one individual with a disability testified before the committee in the other place:

... this right to die makes me feel as if society thinks I should choose to die.

Their lives are just as valuable as those of all other Canadians, and Bill C-14 aims to promote this message by limiting access to those who are approaching death.

Bill C-14 also aims, to a degree possible as a matter of criminal law, to reinforce suicide prevention and guard against death coming to be seen as a solution to suffering.

A coalition of disability rights organizations, academics, lawyers and physicians, among others, considers limiting medical assistance in dying to those who are nearing death to

be the right and necessary safeguard to protect the lives of vulnerable individuals.

The Supreme Court of Canada itself recognized these competing values and that Parliament has the difficult task of weighing and balancing them. I am confident that Bill C-14 strikes a reasonable balance among all the competing interests.

The *Carter* decision told us that an absolute prohibition against assistance in dying was unconstitutional, but it did not tell us what a new law should look like. A new law must respect the legal principles set outside in *Carter* but it does not have to mirror, exactly, the court’s wording to be constitutional.

This is because Bill C-14, as compared to the provisions that were struck down in *Carter*, is based on different objectives and new evidence. This is consistent with the principle that the relationship between the courts and Parliament is one of dialogue. Parliament must respect courts’ rulings and respond to them in good faith. In turn, the courts must show deference to Parliament’s judgment about the balance of fundamental interests and values.

Bill C-14 addresses both aspects of section 7 — respect for autonomy and respect for life — and strikes a new balance through a complex regulatory regime which the court has said will be entitled to deference.

Allowing some to have access to medical assistance in dying in order to spare them the suffering and indignity of a painful and degrading dying process can be accomplished relatively safely without unduly risking the lives of the vulnerable. But we do not have the same confidence with respect to eligibility for those who are not nearing the end of life.

In this context, assistance in dying presents too many distinct risks which some have said the medical community is not well-suited to address. A wide range of circumstances can cause or contribute to suffering in those who are not dying, such as loneliness, social marginalization or discrimination, poverty and grief. Many argue that no system of safeguards can guard against all such risks.

The relationship between medical assistance in dying and suicide is also very poorly understood. How does the availability of medically assisted death impact broader suicide prevention initiatives?

This is a complex question involving difficult predictions about human behaviour on which there is a diversity of views. Nevertheless, the experience in the few jurisdictions that permit assisted dying, where death is not otherwise approaching, gives us some cause for concern.

Our government is not willing to put the lives of those who are vulnerable at risk in this way, nor does the Charter require such risks to be taken.

The constitutional rights and freedoms enjoyed by Canadians are not absolute. The Charter sets out these rights and freedoms, and these are guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The court in *Carter* acknowledged that medically assisted death involves complex issues of social policy and a number of competing interests. In matters of this nature, Charter analysis takes into account the fact that there is no single right answer. Further, deference is shown to the choices of the legislative branch as long as the solution falls within a range of reasonable alternatives.

The overwhelming majority of free and democratic societies do not permit any form of medical assistance in dying, and of the few that do, the majority have chosen to limit access to those in the final stages of life. The experience in Belgium and the Netherlands, where assisted dying is not restricted to an end-of-life context, suggest that broader eligibility would frustrate a number of the objectives of Bill C-14.

As Minister of Justice and the Attorney General of Canada, I am confident that Bill C-14 is a reasonable and justifiable policy choice.

Honourable senators, that being said, our government has committed to studying broader forms of eligibility and, in particular, eligibility for individuals suffering solely from mental illness. There is still much that we do not know, and all Canadians can only benefit from having these issues explored more fully.

Another issue that the government has committed to studying is the possibility of advance requests for medical assistance in dying. I am aware that the pre-study report by the Standing Senate Committee on Legal and Constitutional Affairs has unanimously recommended that Bill C-14 be amended to permit medical assistance in dying for those who are no longer competent but who made an advance request after being diagnosed with a condition likely to cause loss of competence or a grievous and irremediable condition.

This is an extraordinary step, a step that we are not compelled to take as a result of *Carter* and a step that creates risks we are only just beginning to grasp. Because of the similarities with substitute decision-making in health care, we need to take time to fully consider advance requests.

From the point of view of the person who makes the advance request, it is a genuine reflection of their autonomy to state what they want to happen in the future if certain conditions arise and they are unable to speak for themselves. But from the point of view of the person to whom the advance request would apply, we can never be sure death is what they want at the time that the advance request would be acted upon.

The decision to end their life was made by their former self, and they are neither able to confirm nor withdraw that request at the critical moment.

We have no useful international experiences to draw from. In the one place where advance requests for medical assistance in dying have been lawful for some time — the Netherlands — physicians are generally unwilling to follow through on these requests. Parliamentarians have heard from Canadian physicians that it is already extremely difficult to implement advance directives and that it would be even more complex to do so in

the case of medical assistance in dying. We have no other information about the willingness of Canadian physicians to engage in this practice.

We need to take the time to get this right. Getting it wrong would result in the deliberate loss of human life.

Finally, some have suggested that those who suffer from dementia are shells and lack dignity and humanity. As the Canadian Alzheimer Society reminded us when they appeared before the special joint committee, dementia patients are human beings with Charter rights. We should be mindful of the existing stigma associated with this type of disease. Its course is unpredictable and it is, in fact, possible to live well with dementia. This organization has publicly stated that medical assistance in dying should only be possible when a person is competent at the time the assistance is administered.

Honourable senators, our government has been clear that this issue will be studied. We are fully aware of the high priority that Canadians are attaching to the issue. We are taking this seriously, but we do not believe that we are ready to take this very significant step today.

I would like to address why we must have a law in place as quickly as possible. The interim court approval process will end on June 6, as we know. Without federal legislation in place, medical assistance in dying will be unregulated as a matter of criminal law and without any statutory rules, outside of the Province of Quebec.

• (1420)

Parliamentarians have heard diverse interpretations of the *Carter* ruling, and we have heard that “grievous” and “irremediable” are not well-known medical terms. This translates into uncertainty for physicians, and the uncertainty presents a legal risk to medical professionals who are being asked to take on the responsibility of providing assistance and to bear the risk of a criminal investigation or prosecution. A complaint might be lodged by a family member who feels that a physician did not take responsible care with their loved one or by a colleague who disagrees with a physician’s determination of what “grievous and irremediable” means.

Although the likelihood of a criminal investigation or prosecution would be small, the potential consequences would be dire. A number of medical professional bodies have stated that clear legislative protection is an absolute necessity for physicians to feel secure with giving assistance. Moreover, *Carter* does not appear to provide any legal protection to nurses, nurse practitioners, psychologists, social workers, pharmacists or a myriad of other professionals who could be asked to be involved in assessing requests.

Comparisons have been made to the striking down of the abortion laws with no new laws enacted in their place. This comparison is not apt. When the abortion laws were struck down, there was no criminal law left that could apply to the medical act in question, but deliberately ending a person’s life continues to be murder. The charges can still be laid wherever law enforcement authorities consider actions to have fallen outside of the scope of the *Carter* ruling.

Despite the many statements we have heard that Bill C-14 is overly restrictive, a legislative vacuum on June 6 has the potential to operate as a barrier to access due to the legal uncertainty for medical providers who would be asked to assist their patients. While the medical colleges have put in place policies in all provinces and one territory, these do not have the force of law and are inconsistent in several key respects, including the terms of who is eligible and what safeguards must be followed.

Yesterday, in a piece in *The Globe and Mail*, the President of the Canadian Medical Association, Dr. Cindy Forbes, highlighted the need for Bill C-14 to be passed so that there is a consistent national framework. Further, compliance with a medical college policy is no guarantee of criminal immunity, as courts are not bound to accept a medical college's interpretation of *Carter*.

Clear criminal laws are needed so that medical providers will have the security that they need to help their patients who are suffering.

Honourable senators, the data is clear: Dying patients are by far the largest class of individuals who seek medical assistance in dying, even in the very few jurisdictions that permit broader access. Bill C-14 clearly and directly addresses the needs of these Canadians. There is a broad social and medical consensus that medical assistance in dying is appropriate in these circumstances. Without this law in force, these very Canadians will likely face barriers to access.

While some would prefer a broader eligibility with fewer safeguards and others would prefer narrower eligibility with enhanced safeguards, Bill C-14 reasonably balances both sets of interests. It is a reasonable and responsible law that respects individual autonomy to choose one's manner of dying, and at the same time, like other free and democratic societies, it maintains respect for life, suicide prevention and the protection of vulnerable persons, and the equal inherent dignity of all Canadians.

I thank you for listening to me. I look forward to your questions.

**The Chair:** Thank you, minister. There are at least 20 senators who wish to ask you questions. Please be very brief and fast with your responses so that we all get a shot at asking you a question.

[Translation]

**Senator Carignan:** Good afternoon, minister. Thank you for being here.

In your role as Minister of Justice and Attorney General of Canada you have added responsibilities because you must promote and preserve the constitutionality of legislation. This bill was intended to clarify the application of the Criminal Code in medical assistance in dying. However, as you know, Kay Carter was not in a terminal stage of a disease. Ms. Carter, who was one of the parties in the Supreme Court ruling, would not have been entitled to medical assistance in dying under the current bill, which is a rather incongruous situation.

In fact, given that it does not give access to medical assistance in dying to competent adults who suffer from a grievous and irremediable medical condition causing enduring and intolerable

[ Ms. Wilson-Raybould ]

suffering but who are not at end of life, Bill C-14 denies eligibility for this assistance to a significant number of people. Bill C-14 deprives these people of the right to life, liberty and security of the person guaranteed under section 7 of the Canadian Charter of Rights and Freedoms.

Minister, my question is simple: Why is this distinction being made? Why deprive people of the right to medical assistance in dying if they are suffering and have no hope that their condition will improve? You spoke about an absolute prohibition. For these people it is an absolute prohibition. Why make this distinction?

[English]

**Ms. Wilson-Raybould:** Thank you, honourable senator, for the question. Certainly, that's a question that has been asked several times, by many people.

**Senator Carignan:** I know.

**Ms. Wilson-Raybould:** You point to and speak about Kay Carter. I had the opportunity to meet with her daughter and son, and we had this very conversation.

We have sought to take the term "grievous and irremediable" that the Supreme Court of Canada articulated and put more of a definition around what that phrase means. The intention of doing so was to inject a bit more flexibility in terms of who can access medical assistance in dying as they approach the end of their lives.

I am 100 per cent confident that Kay Carter would be eligible under Bill C-14 to access medical assistance in dying.

The eligibility criteria and definition around "grievous and irremediable" are meant to be read in their totality, given all of the circumstances of a particular individual. In recognition of Kay Carter: She was 89 years of age, suffering intolerably from spinal stenosis and in a state of irreversible decline. Her death had become reasonably foreseeable by virtue of her age and frailty.

The flexibility that we sought to inject in the eligibility criteria was to provide medical practitioners the ability to assess their patients' circumstances and to provide for that patient to be able to be eligible for medical assistance in dying. Kay Carter would have fulfilled that criteria.

[Translation]

**Senator Carignan:** You realize, minister, that by creating this distinction between people who are at the end of life and those who are not, within the same group of people who are suffering from grievous and irremediable pain, you are in a way forcing those who are not at the end of life to stop eating, for example, or to harm themselves in order to become eligible for medical assistance in dying.

Do you realize that people might harm themselves or stop eating to become eligible?

[English]

**Ms. Wilson-Raybould:** I recognize that many different forms of suffering exist, and I am aware of situations such as you refer to, honourable senator.

With respect to Bill C-14, a conscious public policy decision was made in putting forward this proposed legislation. It ensured that, based on a vast diversity of perspectives and interests from organizations and individuals, we sought to find the right balance in terms of the objectives of this bill and balancing and respecting personal autonomy, while recognizing that we need to do as much as we can to protect the vulnerable among us. With the recognition and belief that there needs to be a respect for the value of life and for individuals that are suffering, we need to do everything we can as a society to ensure that we address that suffering.

• (1430)

The particular decision around the criteria of reasonably foreseeable death and providing a legislative means for peaceful passage into death is the substantive decision we made that I believe and we believe is the best approach to this very difficult public policy issue and discussion that our country is having, and it's the first step that we're taking.

[Translation]

**Senator Carignan:** I understand your response with respect to organizations. Nevertheless, one of most eminent institutions in Canada is the Supreme Court, which provided rather comprehensive guidance on who can access medical assistance in dying. It presented medical assistance in dying as a constitutional right. You appear to be creating a hierarchy of rights when it comes to the right to liberty, to life and to security. You seem to be saying that the right to life is more important than the right to liberty, which the Supreme Court did not do; it placed them all on the same level.

Several rulings have been handed down recently, including a decision from the Alberta Court of Appeal holding that the criteria in *Carter* do not apply only to those in end-of-life situations. You are therefore depriving those individuals of a constitutional right. They will once again be forced to live in uncertainty and challenge your bill before the courts in order to access this constitutional right that the Supreme Court recognized they had.

Do you realize that people will continue to suffer if they have to wait five years for Parliament to revisit this issue to establish these safeguards?

[English]

**Ms. Wilson-Raybould:** I, too, recognize, as does our government, the decision made by the Supreme Court of Canada. I have the utmost respect for the Supreme Court of Canada and the decisions they make. I recognize that the Supreme Court stated two things: First, an absolute prohibition on medical assistance in dying is unconstitutional; and second, it's up to Parliament to put in place a regime or a framework for medical assistance in dying in this country, taking into account many divergent and complex societal issues and the recognition that there needs to be a balancing of rights — balancing the right of personal autonomy and individual choice with the right and the value that we place on life. That is what we have sought to do with Bill C-14.

The Supreme Court also indicated that in order to avoid the risks that medical assistance in dying presents to medical practitioners in the country, there needs to be a complex series of safeguards and strict monitoring of medical assistance in dying to ensure that the risks are minimized; and that's what we've sought to do. I'm confident that we have found that right balance, which as we've heard from thousands of Canadians is the one to be drawn at this time in our country.

**Senator Cowan:** Welcome, minister. I will follow up on Senator Carignan's questions. I'm sure you're aware of the eligibility criteria for physician-assisted dying as set out in *Carter*, but I want to read them into the record. The Supreme Court stated it requires 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.

Do you agree with that statement?

**Ms. Wilson-Raybould:** I agree that it's the wording the Supreme Court of Canada articulated in *Carter*, yes.

**Senator Cowan:** You agree. Okay.

The court went on to say that:

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

It follows, then, if you accept the eligibility criteria set out in *Carter* and that the legislation, if Parliament chooses to legislate, has to be within and consistent with the constitutional parameters, you would also agree that Bill C-14 ought to reflect the *Carter* eligibility criteria. Would you agree?

**Ms. Wilson-Raybould:** I certainly agree that the Supreme Court of Canada conveyed upon Parliament the duty to put in place a regime that would respond to medical assistance in dying in this country and that it is up to Parliament to determine the most appropriate regime. I recognize that there are differing interpretations with respect to the *Carter* decision.

**Senator Cowan:** Excuse me, minister. Surely you agree that the legislative response, should we choose to make one, has to be consistent with the constitutional parameters set out in the decision of the Supreme Court of Canada. Do you agree?

**Ms. Wilson-Raybould:** I recognize what the Supreme Court of Canada stated. As you articulated in terms of the paragraph that spoke to a consenting adult and the eligibility criteria, I further would state again that the Supreme Court has asked Parliament to put in place a regime and that any regime that Parliament puts in place must be consistent with the Charter of Rights and

Freedoms. I am confident that the regime in Bill C-14 that we have put in place is consistent with the Charter of Rights and Freedoms.

I further recognize that when the Supreme Court renders a decision, it does not necessarily mean that Parliament has to cut and paste into proposed legislation what the Supreme Court has stated specifically; we, as legislators, need to take into account the diversities of opinion that exist in this country and ensure that we reflect those in the public policy decisions we make. This is what I'm confident of in terms of the substantive public policy decision we've made on this complex issue and that the response in Bill C-14 is constitutional.

**Senator Cowan:** Are you saying that you agree or do not agree that the legislative response your government proposes needs to be consistent with the constitutional parameters set out in the reasons of the Supreme Court of Canada?

**Ms. Wilson-Raybould:** I agree that the legislative response needs to be consistent with the Charter of Rights and Freedoms.

**Senator Cowan:** In your opening statement, you referred to Bill C-14 as limiting access to those who are approaching death — I think you used that phrase. Nothing in the *Carter* decision talks about proximity to death or limiting access to those who are approaching death; and yet you instructed your lawyers to intervene before the Alberta Court of Appeal to claim that the granting by the motions judge of access to physician-assisted dying in that case went too far because that person was not terminally ill and she was suffering from a psychiatric illness. How do you square your instructions to your lawyers in that case with this provision, the clear instruction in *Carter* that your legislation has to be within the constitutional parameters of the decision?

**Ms. Wilson-Raybould:** On Bill C-14 we undertook, as I know everyone in this honourable house can appreciate, a substantive and careful review of the *Carter* decision. We ensured that we were responsive to the *Carter* decision, and we recognized that the Supreme Court of Canada clearly stated that the criteria as articulated in that one paragraph apply to the factual circumstances of the case of Gloria Taylor and people like her.

• (1440)

Honourable senator, you mentioned the case where we intervened in terms of Alberta. There were several reasons why we did as such. One of the major reasons was there was concern with respect to the evidence that was provided in order for the individual to access medical assistance in dying under the exemption that individuals could gain through a superior court.

There was concern, and the concern remains, that an individual in Alberta was granted medical assistance in dying with a mental illness alone, and that that determination was made by a psychiatrist over a FaceTime discussion, having not met the patient personally, and was allowed to avail themselves of medical assistance in dying.

I think if the Alberta decision highlights anything, it is the fundamental need for us as parliamentarians to ensure that we

provide a national legal framework that provides substantive safeguards around medical assistance in dying.

**Senator Cowan:** Have you appealed the decision in Alberta? Do you intend to appeal the decision?

**Ms. Wilson-Raybould:** We have not appealed the decision in Alberta. We are focused, senator, on working and doing as much as we can to ensure that we meet the Supreme Court deadline of June 6 — and we are still working towards that — and in assisting honourable senators in this house with any questions or concerns they may have and addressing those.

**Senator Cowan:** So your position, as you said in your opening statement, is that the intent of Bill C-14 is to limit access to those who are approaching death. You say that notwithstanding the unanimous judgment of the Alberta Court of Appeal, which rejected that argument, and the decision of the Supreme Court of Canada, which rejected that argument.

**Ms. Wilson-Raybould:** Well, I would say, senator, that the Alberta court was making a determination with respect to an individual exemption. They were not rendering an opinion on the constitutionality or the direction of Bill C-14. In fact, they specifically stated that they were not making a decision with respect to the legislation, but in a specific statement said they will await any legislative regime that is brought into place by the federal government.

**Senator Cowan:** But you do agree that the Alberta Court of Appeal unanimously rejected the contention that the *Carter* decision limited access to those who were terminally ill.

**Ms. Wilson-Raybould:** I recognize that the Alberta court did speak to *Carter* and did not, as you say, limit it to the terminally ill. However, 29 exemption applications have been made across the country, and other honourable justices have made the opposite determination.

**Senator Cowan:** Let me read to you from the decision of the Alberta Court of Appeal, at paragraph 41:

In summary, the declaration of invalidity in *Carter 2015* does not require that the applicant be terminally ill to qualify for the authorization. The decision itself is clear. No words in it suggest otherwise. If the court —

— and that's the Supreme Court of Canada —

— had wanted it to be thus, they would have said so clearly and unequivocally. They did not. The interpretation urged on us by Canada —

— and this is by your government —

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

[ Ms. Wilson-Raybould ]



That seems pretty clear.

You will not appeal or you haven't decided whether you're going to appeal that decision?

**Ms. Wilson-Raybould:** We haven't appealed the decision.

Senator, I acknowledge and hear what you're saying. I recognize and certainly have read the decision of the Alberta Court of Appeal, and I think this is fundamentally a reflection of the diversity of opinion that exists in this country with respect to the most appropriate approach to medical assistance in dying. Some feel that the —

**The Chair:** Thank you very much, minister. We must go to the next senator.

**Senator Cowan:** Thank you.

**The Chair:** Senator Bellemare?

[Translation]

**Senator Bellemare:** Good afternoon, minister. My understanding of subclause 241.2(2) leads me to believe that the scope of the bill is much broader than that of the Quebec law, particularly paragraph 241.2(2)(d), which describes what is meant by a grievous and irremediable medical condition and indicates that a person must meet the following condition in order to be eligible for medical assistance in dying, and I quote:

(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.

If I understand correctly, under the bill, medical assistance in dying may be permitted even if a prognosis has not been made, simply because the person's death is foreseeable, whether that person has two weeks, two months or two years left to live. I would like you to tell me whether I understood that correctly because, if I did, then I believe that the scope of Bill C-14 is broader than that of the Quebec law, under which medical assistance in dying is granted as part of end-of-life care for people who are terminally ill.

With that in mind, if we pass Bill C-14, which is now before us, what will be the legal status of the Quebec law? From what I understand, it is more restrictive than Bill C-14. Will it then be constitutional or unconstitutional? Is that relevant, or will Quebec's law supersede Bill C-14 because it was passed first? Could you tell us more about that? Thank you.

[English]

**Ms. Wilson-Raybould:** Certainly. Thank you, senator, for your questions, and my apologies for having my back to you.

First of all, I appreciate the question and want to at the outset recognize the substantive amount of work that the Province of Quebec has undertaken and currently undertakes in terms of

putting in place their legislation around end of life. There are some differences between what is in place in the Province of Quebec and what is being put forward within Bill C-14. As you rightly point out, senator, the Quebec legislation is around end of life and care at the end of life by medical practitioners.

Some of the key differences with respect to Bill C-14 are that it allows an individual to self-administer medication in terms of being able to end one's life. We have purposefully — and this is where there is a distinction between the Quebec law and Bill C-14 — put in place reasonable foreseeability in terms of “death has become reasonably foreseeable,” to inject the flexibility to enable medical practitioners, based on the close relationship they have with their patients, to determine whether or not their patient is eligible to receive medical assistance in dying. I have been in close contact with the Province of Quebec and the Attorney General, and what we're doing in terms of Bill C-14 is exercising the criminal law power.

The legislation in place in the Province of Quebec is under the health jurisdiction of the province, and we do not see a conflict necessarily between those two laws. However, I have been advised that the Province of Quebec is reviewing their law in light of Bill C-14. There are different safeguards in place, and within Bill C-14, the federal Minister of Health is provided with regulatory powers to engage with the provinces and territories to reconcile perhaps in the Province of Quebec some of those differences. But there is no conflict in terms of the laws.

[Translation]

**Senator Bellemare:** So it would not be deemed unconstitutional? Even though it is more restrictive, there would not be a conflict? Okay. Thank you.

[English]

**Senator Seidman:** Thank you, minister, for being with us today.

My home province of Quebec has had an extensive debate, as you just discussed with Senator Bellemare, on the issue of MAID and is the only province in Canada to have enacted legislation, Bill 52, just this past December, 2015. My question follows somewhat the train of thought that you have just put forward.

• (1450)

As a member of the special joint parliamentary committee, I had the privilege of hearing testimony from an important constitutional expert in this country, Professor Peter Hogg. He emphasized the importance of federal legislation in setting a basic framework for MAID, but he also said that there is no guarantee that all provinces will have uniform legislation, and some might have none.

To quote him directly:

One thing you can do is recommend a provision in the federal law that . . . I call an “equivalence provision,” which in effect says that if the federal Minister of Health or Governor-in-Council . . . is satisfied that a province or a

territory has enacted safeguards that are substantially equivalent to the federal safeguards, then the federal law would not apply in that province.

The advantage of doing that is that it would avoid overlapping legislation. Also, if you don't do something like that, issues of conflict between the federal and provincial law will be quite complicated, and they will be resolved by the rule of federal paramountcy. That would be a bad situation. I think it can be resolved in a so-called equivalence provision.

That was all Professor Hogg.

I would like to know what your response is to that. How do you see the federal legislation Bill C-14 and Quebec's Bill 52 coexisting? Have you thought about this equivalence provision? Thank you.

**Ms. Wilson-Raybould:** Thank you for the question, Senator Seidman, and for following up on the previous question with respect to the Quebec law.

Since forming government, the Minister of Health and I have engaged substantively with our provincial and territorial counterparts and have had discussions around what a regime of medical assistance in dying could or should look like. You referenced Professor Hogg, and certainly I had the benefit of studying him when I was in law school.

The views of the provinces and territories, the attorneys general and the health ministers across the country and the view of our government is that there should be and needs to be a uniform criminal law across the country. That's what we have sought to do in terms of Bill C-14, to ensure that there is a baseline of safeguards which exist, to ensure there is consistency in terms of eligibility.

If we were to look at the equivalency provisions that Professor Hogg spoke to, it would not necessarily achieve that objective in terms of the uniform framework across the country that we have been asked to put in place. So there are standards of safeguards and eligibility which exist in the criminal law context. The provinces and territories, including as I said with respect to Quebec, have the ability to work with the federal Minister of Health, but working within their own jurisdictions to put in place other regulatory provisions they deem appropriate in terms of medically assisted dying.

**Senator Seidman:** Therefore, it's my understanding from your response that federal law would be paramount to provincial law; is that correct in this case?

**Ms. Wilson-Raybould:** Well, if Bill C-14 comes into being and receives Royal Assent, it would provide that uniformity in terms of the criminal law provisions across the country. So the eligibility criteria would apply in every jurisdiction.

The safeguards that are injected in Bill C-14 would apply, so it would provide that baseline, that uniformity across the country.

**Senator Seidman:** So you would see no problem in the coexistence of Bill C-14 and Bill 52 in Quebec?

**Ms. Wilson-Raybould:** My apologies, senator, yes. This goes to the previous question in terms of the legislation in Quebec that is put in place under the province's health jurisdiction. This is under the criminal law powers of the federal Parliament, and there would not necessarily be a conflict in terms of those laws. As I said, Quebec is considering their law in light of Bill C-14, but there is no conflict in terms of laws.

**Senator Seidman:** Does the equivalent provision deter uniformity across the country? Is that the point you're making?

**Ms. Wilson-Raybould:** Well, the point that I'm not very articulately trying to make is that we're looking at having uniformity on the complex matter of medical assistance in dying. Uniformity is provided and conveyed through the criminal law powers we have. It's that uniformity we're looking for, and it's that request that we've received from provinces and territories to ensure that there is access in each jurisdiction and to ensure that there's not a patchwork of regimes throughout the country.

**Senator Jaffer:** Minister, thank you very much for being here today. This is your second time you have come to answer our questions. We appreciate your presence here today.

As the Justice Minister, your job is to write laws, but you also do this with the mind of a lawyer. For Bill C-14 you are creating a vision for medical practitioners, and these medical practitioners are scientists. They want and need certainty and clarity. So when you ask scientists or medical practitioners to interpret words such as "reasonably foreseeable," medical practitioners have told us at the pre-study they do not know how to interpret these words. It is not in the DNA of the medical professionals, as it is in the DNA of lawyers, to interpret words like "reasonably foreseeable."

Minister, let me tell you what we heard in committee. Douglas Grant, the President of the Federation of Medical Regulatory Authorities was asked how they would interpret "reasonable foreseeability." He was fairly straightforward. He said he doesn't know, and he went on to say he worries that if this language remains in Bill C-14, there will be a variety of interpretations from province to province, health authority to health authority, and physician to physician.

In committee, minister, when you appeared at the pre-study, I asked you the same question about "reasonable foreseeability," and I you said that it "provides health care practitioners with flexibility to take into account all of the person's medical circumstances."

Minister, the medical practitioner is a scientist. He or she doesn't want flexibility. They want clarity and certainty. How do you as Justice Minister create certainty for the medical practitioner?

**Ms. Wilson-Raybould:** Well, thank you, Senator Jaffer, for the question. I certainly appreciate the opportunity to be here a second time and particularly in this beautiful place.

As you rightly point out, I am a lawyer. I am not a scientist, nor a medical practitioner. However, I have had the benefit of working with the Minister of Health who is a medical doctor, and I certainly would invite you to ask that question of her. We have had the benefit of speaking to many doctors, nurse practitioners, regulators and other organizations. What we've heard loudly and clearly from the Canadian Medical Association, representing about 80,000 doctors in this country, are that they take comfort in the further definition that Bill C-14 ascribes to what "grievous and irremediable" means, and that they're comfortable with the language of "reasonable foreseeability." For the medical practitioners that will have to take applications for medical assistance in dying and determine eligibility, that gives us comfort.

I recognize I did give those answers when I appeared before in terms of "reasonable foreseeability." We sought purposefully to inject flexibility into this legislation, not to prescribe a specific time period or prognosis. We wanted to inject flexibility so that medical practitioners, who best know their patients, will be able to make the determination based on all of the circumstances of their patient's case. They are best placed to make that determination. We've heard from medical practitioners that it's very difficult or somewhat arbitrary to identify a specific time period where a person's death has become reasonably foreseeable. There are other jurisdictions like in the United States that ascribe a specific time frame. We felt that having that flexibility is most appropriate.

• (1500)

**Senator Jaffer:** Minister, I have a more technical question on a slightly different topic.

Currently there are terms in the bill that do not have definitions, but the Department of Justice has published an online glossary of terms used in Bill C-14. These terms include "advanced state of irreversible decline in capability" or "natural death has become reasonably foreseeable."

Minister, would you agree to an amendment that would put the definitions of these terms in the bill as opposed to an online glossary, because of the greater force of law that it would have in the text of the bill?

**Ms. Wilson-Raybould:** Thank you, senator. If I am correct, I believe the honourable senator is referring to the explanatory paper that we put out with respect to medical assistance in dying, or Bill C-14.

In the explanatory paper, we sought to provide significantly more information in terms of the thinking and considerations that went into the bill, which also includes considerations around the Charter. We wanted to invite Canadians into the discussion about how we drew the balance in terms of Bill C-14 and the risks that exist.

In terms of your question around amendments, I have always stated, and I will state again here, that we are always open to thoughtful amendments. We received 16 amendments from the

Justice and Human Rights Committee in the House of Commons, mindful that we have a substantive deadline that we need to meet.

In terms of specific definitions — and the Minister of Health is probably more apt to answer this — we recognize that we should leave some of these definitions up to the regulators in the provinces and territories to determine how they can respond to Bill C-14 and the legislation that is most appropriate in their jurisdictions.

**Senator Jaffer:** Minister, when you appeared in front of us, I did ask you about "reasonably foreseeable." However, since then, having studied the bill in more detail, one of the words that really bothers me is "incurable." That word was not used, as far as I read, in the *Carter* decision. I believe that by putting the word "incurable" in the bill, you are restricting the help that people can receive. I would appreciate it if you could explain why you found it necessary to insert the word "incurable."

**Ms. Wilson-Raybould:** The words used in the *Carter* decision were "grievous and irremediable." I would submit that "irremediable" and "incurable" have the same meaning.

Without question, we do not want to preclude a medical practitioner's need and desire, in our value of life, to ensure that we provide all medically available treatments and that we hold up the value of life as being prominent. We do not want to preclude that in any way. I would say again that "incurable" is synonymous with "irremediable."

[*Translation*]

**Senator Pratte:** I'm not a doctor or a lawyer, but I pay attention to the debates of experts. I cannot claim to be an expert, but I try to understand the logic and the human side of things, and I must admit that I still have some questions about the notion of reasonably foreseeable death. I am trying to understand the government's decision, but I am still having a hard time understanding.

If Bill C-14 passes as is, it will grant the fundamental right to medical assistance in dying to a Canadian who has a serious health condition, who is suffering intolerably and whose death is reasonably foreseeable. Another Canadian who has a health problem that is just as serious and whose suffering is just as intolerable, but whose death is not reasonably foreseeable, will be denied that same fundamental right.

The only difference between these two individuals is that one would suffer for less than a few weeks or a few months, while the other would suffer for several years, maybe 10 or 20 years.

Logically and humanely, this makes absolutely no sense. Help me understand this decision, minister. I don't understand.

[*English*]

**Ms. Wilson-Raybould:** Thank you for the question. Certainly this is a question that has been raised many times. Fundamentally, the question is about terminal versus non-terminal.

We made a public policy decision in Bill C-14 in terms of reflecting or embracing the diversity of views that exists among Canadians in terms of our first step in this difficult discussion around death and providing a peaceful approach to death by way of medical assistance in dying. We sought to balance many different rights and interests in terms of personal autonomy, protection of the vulnerable and prevention of suicide as primary objectives, and then holding the value of life.

Based on those considerations, we put forward Bill C-14, which would provide a peaceful passage for those persons who are suffering and whose death has become reasonably foreseeable. This doesn't mean they have to be right at the end of their life, but taking into account all the circumstances that an individual patient has — and a doctor would make that determination — they would be eligible for medical assistance in dying.

I certainly do not want to foreshadow, but recognize that this is the first step in these difficult discussions and decisions we are making around medical assistance in dying; and recognize that increased risks would present themselves if we were to broaden the regime to patients who are non-terminal. We need to be very careful in terms of taking additional steps with respect to non-terminal patients, because the potential for the risks and impacts on vulnerable people is greater. We need to take substantive steps in terms of discussion and dialogue if we are to have a broad regime that is reflected in three of the nine jurisdictions in the world that have medical assistance in dying. We need to consider what types of safeguards would have to be in place.

There are many examples that we can point to, and which I have pointed to in terms of presentations I have made in the other place, but we need to ask ourselves about the situation of an individual who is recently disabled and who is 29 years of age. I am confident that the safeguards that are in place with respect to Bill C-14 would not be able to provide the necessary protections for vulnerable people in that case.

This is a conversation, senator, which will continue. In terms of the approach we have taken in Bill C-14, we believe that fundamentally this is the best approach for Canada right now. The conversation is certainly one that Canadians will not let us stop having. I would invite all honourable senators to continue to engage with us on these substantive questions.

**Senator Pratte:** With respect, minister, if we want to find the right balance, instead of depriving a whole group of Canadians of what the Supreme Court has established as a fundamental right for people suffering from a grievous and irremediable medical condition, would it not have been better to work on additional safeguards rather than depriving Canadians of that fundamental right? Here I am talking about Canadians who are not suffering from a terminal illness.

**Ms. Wilson-Raybould:** Thank you for the follow-up question.

I have to say that this was in no way, shape or form an easy decision that our government took. The discussions that we've had from a broad diversity of views, very emotional perspectives and differing perspectives, saying the regime has not gone far enough and, on the other side, many people saying we've gone too far.

[ Ms. Wilson-Raybould ]

• (1510)

We have sought to find the right balance. This was a very conscious decision that was made reflecting a very careful reading of the *Carter* decision and responding to the factual circumstances of the *Carter* case in terms of Gloria Taylor and Kay Carter.

I am of the view, as is our government, that the bill we've presented before this honourable house is the best approach for this transformative discussion and step that our country is taking.

There are many other issues that I spoke to in my comments that speak to advanced directives, mature minors, and medical illness as a sole basis of eligibility; likewise, the conversation around non-terminal patients is definitely one that we will continue to have, and necessarily so.

**Senator Plett:** Thank you, minister. It's nice seeing you again.

Minister, as you know, our committee made quite a few recommendations. One of the recommendations was that the government explicitly include protection for conscientious objectors, and I was disappointed that the government did not accept any of our recommendations.

We heard from physicians at our committee who stated that they feel this has been imposed upon them and that they took the Hippocratic oath in order to prevent death and to save lives.

We heard from Dr. Sephora Tang, a psychiatrist who deals with patients who are suicidal, some with a physical illness that would qualify for assisted death under this legislation. She says she routinely sees patients who she knows she could work with, who she knows she could offer hope to and, as she has seen many times, who come out of a suicidal state.

Minister, if she were forced to refer to a willing practitioner upon a patient's request, she would be completely stripped of her professional judgment.

The amendment passed in the house committee does not make any such protection explicit. Ontario has been adamant that physicians will be forced to refer, which means Dr. Tang will be forced to refer.

Amendments ensuring conscientious rights are protected will be coming forward from the Senate. Will the government agree to protect the conscientious rights of medical practitioners?

**Ms. Wilson-Raybould:** Thank you, senator, for the question. We've had a conversation about this before and appreciate that the conscience rights of medical practitioners have been raised in many different situations in the other place.

First, conscience rights are protected in section 2 of the Charter. Nothing in Bill C-14 would compel a medical practitioner to perform medical assistance in dying. As I said, this was discussed in the other place and at committee.

Two amendments were made to Bill C-14: The language of the preamble recognized that conscience rights are recognized in section 2 and protected in section 2 of the Charter; and, within

the body of the legislation, for greater clarity, it states that nothing would compel a medical practitioner to perform medical assistance in dying.

Further to that, we have and will continue — in particular, my colleague the Minister of Health — to reach out to and engage with the provinces and territories to have these discussions and recognize that within their jurisdiction, they can put in place regimes that ensure that there is something beyond what you're referring to in terms of an effective referral.

There is an information regime in place that patients can access and understand where there are practitioners who are willing to provide medical assistance in dying. So a number of discussions are under way, and I know that the federal Minister of Health will be working with her counterparts in terms of regulations in the provinces and territories where this can be addressed in a more substantive way.

**Senator Plett:** Well you're right, the bill states that there is nothing in this legislation that will compel, but there is also nothing explicit that will guarantee rights. Of course, you and certainly your deputy minister have said that this is provincial jurisdiction. You stated earlier, when you answered Senator Seidman about uniformity, that we want uniformity across the country and we don't want one law in British Columbia and another law in Newfoundland and Labrador.

Let me ask you this, minister: If you do receive an amendment from this place, if we were to put in an amendment that medical aid in dying is not exempt from the Criminal Code unless the practitioner is freely and voluntarily participating in assisted dying, it would in no way be infringing upon provincial jurisdiction. We as a federal body are making an exemption to the Criminal Code that in these circumstances, or within these parameters, assisting someone in death is legal. The provinces would have no say in this exemption; would you not agree?

**Ms. Wilson-Raybould:** Again, senator, I would submit that the conscience rights of medical practitioners are protected under the Charter of Rights and Freedoms in section 2 and, again, would work with the provinces and territories, respectful of their jurisdictions, to ensure that provisions are put in place that would provide for the conscience rights of medical practitioners within those jurisdictions.

**Senator Plett:** If we were to bring forward an amendment that probably 35 million of 36 million people would support when they want to be protected with conscientious objection, would you agree to that amendment?

**Ms. Wilson-Raybould:** As I said earlier, senator, we will consider all thoughtful amendments that are being brought forward. We have benefited from considerable discussions around conscience rights. Those discussions and debates reflected some substantive amendments in the legislation. But again, all amendments that are being brought forward will be thoughtfully considered.

**Senator Plett:** In this bill, minister, there is a safeguard that stipulates that the practitioner must reaffirm consent, which includes assessing competency to consent immediately prior to

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

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

We put in a recommendation for an amendment to this effect that was not adopted. No other jurisdiction in the world that has legalized assisted suicide allows for any person other than the patient or the physician to administer the drug. Why are we allowing virtually any person over the age of 18 to administer the drug to the patient? And with such a potential for abuse, why are we not at least barring beneficiaries?

**Ms. Wilson-Raybould:** A medical practitioner can assist in medically assisted death or a practitioner can prescribe medication that would enable an individual to self-administer.

The eligibility requirements, the safeguards, are and need to be adhered to when the prescription is provided to that particular individual.

**Senator Plett:** Any person can aid, minister, if the prescription has been given, in the death of that person later on, including a beneficiary. You've exempted that in one spot, and yet you have not exempted it in the other.

• (1520)

**Ms. Wilson-Raybould:** One of the purposes in terms of providing individuals with the ability to self-administer medication is we've heard from many people to —

**Senator Plett:** Sorry, minister, I want an answer to a beneficiary aiding, not self-administering. I am not arguing that. This is a beneficiary aiding in the death.

**Ms. Wilson-Raybould:** Thank you. I certainly recognize that one of the reasons why people want to self-administer is to be able to avail themselves of passing away peacefully in their home, surrounded by their loved ones. One would assume, in many circumstances, that individual family members would be surrounding the individual as they choose to take this step and end their lives. The safeguards are in place with the handing over of the medication, but we recognize that, in reality, individuals that are going to avail themselves of this want to be comforted by loved ones in their own home when this happens.

**Senator Joyal:** I would like to come back to that issue of the constitutionality of the bill. You are the advisor, of course, of the government in terms of drafting the legislation, but you are also the advisor of Parliament. We rely on you to make sure, according to the Justice Department Act — I think it is section 11 — that a bill is Charter compliant.

Let us, if you want, redo the exercise of the test of this bill in terms of its constitutionality.

The first question I would like to ask you is: Do you agree that the *Carter* decision of the Supreme Court, a unanimous decision, came to the conclusion to refuse to consider “terminally ill” as a criterion of accessibility for medical assistance in dying?

**Ms. Wilson-Raybould:** Thank you for the question and for the continuation of our discussions, senator.

With respect to your comments in terms of my providing advice and reporting on the Charter compliance of legislation, I take that role very seriously. That is articulated in the Department of Justice Act, section 4.1.

With respect to the *Carter* decision, I recognize and acknowledge that there are many differing interpretation in terms of the *Carter* decision, some narrow and some broad. We have responded to the factual circumstances in the *Carter* decision, as well as responding to the Supreme Court of Canada that tasked us with putting in place a regime in this country around medical assistance in dying. What the court did not do was prescribe necessarily what that regime would look like, but it pays and will continue to pay great deference to Parliament, in order to put in place what is appropriate.

**Senator Joyal:** But my question was very specific. My question to you was: Do you agree that, in *Carter*, the Supreme Court unanimously refused to include “terminally ill” as a criterion of accessibility to medical assistance in dying?

**Ms. Wilson-Raybould:** I hear the question. I’m not trying to be evasive, senator. I agree that the Supreme Court of Canada, in *Carter*, stated that an absolute prohibition on medical assistance in dying is unconstitutional and recognized that a consenting adult that is suffering from a grievous and irremediable medical condition, whose suffering is intolerable, should have access to medical assistance in dying. I further state that the court said that their decision and their reasons were confined to the factual circumstances of that particular case of Gloria Taylor and people like Gloria Taylor. It is upon that basis that we have moved forward in terms of Bill C-14 and ensuring that we reflect the diversity of views that exists in the country.

**Senator Joyal:** Where I differ in opinion with you is on the basis of the statement made by two justices of the Supreme Court on January 11, when your representatives were seeking authorization for an extension of a delay of six months.

I would like to quote the Madam Justice Karakatsanis, in answer to Mr. Frater, who is a lawyer representing the Attorney General of Canada. Here is what Madam Justice Karakatsanis commented:

Mr. Frater, can I ask you this: Does your position on the Québec legislation mean that you accept that it complies with *Carter*? I’m thinking particularly about somebody has to be a *la fin de vie* whereas in *Carter* we rejected terminally ill.

When I say” we, “ it’s the court. “We rejected terminally ill.”

[ Senator Joyal ]

Later on, in the same audience, the following question, by Madam Justice Karakatsanis, Mr. Justice Moldaver made exactly the same statement. He said:

... the law that has been promulgated in Québec is, if anything, narrower than the test that we set out in *Carter* so that to the extent you met the law in Québec you would necessarily meet the law as set out in *Carter*.

It was quite clear. In my opinion, when you approach the legislation in Bill C-14 and you reintroduce the concept of predictability of death or proximity of death as the expression “reasonably foreseeable death,” you go under *Carter*. You go directly under the substance of the decision of the Supreme Court. That is where we have a problem with reconciling Bill C-14 with your statement that it is Charter compliant. It’s not Charter compliant. You invoke section 1 of the Charter, the reasonable and democratically accepted limit in Canadian society, to support the constitutionality of your bill. How can you contend that it is Charter compliant while, in fact, you are compelled to invoke the reasonableness of your proposal to deny to those who are not terminally ill access to medical assistance in dying? That is where we have a problem, on both sides of this house, to wrestle with the constitutionality of this bill.

**Ms. Wilson-Raybould:** Thank you, senator, for the comments and for the question.

First, let me say this: I recognize that there are different interpretations of the *Carter* decision. I have read the exact same words that you read out today. I do not ascribe to the view that *Carter* stated and that our honourable Supreme Court justices directed Parliament to invoke the broadest regime, potentially, in the world.

What I recognize the honourable justices as saying is that an absolute prohibition of medical assistance in dying is unconstitutional and that, in the ongoing discussion that Parliament will continue to have with the courts on this issue, this is going to be a constant discussion. But the courts kicked the ball, as it were, over into Parliament’s court to put in place a regime for medical assistance in dying in this country, and great deference would be paid for putting in place that regime.

What we have sought to do and are doing right now is our job in terms of balancing the diversity of interests, reflections, on this highly complex social policy issue. We’ve put forward, based on those diversity of interests, based on ensuring that we balance, as it says in section 7, our respect for autonomy and our respect for life. I am confident that Bill C-14 is the best solution for our country right now. I fundamentally believe that it is justifiable, that it is reasonable and that it is the responsible approach, having regard to all of the circumstances, including the time frame in which we need to put in place a regime that this is the best approach for Canada right now.

**Senator Joyal:** With great respect, Madam Justice, you make a political answer to a legal question. This is what we have to investigate and satisfy our minds.

When you exclude from the accessibility to medical assistance in dying all those who are not terminally ill or close to the end of life, you invoke the same arguments that your lawyers made to the

Supreme Court in *Carter*, that is, vulnerability of some persons who might request assistance in dying with no satisfactory protection. You invoke the exclusion of a whole class of people who otherwise would be competent adults, able to give consent, suffering from a grievous and irremediable health condition and intolerable suffering for the person inflicted with that condition.

• (1530)

You invoke the same argument to exclude a whole class of people instead of tailoring a system that would protect those who might be vulnerable in that class of people. It's my contention that your proposal would not meet the test of the Supreme Court that it applied to strike sections 14 and 241 of the Criminal Code on the basis of section 7 of the Charter. That's where I feel, unfortunately, that I cannot support this bill in its present condition, because its constitutionality is at stake.

The Canadian Bar Association; the Quebec bar; Mr. Ménard, the specialist in health law in Quebec; Mr. Arvay who pleaded *Carter*, and professors from various universities support the same conclusion.

**Senator Lankin:** Thank you very much, minister. I'm going to pursue the same line of questioning, so you'll have an opportunity to respond to Senator Joyal as well.

May I first say both welcome and thank you. I would also like to add to that the greatest respect I have for the difficulty of the job that you're doing in leading the country through the development of this legislation. I understand the difficulties in arriving at the right balance. I may think you've got the balance wrong, but I understand the approach that you're attempting to take.

With respect to the issue of the terminally ill or those whose deaths are reasonably foreseeable, I think we have begun to shorthand the language and call it "terminally ill," but I fully appreciate it also involves those whose deaths are reasonably foreseeable.

The concern that I have is not one with which you say the court also expects legislators, the Parliament and the government, to bring about complex regulatory regimes to put the protections and the safeguards in place. In fact you've done that in the measures you've introduced for those who, in fact, are terminally ill or near the end of their lives with the number of doctors, number of witnesses, written requests, time periods and waiting periods. You've put in place a complex regime that has a nature of protection, even for those people who are terminally ill or near the end of life.

With respect to anyone else who is not terminally ill or near the end of life but who meets all the other criteria within your bill of an advanced stage of irreversible decline and serious disease or incurable disease, illness or disability, and the further meaning of that given by the *Carter* interpretation, you've simply put in place another blanket prohibition: an absolute ban for a large class of people, which you've heard argued by others has been considered and rejected in *Carter* and reinforced in other's views of *Carter*.

I have a couple of concerns about this, but imagine the fact situation of a 55-year-old and a 90-year-old. I'll use the case of I. J. that you've referred to from the Ontario Superior Court, a man who is 90 years old and is suffering from spinal stenosis — and you've noted the similarity to the facts with Kay Carter — and has a certain frailty and meets all of those other conditions of intolerable suffering and grievous and irremediable.

The 55-year-old person in the exact same situation of frailty, of conditions of suffering, might not meet this bill and be able to access medical assistance in dying because their natural death is not reasonably foreseeable.

The only thing that means to me is that one person has to suffer for another number of years before being termed to be approaching natural death. There is something so fundamentally wrong and discriminatory in the application of this that I wonder how you've rationalized through to defence.

It seems to me, under your defence of the expectation of putting in place a complex regulatory regime, that measures could be put in place, like you have with respect to the terminally ill, and they may be different and/or greater measures around the protections, the number of witnesses, the number of doctors and the process to be followed. Those protections could be put in place that allow accessibility under the right conditions that meet the needs and concerns of Canadians with a myriad of views, and it doesn't just leave us in a situation of a blanket prohibition of a whole class of Canadians.

**Ms. Wilson-Raybould:** Well, thank you for those comments, senator. I recognize the thoughtfulness of them in terms of reflections on the legislation and the complexity of putting in place a regime and presenting it, as we have, in Bill C-14.

I will say that the Supreme Court of Canada in *Carter*, as you stated, did say that Parliament must be given the opportunity to craft an appropriate remedy for medical assistance in dying.

What we have sought to do, taking into account a diversity of views, is to inject into this legislation multiple objectives, certainly the objective of providing the ability and recognizing the autonomy of individuals who meet the eligibility criteria to avail themselves of medical assistance in dying. But there are other objectives, as you know, in this legislation in terms of protection of the vulnerable, in terms of suicide prevention and the value of life, and in terms of supporting individuals through other forms of medical treatment not to see medical assistance in dying as the only alternative.

In Bill C-14, we have sought to draw a balance between all of those objectives. If we were to have a broader regime in terms of non-terminal patients, there would be increased risks in terms of the other objectives that we are seeking to find balance between and among.

As I stated earlier, we will certainly continue to have conversations about other situations, whether it be on mature minors or otherwise, but also recognize that Canadians are not going to let us not have conversations about other situations

where a patient is non-terminal but suffering. This would impart the necessity to have conversations about what types of increased safeguards would have to exist in those circumstances.

**Senator Lankin:** If I could interrupt. I'll try not to take as long in my questions so that I can get through a number of issues.

My question to you is about the nature of the protections that could be put in place. It seems to me that one of the criteria you need to meet is to assure the courts, perhaps in the future, that it was minimal impairment to the rights of this class of people. A blanket prohibition doesn't, in my way of thinking, meet the criteria of minimal impairment. Protections might.

If you're saying that we haven't had enough discussion about what the protections are, I don't think a blanket prohibition is a balance with the rights of protecting the vulnerable. I agree with you on all of those public policy goals that you've set out, but a blanket prohibition isn't a balance.

If you're saying we need more work before we can do that, I would argue that there's already been precedence in the four months that we've had as an extension to bring about an act to replace the section struck down by the *Carter* decision, and that has been judicial authorization, so there is an example of some protections. You might see more than that.

If you're saying we haven't had enough time to determine that, then surely it should be one of the issues that you've put in the preamble to a consultative study so that, in fact, we can come up with those measures and we don't leave a whole class of people out of their rightful access to medical assistance in dying.

**Ms. Wilson-Raybould:** I appreciate your comments, senator. I'm not sure if there was necessarily a question there. I don't say that with any disrespect.

You're articulating the difficulty, the challenge that we had in coming to a place where we —

**Senator Lankin:** I did ask whether or not it would be appropriate, if you don't think you've had the time to create the protections, to put it to a review like you have the other issues under the preamble section of the legislation.

• (1540)

**Ms. Wilson-Raybould:** My apologies, senator. As I stated earlier, we would be open to thoughtful amendments and the recognition that there's going to be ongoing conversations about this. And if we're speaking about, as you have so articulately talked about, non-terminal patients and what the requirements would be in terms of the safeguards that would be necessary to ensure that the balance that we've drawn with respect to the other objectives of this legislation are in place and are met, it's certainly a discussion that will be one that we will continue to have. But thoughtful amendments in that regard would be considered.

**Senator Lankin:** I have one more area of inquiry.

**The Chair:** You have 40 seconds left.

[ Ms. Wilson-Raybould ]

**Senator Lankin:** I think the inadvertent conclusion that one would draw about what reasonably foreseeable natural death means when you take out all of the other conditions to be met, and you've articulated with respect to Kay Carter and the case of I.J., is age. And I have to ask you, are you not concerned about the inadvertent impact of further devaluation of the life of seniors and of a situation where if you're old enough to be dispensed of

**The Chair:** Thank you very much, senator.

Senator Batters.

**Senator Batters:** Minister, you appeared in front of our Standing Senate Committee on Legal and Constitutional Affairs in early May as we began our pre-study of Bill C-14. Your government wanted our legal committee to conduct this pre-study to accommodate the very tight time frame set forth by the Supreme Court of Canada. Our Senate Legal Committee's pre-study heard from 66 witnesses and took 20 hours of committee study. We concluded with 10 recommendations for amendment of Bill C-14, five of which were even unanimously agreed to by our Senate Legal Committee, a committee which contains Conservatives, Liberals and one independent.

And by the way, minister, advance directives was definitely not one of those unanimously agreed to. I suggest you have another look at that report.

We gave you the study 15 days ago, and during those 15 days your government has done nothing with those recommendations. You did not incorporate any of the changes, even those unanimously agreed to, in the bill that you sent to us last night. And you had the time to incorporate those changes and send us a better bill after the kerfuffle in the House of Commons two weeks ago which delayed the progress of this bill.

Minister, this is what your colleague Government House Leader Dominic LeBlanc told our Senate Rules Committee when he appeared in front of us in February.

I want to say this also to colleagues and senators. As your committees look at legislation, when you make amendments to government bills, in the interests of strengthening or improving those pieces of legislation, our colleagues in cabinet have been told to consider positively those amendments. We do not see the Senate amending a government bill to improve it, fix it or strengthen it as a defeat, a problem or a crisis. We see it as proof positive that the institution is fulfilling its important role. We look forward as ministers to working with your committees on legislation, when it arrives here.

Minister, why has your government ignored every single recommendation made in our Senate Legal Committee's report instead of allowing us to fulfill our important role in strengthening this crucial piece of legislation?

**Ms. Wilson-Raybould:** Thank you, Senator Batters, for the question and reflections on the Government House Leader's comments. At the outset, I will say that this is not ideal in terms of



the time frame that we're under and the recognition that you received Bill C-14 very late.

I will say that we have considered the pre-study and the recommendations and recognize that there may be recommendations in terms of amendments that are put forward in this house throughout the process that you're undertaking.

We have considered many of the additional safeguards that have been recommended by the pre-study and other matters that you quite rightfully say that weren't unanimous that came out of the pre-study. And many of the reflections were considered in the other place in terms of making amendments.

But again, we are open to amendments and recognize that the legislation that we have put forward is what we believe to be, in terms of its objectives, a balanced approach to these issues that balance the necessary safeguards that were reflected in a lot of the recommendations or the increased ask for safeguards, as well as protection of individual autonomy. And we want to ensure that we keep that balance.

**Senator Batters:** Minister, the purpose of a pre-study is to work to save time in the legislative process. So that's why our committee provided you with those 10 amendment recommendations, so that you could amend Bill C-14 to strengthen it even before it left the House of Commons.

Our Senate Legal Committee does not often do pre-studies of legislation. One recent example was when the Conservative government asked our Legal Committee to do a pre-study of the Fair Elections Act because of the tight legislative time frame with that.

Our Legal Committee conducted that Fair Elections Act pre-study, concluding with several recommendations, and the Conservative government then took many of the Senate recommendations, worked them into the bill which was still before the House of Commons, and then sent an improved bill to the Senate.

So, minister, why don't you follow that Conservative government's lead in how a Senate committee's pre-study should be used to strengthen and improve legislation?

**Ms. Wilson-Raybould:** I appreciate the comments, senator, and without reservation I recognize the important work that committees undertake, including the committee that you reference. We very carefully considered the recommendations in the pre-study, as we will very carefully consider any recommendations that come out of the process that you're undertaking now as senators.

I witnessed and participated in the discussions at committee in the other place and recognized that voting on Bill C-14 yesterday there presented different parties and individuals in different parties voting in favour of Bill C-14 and voting on specific amendments that were being put forward not in a consistent way, necessarily, but in a way that reflects the diversity of opinions that exist around specific amendments, whether we're talking about safeguards or broadening the regime. Again, we're seeking to

ensure that that balance is there and that we achieve balance in putting forward the most appropriate regime that we can in terms of medical assistance in dying.

**Senator Batters:** Minister, when you appeared in front of our Senate committee at the Bill C-14 pre-study, I asked you why the Liberal government had chosen not to require terminal illness and end of life to access assisted suicide.

Minister, polling by national firms and by the external panel shows that Canadians expect terminal illness and end of life to be requirements to access assisted suicide. There are only nine jurisdictions, as you referred to, in the entire world that allow assisted suicide, and six of those jurisdictions require terminal illness and end of life. Those jurisdictions that require terminal illness and end of life include Quebec and a few U.S. states that allow assisted suicide.

When you answered my question that day in early May, you did not tell me that requiring terminal illness and end of life would contravene the *Carter* decision or would contravene the Canadian Charter of Rights. Minister, I later learned why you didn't say any of those things is because in the same time frame you were testifying before our Senate Legal Committee's pre-study, your federal justice lawyers were arguing before the Alberta Court of Appeal that terminal illness is required by the *Carter* decision.

So minister, why don't you agree to amend Bill C-14 in accordance with our Senate Legal Committee's recommendation to require terminal illness and end of life? That's what Canadians expect.

**Ms. Wilson-Raybould:** I would disagree with the assertion that Bill C-14 is not compliant with *Carter* and not compliant with the Charter. I deem it to be compliant with both, and what we have sought to do in Bill C-14 is to provide medical assistance in dying for individuals that are approaching the end of their lives, to provide a peaceful passage to death. This is what the Supreme Court of Canada spoke about in the *Carter* decision. This is the regime in Bill C-14 that we're putting forward to ensure that we maintain our objectives of protecting personal autonomy to make such decisions while protecting the vulnerable and ensuring that we maintain a value for life and that we ensure that suicide prevention is also another objective that we keep top of mind.

• (1550)

**The Chair:** Thank you, minister.

**Senator Tardif:** Minister, there is a commitment in Bill C-14, under section 9.1, that both the ministers of health and justice will:

... 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 requests by mature minors for medical assistance in dying, to advance requests and to requests where mental illness is the sole underlying medical condition.

My concern here is that this section commits to a start date but not to an end date. Do you think your government should consider and commit to a set time frame with an end date as you

have done with Bill C-14? And if so, what sort of time frame are you considering?

**Ms. Wilson-Raybould:** Thank you for the comments and acknowledging 9.1. This was an amendment that was recommended, made and agreed to by all parties in terms of setting a time frame for when these studies would commence.

Again, we would consider recommendations that would be put forward in terms of amendments. With regard to proceeding with an independent study or independent studies, we will do so on these more contentious and controversial issues to gain the evidence and the knowledge we need to ensure we can benefit from a regime and, if and when Bill C-14 passes, that we have the ability to monitor how medical assistance in dying has been operationalized and how effective it's been in this country, and to learn from that monitoring. In doing so, we would hope to benefit from the other studies and areas that we'll have to consider in terms of potential next steps for the medical assistance in dying regime.

I'm not certain that putting a time frame on that is necessarily the best approach to take, in that there's a lot of work to be done and many considerations to be made related to engagement around those particular issues.

**Senator Tardif:** Would a time frame of three years seem suitable to you, minister?

**Ms. Wilson-Raybould:** Thank you, senator, for the question.

I know the honourable senator knows there is a five-year review written into the legislation, and certainly recognizes that this is not a conversation that's going to commence in five years upon Royal Assent, but one that will continue. I, the Minister of Health and the government are committed to ensuring that we commence an independent study or studies on these particular issues, and perhaps look at other issues that have been articulated here in this honourable house.

**Senator Tardif:** It just seems that five years is a long period of time to deal with some of these issues, minister.

On another matter, minister, the current version of this bill as adopted by the House of Commons reduces the number of clear days between which the medical assistance is requested and the date it is provided from 15 to 10, as indicated in the original version of the bill. Do you think this time frame is a sufficient safeguard against precipitous decisions based on temporary mental suffering? In other words, does this provide enough time for medical personnel to provide proper assessments and fulfill their legal obligations under Bill C-14?

**Ms. Wilson-Raybould:** As you rightfully point out, senator, this was another amendment that was made. Initially, it was 15 days, and now it's 10. This was put forward and approved at committee, and recognizes that a necessary reflection period of 10 days is sufficient. Obviously, we will not be privy to individual circumstances, but by all accounts, engagements and discussions that we've had, not only with our colleagues, but also with

medical practitioners and others, a reflection period of 10 days is appropriate. That reflection period can be a bridge, given the patient's necessary terminality, and could be reduced.

**Senator Tardif:** Thank you, minister.

**Senator Wallin:** Thank you very much. I know we seem to be coming back to this issue time and again, but I think it's so crucial.

You've talked about respect for the value of life, and I think that's precisely what would motivate an advance directive. You have talked about genuine and firm wishes being respected and recognized, and peaceful passage.

I'm wondering what the rationale is, legal or not, against advance directives for those of clear and sound mind, who may or may not be old. That does seem to be a category that you have exempted and said can make decisions, while people who aren't in that category can't.

These people who are of sound mind know, because of genetic vulnerability, an inherited trait or even a surprise diagnosis, that they want to make this decision to manage their life and death.

In my family, we deal with the issue of Alzheimer's and dementia. You referenced that a former self in those situations might make a decision, but then you, or the system, wouldn't be able to confirm or withdraw consent because they somehow had become a later self as opposed to a former self. The whole point of advance directive is to make that decision when you're of sound mind, knowing full well that while the end may not be imminent, it will not be pleasant.

I'm at a loss to see what is holding you back on that issue. If you are so convinced on this issue, then, in studying it, whether it's for a week, three years or five years, how would you fundamentally change your mind if you actually think it's a point of law?

**Ms. Wilson-Raybould:** Thank you, Senator Wallin, for the question on advance directives. Certainly, this discussion has been raised in many different forums and by many different parliamentarians.

I appreciate your reflecting on your personal circumstances; I have a grandfather who suffered from Alzheimer's for 16 years.

This is an area where there is concern among medical practitioners about administering medical assistance in dying when they can't confirm the consent of the patient. That concern is reflected in other jurisdictions that have advance directives, and it also is recognition of the quality or value of the life of someone who suffers from dementia. We've had submissions from organizations on that topic.

Advance directives are something that we are going to study and learn about from other jurisdictions that haven't necessarily been able to operationalize advance directives fulsomely in terms of medical assistance in dying. Right now, there is concern about advance directives in the medical context.

We are committed to studying the risks and benefits, in our study that will commence in 180 days, to ensure that we're making decisions based on evidence and what has happened or not happened in other jurisdictions and come back with recommendations on how we can approach this.

**Senator Wallin:** So it is not a point of law —

**The Chair:** Thank you, Senator Wallin. Senator Ogilvie.

**Senator Ogilvie:** Thank you, minister, for being here.

I want to come back with my first question to pursue the issue that a number of senators have already raised with regard to your conviction about the solidity of your legislation vis-à-vis the Supreme Court decision.

The arguments that you have brought today as to why you have softened it are, indeed, as has been pointed out, the very arguments you brought in challenging the *Carter* issue, the ones that you brought in dealing with your challenge that you brought — as the Attorney General of Canada — to challenge the grant of the right to medical assistance dying to an individual in Alberta who was suffering intolerably from an irremediable condition on the issue of terminal. I am speaking with regard to your interpretation of “reasonably foreseeable” and your interpretation of that as being “terminal.”

Now, you have also indicated that there is considerable difference of opinion on this. I would submit that the Supreme Court of Canada itself — and my colleague has quoted one of the justices in that decision who clearly stated that whereas in *Carter* we rejected terminally ill, the Supreme Court of Alberta — not your average citizen on the street — clearly interpreted the issue as not defining “terminal.” Yet you continue to persist in arguing that the very most vulnerable Canadians, those who are suffering horribly from a disease that may last for years, have no protection under your law, whereas they have protection under the Supreme Court decision.

• (1600)

How can you justify such a possible cruel interpretation for persons suffering so intolerably?

**Ms. Wilson-Raybould:** Thank you for the questions, senator.

As parliamentarians, as the government, we will be paying great deference with the regime that we put in place for medical assistance in dying in this country. We are seeking to balance rights and diversity of views.

In balancing those, we have to legislate for 36 million Canadians. What we sought to do in putting forward Bill C-14 is to find that balance and to find an appropriate regime that would recognize the multiple purposes and objectives that we are seeking to accomplish.

This is different from the Supreme Court of Canada decision in *Carter*. We are talking about putting in place a legislative regime for medical assistance in dying. The court stated specifically that the regime that we put in place is the prerogative of Parliament,

taking into account the complex societal values and views in place in the country. That's the balance that we sought to draw with this legislation.

**Senator Ogilvie:** Minister, I don't believe that 36 million Canadians are looking for guidance under this. We are dealing with those who are suffering intolerably, which is a very small number, but I take your point.

The second question I would like to ask refers to a question that has been brought up with regard to your putting in the first bill and then modifying it in the second from 15 days of waiting to 10.

I might point out that the joint special committee had in its concerns before it the very same issues you raised when you started your presentation about protection for the vulnerable overall. The joint special committee, however, came to different conclusions than you have come to with regard to how to protect the vulnerable.

One of those areas is once an initial grant has been made — and you have now a 10-day waiting period for reconsideration of the issue — the joint special committee recognized that the government should work with the provinces to ensure that any period of reflection for medical assistance in dying that is contained in legislation or guidelines be flexible and based in part on the rapidity of progression and the nature of the patient's medical condition as determined by the patient's attending physician. That was intended to allow for the circumstances in which an individual might be progressing rapidly to a situation where they are no longer competent, to those conditions where it might take longer for reflective review of the initial grants.

Why did you decide to choose a specific number of days as opposed to allowing the flexibility of consideration by the experts who should review the situation?

**Ms. Wilson-Raybould:** Thank you for that question. Again, this was the subject of a lot of discussion at committee that resulted in an amendment.

Flexibility is built into the legislation in terms of providing a medical practitioner with the ability to abridge the 10-day reflection period having regard to the circumstances, the health circumstances or the decline of the patient, so that a 10-day period wouldn't necessarily have to be the case in all circumstances.

There was discussion around what the length of the reflection period should be and discussion around the idea that a patient who applied for medical assistance in dying certainly would have thought about putting forward that application well in advance, but it was determined at the committee that a 10-day reflection period would be sufficient to enable a practitioner to assess the patient, determine the conditions of the patient and provide that patient with the ability to retract their application at any time. So 10 days is sufficient for the patient to undertake those and for the medical practitioner to be able to respond and make their assessment.

**The Chair:** Minister, on behalf of all senators, thank you for joining us today to assist us with our work on the bill. I would also like to thank your official.

I would now ask the Honourable Jane Philpott, P.C., M.P., Minister of Health, and her officials to enter.

(Pursuant to rule 12-32(4) of the *Rules of the Senate*, the Honourable Jane Philpott, P.C., M.P., Minister of Health and her officials were escorted to seats in the Senate Chamber.)

**The Chair:** Minister, welcome to the Senate. I would ask you to introduce your officials and to make your opening remarks.

**Hon. Jane Philpott, P.C., M.P., Minister of Health:** Thank you very much. To the Speaker and honourable senators, I am pleased to be here today. I have with me two of my officials. Simon Kennedy is the Deputy Minister of Health, and Abby Hoffman is an assistant deputy minister of health. They are joining me this afternoon.

• (1610)

I am pleased to be here to speak on the subject of medical assistance in dying and, more specifically, Bill C-14.

I would like to take this opportunity to thank the Standing Senate Committee on Legal and Constitutional Affairs for conducting a pre-study of the proposed legislation and for sharing their report and considered recommendations. We know that the committee conducted its work in the best interests of Canadians, and we are reviewing its recommendations carefully.

[*Translation*]

We can all agree that medical assistance in dying is a sensitive topic, which explains the diversity of opinion. However, in the short time since this government was formed, parliamentarians, experts, stakeholders and officials have done a considerable amount of work informed by the diverse but sincere views of countless Canadians.

[*English*]

The development of this bill was informed by careful consultations and very thorough reports of the federal external panel, the provincial-territorial expert advisory committee, the special joint parliamentary committee and the House of Commons. Now, honourable senators have carefully considered the bill's provisions.

Over the past several months and weeks, I have had conversations with members from both houses of Parliament; the Minister of Justice and I have appeared at committees in the house and in the Senate; and I have had numerous meetings, both in person and by phone, with interested advocates. Before you today is a transformative legislative framework that we believe is the right approach for Canada. This is a democratic bill: Rather than representing any single interest, community or perspective, it seeks to respond to the many views and legitimate concerns that have been raised.

I characterize this bill as a well-crafted reconciliation of the many real-world considerations that are before us. First, it is about the principle of personal autonomy. By including criminal exemptions to protect providers and family members, it provides Canadians with access to medical assistance in dying.

[ The Chair ]

Second, it respects the principle of the inherent value of life by including appropriate safeguards that will protect vulnerable individuals. It also includes a commitment to making regulations on monitoring and reporting, to provide reassurance to Canadians that the legislation is working as it should.

On the other hand, it recognizes that other matters, such as mature minors, those with mental illness as a sole underlying condition and people who want to use advance requests, fall outside the bill's criteria. These are complex issues that have been forcefully argued by experts from several perspectives. They are issues that need more study before we consider taking further steps.

So we have committed to additional studies to increase our understanding of several highly complex and sensitive issues of deep importance to many Canadians. These studies will ensure the evidence necessary to make decisions is gathered and assessed in a way that will contribute to the ongoing consideration of the bill's provisions such as through the planned parliamentary review.

The bill also recognizes the concerns of so many commentators who have spoken compellingly about the need for better access to high-quality palliative care. This is an issue I am deeply committed to working on with my provincial and territorial colleagues, along with the delivery of our government's platform commitment to \$3 billion for home care, including palliative care.

The language of the bill also recognizes the conscience rights of providers. We live in a federal system, as you well know. Our Constitution allocates various powers among the federal government and the provincial and territorial governments. The federal government can only legislate so far without infringing on provincial powers. If it goes too far, the federal laws are rendered invalid. To suggest otherwise could simply provide false reassurance.

Whatever one's views, provinces and territories are essential partners in this endeavour. Under the Constitution, they are ultimately responsible for health care implementation issues such as conscience rights of institutions and providers, including the extent of obligations to refer and ensure continuity of care in accordance with the wishes of patients. They or health care regulatory bodies will determine how providers should discuss palliative and end-of-life-care options with people seeking medical assistance in dying.

Yet even within their own jurisdictions, provinces and territories will be guided by their obligations under the Canadian Charter of Rights and Freedoms and federal legislation such as the Canada Health Act. In order to respect this constitutional reality, we have proposed a care coordination system that would reconcile patient access with provider conscience rights.

When jurisdictions work together and respect each other's authority, we can find creative ways to make progress.

[*Translation*]

In the House of Commons, some would have liked the bill to be broader and to extend eligibility to more individuals by removing the reasonably foreseeable death criterion or even allowing access

to mature minors, people with a mental illness as a main underlying condition, and people who make a request through an advance directive.

Others would have liked the bill to be more restrictive by limiting eligibility to terminal illnesses or making the process more complicated by adding safeguards or supplementary criteria for approval.

The pre-study and the report submitted by the Standing Senate Committee on Legal and Constitutional Affairs suggest that honourable senators share a diversity of opinion similar to that of my colleagues in the other place. Some have also expressed the desire to take more time to study the bill and make amendments.

At this point, I would like to address another topic that has received a lot of attention these past few weeks. Some commentators have said that the absence of federal legislation as of June 6 will have no impact. There are diverging views on that. I would like to reiterate my opinion and that of experts such as the Canadian Medical Association and the Canadian Medical Protective Association. The absence of a legal framework will cause very real and very serious concerns.

[English]

Medical assistance in dying will be available on June 6, and it will be based on the Supreme Court's decision in *Carter*, which many argue is less restrictive than what is laid out in the bill. Therefore, medical aid in dying will be legal, but without Bill C-14's eligibility criteria and safeguards, which are designed to provide a consistent framework for the whole country.

We are grateful that the provinces, territories and the colleges of physicians and surgeons have issued guidance for medical assistance in dying. However, it should be recognized that the enforceability of those guidelines is unclear. This lack of clear parameters will cause uncertainty among providers. In addition, neither the decision of the court nor these guidelines address the situation of other providers, such as nurses or physician assistants who might be asked to assist, or pharmacists who are required to dispense medication. The most likely result is that most providers will be extremely reluctant to participate.

[Translation]

With this bill, the government is responding to the current situation and the legitimate concerns of many Canadians. As the Supreme Court stated in its decision, it will give greater deference to a complex regulatory response than to an absolute prohibition. We have formulated that kind of response with this bill.

[English]

We should note that there is a requirement in the bill to review the legislation in five years. At that time, we will have gained five years' experience within the system and, at that time, as the result of independent studies, we will have much more information and evidence upon which to make informed decisions on those issues for which we cannot get consensus at this time.

We feel this type of measured, carefully considered and incremental approach is the right way forward. We will carefully consider the Senate's recommendations and seek to

respond in the spirit of democratic responsibility and compassionate practicality. We look forward to the support of the honourable members of the Senate in the best interests of all Canadians.

**The Chair:** Thank you, minister.

Colleagues, I will give priority to those senators who did not get a chance to question Minister Wilson-Raybould. We will start with Senator Marshall.

**Senator Marshall:** Thank you, minister, very much for being here today. My question concerns clause 4 of the bill, regarding the regulations.

• (1620)

The "Summary" in Bill C-14 states that the proposed amendments to the Criminal Code require medical practitioners, nurse practitioners and pharmacists who provide medical assistance in dying to provide certain information to a designated person so that medical assistance in dying can be monitored. However, the information required under clause 4 and how it is to be used, protected and disclosed is not specified in the bill. The bill states that it may be included in the regulations.

At present, there are no regulations that I am aware of. In addition, clause 4 of the bill, which references the regulations, will not come into force at the same time as other clauses in the bill as stipulated in clause 11 of the bill. The information referenced in clause 4 is critical in determining the number of people who receive medical assistance in dying to ensure that all legislative requirements are met to protect information related to individuals who have requested medical assistance in dying and to ensure the protection of the vulnerable.

Given the significance of the regulations and the information to which they refer, could you tell us when clause 4 will come into force?

**Dr. Philpott:** I thank you for an excellent question. It is one that I have not been asked frequently, so thank you for raising a new topic.

I am working actively on this with my officials. In fact, my assistant deputy minister, who is here, has taken a significant lead in this very important area. I believe this will help us tremendously as we proceed to consider further adaptations, as necessary, for the legislation.

My officials are working particularly closely with the provinces and territories because, as you have indicated, there are a number of concerns regarding, for instance, the confidentiality of this sensitive information. I believe that three of the provinces have already proceeded to a fairly structured regime mechanism by which the information will be collected going forward. It includes a number of pieces of information, such as how many people had asked for medical assistance in dying; how many proceeded with it; and if people withdrew, why they withdrew.

Other provinces have not come that far yet. My officials have determined that there will be other mechanisms by which the information can be gathered in the initial stages, for example from

coroners' data. That is not the ideal mechanism for gathering data because there will be some missing pieces of information. We are working actively on that mechanism, and I believe I will have strong collaboration from my provincial and territorial counterparts so that we can ensure that we have a robust system. I do not have concerns about missing actual numbers of cases, but I want to make sure that the data are as complete as possible.

**Senator Marshall:** My concern, minister, is that if the bill is enacted and comes into force with no regulations and that section isn't in place, there will be no guidance for the provinces with regard to what they should report. You referenced three provinces, but I would be concerned about the consistency from province to province. Of course, I would also be concerned about the remaining provinces and territories.

The other issue I have concern with is that the bill indicates "may" rather than "shall" implement regulations. I would like to see that amended.

I have another point I would like to ask you about. Clause 4 of the bill indicates that:

The Minister of Health, in cooperation with representatives of the provincial governments responsible for health, may establish guidelines on the information to be included on death certificates in cases where medical assistance in dying has been provided . . . .

I find it curious that all the preceding clauses reference regulations but in this clause it mentions only guidelines. What is the logic behind that?

**Dr. Philpott:** You have raised a number of issues. I hope I will address each of them.

I understand that one of the recommendations of the Senate committee came after they discussed the matter of "may implement" or "shall implement" regulations. In fact, that was a matter for discussion in the writing of the proposed legislation. The decision to change it to "may" rather than "shall" was on the basis of the fact, as I understand and you are much more expert at this than I, that it would not be the normal pattern of legislation to dictate a minister's role; so "may" was more acceptable.

For as good as my word may be in this house — and I hope it is good — I can assure you that I have already started working on those regulations. You are more familiar with the fact that it is not unusual to have a period of time between the implementation of legislation and the establishment of regulations. I am sure you understand that. In the meantime, obviously a number of guidelines are in place.

The colleges of physicians and surgeons across the country have already put in place some guidance in terms of the kind of information.

The other helpful piece is that Quebec, as you know, is several steps ahead of us in terms of a similar piece of legislation. They have established an excellent mechanism by which reporting and

monitoring are done. We've had a look at that and are actually using that as a model for the kind of monitoring that could be done.

On the matter of medical certificates, my understanding is that it's around guidelines and not regulations because it falls under provincial jurisdiction and officers of the respective provinces issue these. Therefore, it would not be appropriate for it to be a federal regulation.

**Senator Marshall:** My final comment is that I would prefer to see "shall" and to see it vested in you so we would have consistency from jurisdiction to jurisdiction; and that the information would be available because we are talking about people's lives. We are talking about vulnerable people and about putting a system in place, so we have to have something in place to make sure that everything that should be followed is actually followed.

**Dr. Philpott:** I appreciate your feedback on that. If this is an area you are interested in, I would be happy to have a conversation with you. I totally agree that it will be extremely important information. In a world where data is king or queen, the more data we have to guide our decision making, the better. I would be happy to have your further recommendations.

**Senator Cowan:** Minister, welcome.

We have all received hundreds, if not thousands, of emails from people about this bill, particularly from those pleading for the inclusion of advance directives for medical assistance in dying. My concern is that without such a provision in the bill, we are condemning individuals whose diseases will inevitably result in their loss of capacity. We will condemn them either to suffer intolerably or place them in a position where they choose to take their lives before they might otherwise decide to do so. Without advance directives, individuals with diseases like Alzheimer's will be denied the right to end their lives in a dignified manner.

It's for that reason that the special joint committee of the Senate and the House of Commons recommended the use of advance directives and the majority of the Standing Senate Committee on Legal and Constitutional Affairs in its pre-study supported the recommendation of the joint committee. Both committees heard from witnesses who said that the exclusion of advance directives would deny a constitutional right to Canadians who have a grievous and irremediable medical condition that will affect their competence at some point in the future.

Why did your government reject the committees' recommendations? Shouldn't Canadians who are faced with the ravages of a disease like Alzheimer's have the right to make decisions respecting the end stage of their life in the same way as the rest of us?

**Dr. Philpott:** Thank you, honourable senator, for that excellent question. As you indicated, we received a tremendous amount of correspondence on this, and in so many other ways people have provided input. I would agree with you that one of the topics we heard about most was the matter of advance directives. It is something that Canadians are very interested in. I can certainly say that the concept of advance care planning is something that I am highly supportive of and that we must do better on in Canada.

[ Dr. Philpott ]

• (1630)

As for advance directives for medical assistance in dying, I'm happy to tell you the things that we took into consideration. One of the realities that I think most would agree upon is that the academic evidence is unclear as to how to do them best. I would refer you to and be happy to share with you a number of studies that have looked at jurisdictions where advance directives are in place, the Netherlands being one of the most common ones.

One of the troubling realities in a place like the Netherlands is the fact that one study that I could share with you looked at over 2,000 cases of people who had advance directives. There was evidence that the providers in question were aware of the advance directives and in many cases had discussed those advance directives with the patients or their families, but only in an extremely rare number of cases were those advance directives acted upon.

That raises the question that there must be something about how their legislation is written or the safeguards around it that led either the patient's family or the provider to not go ahead with those advance directives.

It's that kind of information that was troubling to us in terms of whether or not we had the capacity within a very short period of time to implement a mechanism of advance directives that would actually be effective.

Just last week I was at the World Health Assembly and met with some health ministers, including those from both Switzerland and the Netherlands. In particular, I discussed the matter of advance directives with the Minister of Health from the Netherlands. She acknowledged that they had a great deal of difficulty with the concept of advance directives and that it is an extremely difficult concept to legislate in this context.

One of the difficult questions is, for instance, what illnesses would be under consideration. As you may be aware — because I know you've studied this a tremendous amount — there's a difference around advance directives for people who are in a coma versus advance directives for someone with dementia, which is the topic that we hear about most. If I'm not mistaken, the Netherlands is the only country in the world that allows advance directives for a diagnosis of dementia. So it's rarely done, and in that context it's not quite working as one would hope.

How often should those advance directives be reviewed? What are the criteria for confirming that consent? All this to say — and I don't want to belabour this too much — it's not an easy thing to legislate. I think there is a very real possibility that we may someday see advance directives as part of this legislation, although it's not up to me alone; it's up to all of us working together for that. We have to address this timeline. It was felt not to be realistic to be able to address this very complex matter. I look forward to working with you on it in the future.

The other thing I will say is that many of you are aware that the provincial regulatory bodies across the country have put in place guidelines. Every single provincial regulatory body in the country

has said, "No advance requests." There seems to be consensus that this is an area we need to discuss carefully, and I look forward to doing so.

**Senator Cowan:** Thank you. On another topic, you raised the issue of the regulatory authorities. As you know better than I, there are colleges of physicians and surgeons in each of the provinces and territories. The federation of those bodies, which I think is known by the acronym FMRAC, issued a press release on May 19 that said the terms you've used in the bill — "reasonably foreseeable" and "incurable" — are too vague. The President of FMRAC, Dr. Grant from Nova Scotia, said:

This is legal language that is far too vague for physicians. If it remains, physicians will be unable to confidently determine eligibility for some suffering patients.

When Dr. Grant and other representatives of regulatory agencies appeared before our Legal and Constitutional Affairs Committee, they again said this is legal language, not medical, and that the language is too vague to be understood or applied by a medical provider and too ambiguous to be regulated effectively.

So I have two questions. What are you doing to ensure that the concerns of FMRAC and its constituent colleges across the country are being addressed? Why would you not have consulted with any of the regulatory bodies across the country, or FMRAC itself, in the course of preparing the legislation? We heard from Dr. Grant and from several provincial college heads who said they had absolutely no consultation with either the Department of Health or the Department of Justice in the preparation of this legislation. Why not?

**Dr. Philpott:** Thank you for those questions. You may know that I had the opportunity to speak with many of the individuals you're talking about within the past week and have heard —

**Senator Cowan:** On the weekend.

**Dr. Philpott:** Over the weekend, yes. I have heard these concerns and am very much aware of them. I appreciate the role they play.

On the specific question of their concerns around the interpretation of the guidelines, as you are aware, they are regulatory bodies; they don't speak for physicians. The bodies that speak for physicians are medical associations, including the Canadian Medical Association.

The Canadian Medical Association has surveyed its 83,000 members on two occasions and has spent an enormous amount of time and money getting the views of physicians. In terms of the terminology, that's the group we need to look to and ask, "Is this terminology that health care providers and in particular physicians can understand?"

In fact, we received strong support from the Canadian Medical Association with regard to the clarification that is provided in the legislation that a natural death is reasonably foreseeable. In fact, when I talk to the folks at FMRAC about their desire not to have that phrase in the legislation and their concern as to whether it would be interpreted, the reason that was added in was to help

further define for the sake of physicians and health care providers what “grievous and irremediable” meant. In fact, I asked them, “How would it be easier to define what a grievous and irremediable condition is and how would someone apply?”

So the language around reasonable foreseeability has actually helped to further define. I did not receive an answer. I would be happy to talk to them further about that.

But, in fact, the Canadian Medical Association, the Canadian Nurses Association, the Canadian Pharmacists Association and HealthCareCAN have all very much supported our bill and the language that’s used in it.

**Senator Cowan:** I understand. Would you not agree with me — and here I am talking to a physician. Physicians tell me — at least physicians in Nova Scotia — that they look not to the Canadian Medical Association but to the College of Physicians and Surgeons in Nova Scotia for guidance on practice matters. Not that the College of Physicians and Surgeons would speak for physicians, but it’s to that body they look for guidance in the practice of medicine and what is good practice and what is bad practice, not to the Canadian Medical Association. Not to disparage the Canadian Medical Association, but that’s the role. Would you not agree with that?

**The Chair:** His time is up.

**Dr. Philpott:** Would you like me to answer him briefly?

**The Chair:** No, I’m sorry. Senator Cools, please.

**Senator Cools:** Sorry about that. I hope she won’t cut you off with me.

**The Chair:** Make your questions snappy.

**Senator Cools:** I would like to welcome our doctor minister to the Senate, and I hope that her short experience with us will be a happy one and very successful.

I must say to you, minister, doctor, that I am very uneasy with this bill. I have many misgivings, perhaps because I once served on the national Parole Board of Canada and I learned a lot about human behaviour and human deviousness and deviance in many areas. I do have many misgivings about this bill, so I alert you to that. I am hoping that this bill is not going to create more problems than it solves, but I will hold my judgment on that. In the meantime, I’m with you as much as I can be.

My question was originally for your colleague, the Attorney General — I had intended to put it to her but her time ran out — was that the first thing about this bill that I observed was that the government was asked to frame a bill, which is the business of the drafters, who are at the Department of Justice. The first thing I observed is that I found the conceptual framework around drafting the bill unusual. Drafters build these bills clause by clause. I found that Bill C-14 has an unusual conceptual framework because, as you have said, the Criminal Code is the explicit and the exclusive domain of the feds. The Criminal Code is ours. It has been for a while, especially since we codified it in 1892.

[ Dr. Philpott ]

• (1640)

I became aware that Bill C-14 was not drafted as a set of positive statements and positive law being articulated in a certain order. It fulfilled what it was trying to do in a negative way, by a series of exemptions. I have read it a few times. I am not happy with it, but I understand it and I accept it now. I have read much on drafting and have had many bills drafted.

Minister doctor, do you have any ideas or insights into why this conceptual framework and approach were used?

**Dr. Philpott:** Thank you, honourable senator, for those comments and questions. First of all, I am happy to be here with you. I consider it a real honour.

**Senator Cools:** Come and stay.

**Dr. Philpott:** This is my first time being here, and I’m really delighted to be here with you. Thank you for giving me the opportunity.

You mentioned your expertise in societal deviance, which is actually a very interesting field of expertise. That’s one of the reasons why I’m happy to be here today, to ask if at all possible that you would with the greatest of respect find a way as soon as possible to help this legislation be enacted. There is, on the one hand, a real concern about whether people who should have access to medical assistance in dying will receive it. On the other hand, there is a real concern that adequate safeguards will not be in place. I will go back to that question at any time because I am concerned about that.

Your last comment was why is it so negative? That is an interesting perspective. I don’t think I have a great answer. It’s partly due to the fact that the whole piece of legislation is around exemptions and excluding people from liability for participating. It’s written in that way. It’s written in a way to figure out who is not liable if they participate in medical assistance in dying, or who is not eligible.

So you’re right, there is a bit of negativity. I think it’s just the reality of the matter at hand.

**Senator Cools:** I am glad you appreciate that, because the substance is presented as exemptions from criminal prosecution.

Every doctor I have spoken to regarding this bill is very apprehensive about it, even uneasy. It seems to have brought much uncertainty and some fear to some of them regarding what they may be asked to do. Many of them seem singularly unprepared. Most practitioners operate as sole practitioners, except in the hospital settings. Do you have any information on practitioners’ responses or thoughts on being approached to deliver death? They are being asked to do something that they are not used to doing. I will be quite frank. I wonder if you could comment on that.

**Dr. Philpott:** Again, an excellent question. You’re absolutely right. This is new territory for doctors. Doctors didn’t go out advocating for this legislation, for the most part, although a few did. There are some who are hesitant around it. In particular, in the context of an absence of legislation, there’s a tremendous



amount of anxiety for doctors about what might be lying ahead in the next week or so if there's no legislative protection around them. That's a real concern.

I agree that there is a certain sense that they may be unprepared, but organizations, like the College of Family Physicians of Canada, and many others, have done a tremendous amount of work putting in place continuing medical education programs around this. We're seeing a lot of work being done by them, as well as by the Royal College of Physicians and Surgeons of Canada, which gives educational guidance to doctors. They are increasingly prepared, and some will take more of an interest in it than others.

In response to the sole practitioners, the reality is fewer doctors are practising in sole practitioner cases. Family doctors are trained in the context of teams for the most part, and therefore most of them are choosing to continue to practise in the context of teams. This is extremely helpful for them to be able to have people to consult and advise with, and it works very well.

So you're right, there are some issues around that. Most solo practitioners have developed mechanisms to gather support from their colleagues, but I think that's less and less of a reality.

**Senator Cools:** Thank you very much.

**Senator McIntyre:** Thank you, minister, for being here today and answering our questions.

The Supreme Court in both the *Rodriguez* and the *Carter* decisions was very concerned with the issue of procedural safeguards for medical aid in dying. So were Parliament's special joint committee and the provincial-territorial expert advisory group.

Bill C-14 addresses those concerns. As a matter of fact, there are a number of safeguards and procedural requirements that Bill C-14 introduces to safeguard the MAID process. Listening to your presentation, it's obvious to me that you are satisfied with those safeguards. That said, notwithstanding Bill C-14 and the inclusion of those safeguards, some witnesses who appeared before the Legal and Constitutional Affairs Committee were very concerned and not exactly reassured with the safeguards presently in force. Could you reassure those witnesses and stakeholders, please?

**Dr. Philpott:** Thank you for the question. You're absolutely right that safeguards are an essential piece of this legislation. Not to belabour the point, but they are one of the reasons why we really need to have legislation in place. Medical assistance in dying does expose vulnerable populations. In fact, the court asked us to implement a regime which has the complexity to address the necessary safeguards.

This bill had input from a number of organizations, committees, et cetera, which I outlined earlier in my remarks. It also had, of course, guidance from other jurisdictions around the world that have used safeguards. We believe there is no safeguard that is used in any international context or even in other contexts in our own country that was not taken into consideration. So if there are areas that you think are unaddressed, I would be happy

to hear those or to explain why they may not be included, but we believe that this bill has a good balance to make sure that those safeguards are in place.

**Senator McIntyre:** Minister, before drafting Bill C-14, your government reviewed a number of documents. For example, Quebec's Bill 52, the *Carter* decision, and various reports dealing with medical aid in dying, such as the external panel report, the provincial-territorial expert advisory group report and the special joint committee report.

Those reports contained a number of recommendations, a large number of which were not addressed in Bill C-14. You decided to ignore some, not all, of those recommendations and use a more restrictive approach. Could you clarify that a little bit, please?

**Dr. Philpott:** Thank you very much. You're absolutely right. We reviewed a large number of documents and sources of information. One of the best sources of information we have had at our disposal is the experience that's already taken place in Quebec. You may be aware that the regime is working extremely well. I spoke today, for instance, to the Canadian Medical Protective Association. They are the organization responsible for providing legal advice to physicians. They said that there has not been one single complaint or concern addressed about the implementation of the bill in Quebec, so that's very helpful to see.

Why did we end up with what might be described as a more restrictive approach than some of the recommendations that are there? I go back to the basic principles we had to take into consideration. The *Carter* decision, of course, was extremely helpful, but as you know, the *Carter* decision spoke to the experience of two individuals and people like them. So that was very helpful information. As a government, we had the responsibility to make sure that this piece of legislation would be appropriate for a country of 36 million people. We felt the weight of that responsibility. We felt, of course, that we had to uphold the Supreme Court's direction that they said that medical assistance in dying must be available to Canadians, and we respected that. But at the same time, we felt that, as a government, we had a responsibility to protect the inherent value of life and protect vulnerable people in this country. After a number of weighty conversations, we believe that this is the right approach for Canadians.

• (1650)

As to the areas where people might have wanted it to be more expansive, we simply need more time to study those, to make sure we have the best evidence on those, to make sure that we are working forward in a wise method.

**Senator McIntyre:** I have one final short question.

The bill includes legislative and non-legislative measures. As far as non-legislative measures are concerned, of particular importance are the commitments to develop a pan-Canadian end-of-life care coordinating system and to support the full range of end-of-life care options, including expanding palliative care, of course.

Once Bill C-14 becomes law, how serious will the government be on this issue of palliative care?

**Dr. Philpott:** Thank you for the question.

We are absolutely serious on the matter of palliative care. I have said, in the other place, that I believe that all Canadians should have access to high-quality palliative care. We know that that is not the case currently in Canada. In fact, 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.

One of the best outcomes of this legislation is that it is spurring all of us on to make sure that happens. I know the Senate also has done fantastic work in the past on palliative care, and there have been reports issued from the Senate. I hope that I will have your support in finding ways in which we can make sure that we do better by Canadians.

**Senator Jaffer:** Thank you very much, minister, for being here.

Minister, this is something we haven't covered today, but my preoccupation is with mature minors. We had one witness at the pre-study, Maureen Klenk, who said that a 14-year-old girl can have a baby and yet cannot decide what happens to her if she is seriously ill.

Before listening to all of this, I was not in favour of any mature minor decisions, but I've come to a place where I think that they need to be heard. I very much appreciate what you are putting in place. I know that we are studying it. I understand that, but I'm anxious to hear from you as to how you see setting up the framework.

**Dr. Philpott:** Thank you for raising a very important matter. As a family doctor myself, I certainly understand the concept of mature minors, and I think no one can pretend that you can draw a line in the sand as to at what point a person has the maturity to be able to make a decision. If one were to put an age limit on it, for all intents and purposes it's an arbitrary date that we have said is 18.

Having said that, there is no place, other than this house, that understands better what time pressure is on this bill. We, in the other place, had this same experience. This is a bill that has had to be drafted and hopefully implemented in extraordinarily rapid fashion. To put in place a fundamental, transformative piece of legislation that changes the social fabric of this country in such short order is stunning, and I know that you are feeling the burden of that now.

We felt that the issue of mature minors and where you're going to draw the line in the sand so that young people and, particularly, children will not be vulnerable and have undue harm met upon them is something that really required further study, and, in fact, that was the guidance that we were given from a number of sources.

**Senator Jaffer:** Minister, I started off supporting this bill and was very much supportive, and I thought I understood — and I still do — why you took the route you did. This is a very serious issue, and I think I speak for all of my colleagues here that there's never going to be a more serious issue than this in front of us. All of us have taken it very seriously.

But during the pre-study, the thing that really came to my attention, which I'm having real difficulty with, is the word "incurable." I can quote all kinds of doctors, but I would rather just have this conversation with you. I understand from the doctors that "incurable" means you have to try every kind of treatment before you're found to be incurable. I'm not a doctor. You are. Some people, for example, don't want any more chemotherapy. They don't want any more X therapy; they've had it.

Minister, why did you feel it necessary to make the bill more restrictive and use the word "incurable"?

**Dr. Philpott:** Thank you for that excellent question.

I want to first of all say to you that I hope I'm not misreading you, but my impression, from the line of questioning, is that you support the concept of medical assistance in dying and would like people to have access to medical assistance in dying. So I will, again, go into plead mode to say that if you want Canadians to have access to medical assistance in dying as soon as possible — and in fact there is reason to believe that there are people now waiting for us to implement this so that they can have a dignified death as a result of this — we need legislation in place. I cannot overstate the access issues that will be in place if we don't get legislation in place. I, again, will go into more detail if desired.

On the matter of curability, there are a lot of reasons why something is incurable. Sometimes it's because no cure is known. Sometimes it's because, for the cure that is available, the patient has a contraindication to whatever that treatment might be. Sometimes there's no access to that treatment in a particular country. Sometimes it's a matter that the doctor and the patient make the decision that that particular treatment is inappropriate given the circumstances. Sometimes people are not able to be cured because of the fact that there's a requirement in the relationship between a provider and a patient of informed consent and that a patient needs to consent to accept a treatment.

All of those situations need to be necessary for someone to be able to avail themselves of a cure. This is a way of being able to define the specific circumstance in which the doctor is looking at this patient and saying, "I cannot cure this patient's problem, and therefore they meet the criteria."

**Senator Jaffer:** Minister, you've gone into plead mode a number of times. I only want to speak for myself, but I know a lot of my colleagues agree with me. We also would like to go with you into plead mode. I and I'm sure all of my colleagues have heard from thousands of Canadians with great pleas that this is not the right legislation. This is a bill that's eating us up inside out. How do I go back to B.C., where I come from, and tell people, "I didn't listen to you because the minister pleaded with us to do this bill, even though it does not meet the Charter"?

I go into plead mode with you to say listen to Canadians who are pleading with you to "Let's get it right."

**Dr. Philpott:** Thank you for that. It's only fair that you should also be allowed to plead.

So I want to say I think my colleague the Minister of Justice has already addressed the question of this meeting the Charter. Two things I want to say to you. One is look at the experience of Quebec. This piece of legislation is more expansive than the Quebec legislation. It is working well. People in Quebec are getting access to medical assistance in dying, and so I think that should be reassurance to your colleagues in B.C. that this is the kind of legislation that should work and make it available.

But I'm going to take this opportunity to say to you that doctors and other health care providers will be extremely hesitant to provide assistance in dying in the absence of legislation. The bigger questions are around, for instance, pharmacists. You can't provide medical assistance in dying without medication. I spoke today to the Canadian Pharmacists Association. I spoke to HealthCareCAN, which is the organization that represents academic hospitals in this country and, therefore, also has information from the hospital pharmacists who will be required to dispense the medication.

• (1700)

There is no clarity for them absent legislation. It will require people going to court and getting legal counsel. It will lead to significant delays.

If it is important to you, the sooner we can have legislation in place, with all due respect and with great anticipation of your recommendations for us and any potential amendments you might want to offer, the better. I urge you, and I anticipate the great opportunity to collaborate with you to get legislation in place.

[Translation]

**Senator Boisvenu:** Good afternoon, minister. I would like to congratulate the members of the Standing Senate Committee on Legal and Constitutional Affairs on their excellent work during the public consultations in connection with the study of this bill. There were some very difficult and highly emotional moments. The committee demonstrated a high level of compassion and a deep understanding of what kind of measures Canadians expect from their government.

We heard testimony from families; they are my primary concern. We heard testimony from the Simard family. Their mother had multiple sclerosis and was denied humane end-of-life treatment. She took matters into her own hands and starved herself to death.

In other cases, people have had to travel to other countries to access these measures because they do not have that right in Canada, be it in Quebec or any other Canadian province.

I am not a lawyer or a doctor either, but as I understand it, Bill C-14 discriminates between people who are dying and those who are suffering.

We are making a very serious mistake if we believe that this bill meets Canadians' expectations. It meets some of the expectations that Canadians and doctors have with respect to people who are

dying, which is the easiest part to legislate. The hard part, the part you should have tackled, is the part about those who are suffering physical pain, and for whom science and medicine can offer no drug that would enable them to enjoy the quality of life they are entitled to.

Here is my question, minister: are you going to let families continue to see loved ones, often a father or a mother, kill themselves by such terrible means as hunger strikes? Are you going to let people watch their loved ones go to another country to die, saddling them with the responsibility of bringing their body back to Canada, without having been able to see their loved one die with dignity?

You need to listen to the senators and members of the other place who are asking you to ensure that those who are dying and those who are suffering are treated equally.

Are you prepared to listen to those senators who want to make this bill fair and equitable for all Canadians, those who are dying and those who are suffering?

[English]

**Dr. Philpott:** Thank you for the question. I hope you will forgive me if I respond in English. I am still working on improving my French to respond on these very complex matters.

This is something I heard a great deal about from people, and I am listening. I want to assure you that I have heard you. I have tried my very best to make sure I have understood the diversity of perspectives. I think you will have found that even in this chamber there is a diversity of perspectives on this matter.

What I can say to you that I hope will help you to understand how the legislation was drafted as such is the fact that it was done in recognition of the *Carter* decision. The *Carter* decision, as you know, involved the case of two women who were, I think it would be fair to say, at the end of life and whose natural deaths were reasonably foreseeable.

I read the *Carter* decision most recently two days ago, and when I did so, I looked for how many times the term "end of life" is used in that decision. That little phrase "end of life" appears 17 times in that decision. That was the frame with which we went to draft legislation and to recognize that Canadians were asking us to respond to the end-of-life options that were there for them.

Having said that, "end of life" is very difficult to define. It is a term that is used in the Quebec legislation. There are jurisdictions that put real parameters around it that say the end of life must be anticipated within six months or a certain period of time. We did not feel that that respected the professional opinion of doctors.

The solution was to recognize that, while we could have used the term "end of life" because that would be appropriate in acknowledgement of the *Carter* decision, we preferred instead to define "grievous and irremediable" and to say that a natural death was "reasonably foreseeable," which is a term that is understood and accepted by doctors, as I said before.

I hear you when you are saying that you want more than that. That is something that we will continue to have a conversation about over time. However, we believe this is the piece of

legislation that we were required to put in place, and it responds to what Canadians have asked us to do.

[*Translation*]

**Senator Boisvenu:** Minister, even Dr. Barrette, the Quebec Minister of Health, said just yesterday that the notion of “reasonably foreseeable death” was medically impracticable. If Quebec were to change tack to enforce this legislation in that regard, physicians who adopted this practice would be subject to prosecution.

Furthermore, with regard to that definition, Bill C-14 is not a judicial surety for the provinces to be able to enforce it.

There is something fundamentally wrong with the terms used in the bill. In the proposals brought forward, there should have been some openness to amending the terminology to create a social consensus on this bill, which is so crucial for Canadian society.

[*English*]

**Dr. Philpott:** Thank you. To answer that best, I will give you an example of a particular case in question.

You are absolutely right that there is a difference between end of life and reasonable foreseeability. I think you will agree with me that reasonable foreseeability is less rigid than legislation that might talk about end of life.

An example of a case would be the matter of amyotrophic lateral sclerosis. I am wearing a cornflower today to recognize ALS. From the time that that diagnosis is made, sadly, a person’s death is reasonably foreseeable. That is a case where that in and of itself would not qualify a person for medical assistance in dying according to our legislation because, as you know, there are a number of other criteria that have to be there: a person has to be in an advanced state of irreversible decline; they have to have grievous and irremediable suffering.

On the matter of whether or not their death is reasonably foreseeable on a diagnosis of ALS, I think few doctors would disagree that it is reasonably foreseeable, because it usually happens within a matter of months or years.

That is why we went with something that gave a bit more flexibility for providers to be able to say, “I can’t say this person will die in a month or six months or a year from now, but I know their death is reasonably foreseeable.” We believe that’s a fair way to be able to describe it. Any physician I have talked to has supported this as something that they understand.

**Senator Nancy Ruth:** Minister, thank you for being here. I was very excited during the election when Prime Minister Trudeau said that gender-based analysis would be done throughout the whole of government.

What GBA was done in your ministry on this bill, and what did it come up with? What did it say?

**Dr. Philpott:** Thank you for the question. I would have to go back to look at the memorandum to see the exact details of this, but you may know that we have an outstanding Minister of Status

[ Dr. Philpott ]

of Women who is very hard on us as we draft legislation and address matters in cabinet to make sure that a full gender-based analysis is addressed. You are absolutely right that this is something where there may be different vulnerabilities according to people’s gender. That needs to be taken into consideration.

• (1710)

If you would like the exact details of the analysis, I would be happy to provide them to you.

**Senator Nancy Ruth:** I would. It is also my dream, minister — and you can convey this to the Minister of the Status of Women — that every piece of legislation tabled in this chamber and yours will be also tabled with the GBA. We have no means to get the transparency of this promise, so I would like you to do that. Would you commit to suggesting that to your cabinet colleagues?

**Dr. Philpott:** I will.

**Senator Nancy Ruth:** Thank you.

I also believe if GBA was done rigorously on this issue —

**The Chair:** Senator, would you stay on track?

**Senator Nancy Ruth:** I am.

I also believe if GBA were done on this issue, it would lead to the necessity of advance consent. Madam Justice Lynn Smith, of the trial division in the *Carter* decision, called medically assisted dying this ultimately personal and fundamental choice. Bill C-14 falls short of this standard because C-14’s overarching failure is that it does not trust us — it does not trust Canadians — to make the best choices for ourselves.

You indicated a few minutes ago that the plaintiffs in *Carter* were, in fact, two women. The facts are that women are more likely to be the caregivers, paid or unpaid. They see their parents out, their in-laws, their husbands and then their friends, and then they are stuck in some institution in front of the television, eating pap and they are dependent on the effect of systemic disadvantage, be it in wages, pensions or other issues in which women suffer in this country. Would you agree with that analysis, minister?

**Dr. Philpott:** I certainly agree that women currently share the greatest burden as caregivers in the country, but not, I think, all across the board; I can certainly tell you many stories of outstanding men who are caregivers, but I hear you.

**Senator Nancy Ruth:** Good, because you know we live longer. Anyway, this is primarily women’s labour, whether it is paid or unpaid.

Given the promise of Her Honour Justice Lynn Smith that there should be personal choice, I have heard your comments about the Netherlands on advance care. But they say in Oregon there seems to be some mental relief, at least, if you can have that, even if it’s not implemented. That is why I keep raising this issue.

For me, that would have been part of your ministry’s gender-based analysis and it would be part of solving this. I am concerned that only one of the four mandatory elements in your

prescription in this bill is the subjective one, which was the test in the original trial division in *Carter*.

Do you have any comments on that?

**Dr. Philpott:** I would have to look at exactly which part you are referring to.

On the matter of advance requests, I hope I have made myself clear that it is something we definitely need to consider, that there is an absolute openness to exploring that and making sure it is done appropriately.

I would like to specify for you the challenges around that for both families and for health care providers, not just in advance requests for medical assistance in dying, but even in terms of the kinds of requests and decisions that caregivers and doctors have to make when the advance request is simply around something like the withdrawal of life support, which is a bit of a different situation.

It can be extremely difficult to know that that is the wish of that person at that time, and it puts a huge burden on providers. I'm not saying it doesn't mean we don't go there, but I'm saying to you that the interpretation of advance directives is complex. It is just as complex for the caregivers you are referring to — often women caregivers — to make that final decision as to whether or not this is the day, this is exactly what that person meant when they wrote that advance directive two years ago and these are the circumstances under which they would want me to take the decision today to provide assistance in dying.

I would argue if I may, with all due respect, that it is the women caregivers who you refer to who will, in fact, often find themselves in challenging situations of making those decisions on behalf of someone who has sadly lost the capacity to make a decision for themselves.

**Senator Nancy Ruth:** I look forward to some movement before the five-year review, minister. Thank you.

**Dr. Philpott:** Thank you.

**Senator Eggleton:** Madam Minister, you have pleaded with us also on the question of time. We know that June 6 is just next Monday. That is, indeed, a big challenge.

I think we should have a bill put in place, though it may be very difficult to do it by that point in time.

Let me also ask you about something else. Twenty-eight years ago, the Criminal Code provision on abortion was struck down by the court. The government of the day subsequently attempted another bill, but when it came to the Senate, the bill actually lost on a tie vote. To this day, 28 years later, we do not have a Criminal Code provision on abortion, yet the sky has not fallen.

We have the colleges of physicians and surgeons and the provinces who have stepped in to set regulations and guidance and all of this. I recognize it is not quite as even across all the provinces but, again, as I say, the sky hasn't fallen.

Wouldn't it be better to get this right than to get it fast?

**Dr. Philpott:** That's an excellent question and one I have heard before. I must say I am heartened by your optimism that there is a possibility that this could come to pass by June 6. I would consider that a small miracle, but I would be absolutely delighted. It would be outstanding, and on behalf of many Canadians, it would make them very happy.

Having said that, obviously the comparison to the matter of abortion is one that has been made frequently. You have already acknowledged, yourself, that one of the challenges around the lack of legislation at the federal level on abortion is the reality that it did cause access issues. There has been movement on that, even very recently, in the last number of months, in Prince Edward Island, for example. Abortion access has been patchy across the country. I don't think anyone will deny that, and it is in part because of the challenges that it faced in the past.

I had my staff today draw up a list for me of the different guidelines that are currently in place across the regulatory bodies in the provinces in this country. I would be happy to share the document with you. It is a crazy patchwork. With total respects for those regulatory bodies, their ideas of what the safeguards should be are very different across the country.

That doesn't mean it's impossible, but, for instance, the age of consent is different: In some it is 18, and in some mature minors are defined differently. The waiting periods are different, sometimes absent one witness or two witnesses. Requirements for reporting are rarely there and how many physicians have to be there.

The only thing they are consistent on is that none of them allow for advance requests. Every other safeguard exemption criterion has differences across its jurisdiction. This is a less than ideal situation.

When I met with the Ministers of Health in January, we agreed that we need to have consistency across the country. There needs to be clarification, as our bill requires, about a residency requirement that a person has to be eligible for publicly funded insurance to participate.

This is one of the arguments for legislation. I think a stronger argument for it is the fact that providers are not going to have the legal confidence to proceed. The patchwork of access, in spite of the wonderful work of the provinces and territories and their regulatory bodies, is a much less than ideal circumstance.

**Senator Eggleton:** Thank you.

**Senator Meredith:** Minister, welcome. I applaud your enthusiasm that we will meet this deadline for June 6 —

**An Hon. Senator:** June 10.

**Senator Meredith:** Okay, I am being corrected.

I agree with my colleague Senator Jaffer with respect to the fact that this is a bill that we are all deliberating. It is one of conscience. As a person of faith, I believe that God gives life and he is the only one that should take it, a view that is shared by the EFC and many faith groups across this country who have made

submissions to the committee with respect to conscience and how we ought to take time to deliberate and put a law on the books that benefits all Canadians.

• (1720)

I am of the opinion that we are going at warp speed. We need to take time because this is about people's lives. This is about the vulnerable. This is about our seniors in this country. This is about the potential for abuse for those individuals who will engage in assisted death.

Minister, I believe that it is time that we as a Senate do the right thing, make the right decision, not hastily. We need to have more time on this.

That being said, it is before us and we are deliberating it. You are here before us and we welcome you.

One of the questions that I had for your colleague was with respect to court challenges — constitutional challenges. In your opinion, what are the potential constitutional challenges or court challenges that will come before you if this legislation is passed? And if it's struck down, what is your opinion on that?

**Dr. Philpott:** Thank you. I will try to respond to each of those things quickly.

Honourable senator, I respect your perspective as a person of faith and that the concept of assistance in dying is troubling for you. I understand that; I have heard that from others. As you know, we are here to represent all Canadians and their diverse perspectives and faiths. That can be a real challenge at times.

However, as you know, this bill has been supported by many faith leaders who have recognized that legislation is necessary because it provides the safeguards for the vulnerable. Without the context of those safeguards in the legislation, people might meet premature death without proper safeguards.

The matter of conscience rights I have heard repeatedly. I hope I have addressed your concerns in my previous remarks about that being provincial jurisdiction and an absolutely fundamental understanding that the conscience rights of providers have to be respected.

On the matter of court challenges, I think that is an interesting question because, again, absent legislation or even with legislation, there may be court challenges. I think the courts themselves would agree that this kind of fundamental social policy that is literally life and death is best put in place by a thoughtful process of policy development and not on the basis of case-by-case legal challenges, which would not be the ideal way to put a framework in place.

Being able to think about this, as we are now, on behalf of 36 million Canadians is the best. It is my hope that we will not have a long period of a void where, in fact, those court challenges will come rather rapidly, I suspect.

**Senator Meredith:** Minister, you talked about the court challenges and professional conscience. However, for those individuals who do engage in assisted dying, are you concerned about any abuse should we pass this legislation?

[ Senator Meredith ]

**Dr. Philpott:** Do you mean on behalf of providers or patients?

**Senator Meredith:** On behalf of providers.

**Dr. Philpott:** The safeguards are written to ensure that abuse will not occur. As I say, this is done on the basis of experience in other jurisdictions that have adequately found that possible. I will tell you that I spoke today to the Canadian Medical Protective Association, which is responsible for legal representation of Canadians, and they say that what they need to be able to give advice to make sure that physicians abide by the legislation is a law.

**Senator Meredith:** How will you ensure that people with disabilities are not coerced into choosing medically assisted death by others who are unwilling to meet caregiver needs? My colleague opposite raised the issue of palliative care. We know that the state of individuals and their mental capacity comes into play. What kind of investments will be made with respect to palliative care by the government? I believe that we need to look at those kinds of investments, rather than assisting individuals in dealing with their difficult or painful or irremediable situation, by allowing family members to have the resources that are needed to help them at the end of their lives.

**Dr. Philpott:** You may know that we received a letter yesterday that was written to us on behalf of 36 organizations largely representing vulnerable populations, including the Canadian Association for Community Living. Some of their representatives were actually here in Ottawa yesterday. That letter on behalf of those 36 organizations was in support of our legislation because they believe that this legislation is necessary for their protection. I was pleased to see that. We have certainly heard that repeatedly.

Again, on the matter of palliative care, I am absolutely supportive of it. Our government is prepared to make major investments that will help our provincial and territorial colleagues deliver palliative care more effectively.

You are absolutely right. It would sadden all of us to think that people would choose medical assistance in dying simply because they didn't have access to other forms of comfort in the latter stages of their life and as they were facing suffering.

We need to do better. I hope that we will find ways to work together to do so.

**Senator Meredith:** Thank you.

**Senator Enverga:** I want to thank the honourable minister for appearing here before us.

Many of us are concerned about the lack of end-of-life and palliative care in this country and the uneven access that Canadians have to such care based on income levels, province and region of residence. We are told by some that this is not the issue before us. I, among others, disagree.

This legislation is a possible sign of the government giving up on those options. It is a sign that those who are not given the option of care do not make a choice when deciding to access assisted dying, and other issues.

Except for vague allusions to working with provincial governments for improvement and other non-committal niceties, how does the government intend to ensure that all those who access assisted dying have been offered palliative or end-of-life care?

Minister, you said you are deeply committed to high-quality palliative care. I believe this is preferable to the state helping people to die through this bill.

What assurances do we have that provinces will not forego developing high-quality care because of budget pressures and instead use this bill to save money by making it legal to kill people?

**Dr. Philpott:** Well, again, you have raised this matter, which we have heard repeatedly in the other chamber and have heard from a number of places, namely, that the issue of palliative care is very much at hand.

I have no reason to believe that the implementation of this legislation would ever be perceived as an excuse not to provide high-quality palliative care. On the contrary, I believe this has opened up a conversation for us as Canadians about what we want a good death to be like, how we want to be cared for.

I hope that you have, as most of us have, examples of people who have had access to excellent palliative care, and it is outstanding. When a person has the option to die with peace and dignity, hopefully, often at home or in a hospice, this is certainly the kind of death that I would choose and I suspect many of you would choose as well to have that kind of care.

I think the mechanisms that we will be able to undertake are partly through the investments that we make as a federal government that will support our provinces, but as you may have heard me say, it takes more than money to deliver great care. Some of it requires systemic transformation within the health system. I am a primary care doctor. I hugely believe in the value of primary care, and there is a tonne of evidence that you are probably aware of that the most expensive place to deliver care to people at the end of life is in a hospital, and that as close as a person can get to their home, the less expensive it is.

We need to find mechanisms to make sure that where that is being done well is much more widespread. There are great examples across this country of fantastic palliative care programs. I know some of them in my own community.

• (1730)

We need to find ways. We hope that through a health accord that I'm in the process of negotiating with my provincial and territorial counterparts, the injection of money that hopefully our provincial and territorial colleagues will agree to use to invest in palliative care will be a way for them to demonstrate to themselves, and to inject their systems with an ability to scale up these excellent models.

**Senator Enverga:** With regard to that, would you believe that the choice of physician-assisted death will be less costly than the prolonged treatment or palliative care? Would you believe that?

**Dr. Philpott:** I'm a little anxious about what the implications of that would be. Doctors and other providers, especially as they work with their patients, have a responsibility to do the right thing for their patients. I don't think that the decision as to whether a person would choose medical assistance in dying for any individual case would be made on the basis of whether it's the most cost-effective example. I would want to respect my colleagues and never imply that would be the case.

The reality is, though, as I say, that palliative care, to be delivered effectively and well in the home, is a cost-effective option, with the other option being delivering palliative care, for instance, in hospitals. That's why we need to make sure that we invest in home-based palliative care and hospice palliative care — not simply because it saves money, and I hope I didn't imply that in any way, but because that is the best option for people, and it is usually the option that people would prefer.

**Senator Enverga:** I understand there are a lot of chances that mistakes can happen, and when mistakes happen — how do we ensure that mistakes are not made that could cause a person to be mistakenly offered assisted dying, especially since the reporting is to take place after the fact? Isn't it supposed to be the other way around — that the reporting should be before the assisted dying, not after?

**Dr. Philpott:** The reporting mechanism is largely an opportunity to be able to gather data to understand the process and what's happening across the country. The mechanism to make sure that mistakes don't happen is the very safeguards that you see written in this bill. They are safeguards that, in some cases, people have asked us to remove, but they are safeguards that we believe are important to make sure that there is, for instance, if possible, a waiting period; there is the opportunity for that waiting period or period of reflection to be shortened in the case where death is becoming imminent.

But all of those safeguards are there to make sure that mistakes aren't made.

There are, as you know, eligibility criteria.

At the moment, some of the most vulnerable people that you may be thinking about, for instance, are people where mental illness alone is the reason why they've asked for assistance in dying. That's a very complex issue that I've heard a lot about, and one of the reasons why we chose not to explicitly include that group of people in this is because it's going to be very important that, if one were to consider that, extraordinary safeguards would need to be put in place.

**Senator Enverga:** But would it be ideal? In a good world, would it be ideal that the report be done before to prevent the mistake? What do they call it — more safeguards and a pound of cure.

**Dr. Philpott:** Again, the reality is that these safeguards are written. There are also guidelines that will be written — educational guidelines, regulatory guidelines, mechanisms by which the request needs to be made. I know that, as we speak, regulatory bodies are making it very clear to health care providers that there are a number of steps that have to take place.

Every day in this country, doctors make life-and-death decisions with their patients. Every day we trust them with our lives, and I have nothing but the greatest respect for my health care colleagues across this country. We operate in this country on the basis of trust — that those health care providers, among the most trusted people in our country, make those decisions on our best behalf. It's extremely rare that they don't do so, and there are mechanisms in place to address that.

I have no reason to believe that in the case of medical assistance in dying we cannot proceed with an assumption that decisions will be made in the best interests of patients, as they literally always are.

**An Hon. Senator:** Hear, hear.

**Senator Enverga:** To give you an example, if I may, my mother-in-law had been sick and was on life support for a long time. Regularly, I would say, my wife was being asked by an expert out there who kept telling her, it's better to take her off life support because she has no quality of life. Those are examples that we fear might happen here.

People or physicians might think that it's better for a certain patient to pass away, because the quality of life is not there, which is not true, because after a couple of months in the ICU, my mother-in-law was able to survive and flourish and live a longer life.

Those are the things that we want to ensure never happen. How can we ensure that?

**Dr. Philpott:** Let me first of all say that I'm sorry to hear of the suffering that your mother-in-law had to undergo. I will say, simply in response to that, that the matter of medical assistance in dying is an act of commission. It's a little bit different than the act of withdrawing life support, and those are actually very different circumstances.

**Senator Enverga:** I understand, but —

**The Chair:** Thank you, minister. Senator, your time is up.

**Senator Joyal:** Madam Minister, I'm here at the end of the rope.

With your colleague this afternoon, we had the opportunity to raise the constitutional obstacle that the concept of natural death that might be reasonably foreseeable, raised in relation to the Charter and, of course, the committed impact of the constitutionality of the bill.

I will not make those arguments to you; it's not your portfolio. But this preoccupation that exists on both sides of this chamber in relation to this concept has legal implications that we have canvassed this afternoon. It also has medical implications. So the concept is questionable on both accounts, on the legal aspect of it and on the medical aspect of it.

I am not a doctor, but I would want to quote the Quebec Minister of Health, your colleague. He's a doctor, as you know, and he is a person who was directly involved in sponsoring the Quebec bill that you claim has been a pathway for this bill.

But the Quebec Minister of Health, Dr. Barrette, is rather adamant in relation to the medical concept of natural death that may be reasonably foreseeable. Let me quote him to you. I'll translate it freely in English, if you want. He said, "The worst element of this bill, Bill C-14, is the natural death that should be reasonably foreseeable. It can't be, in my own opinion. This is something that is inapplicable. This concept is medically impracticable. Reasonably foreseeable death is a notion that doesn't exist. It is a notion that, for me, has no medical meaning. Any situation where the context of the consideration made by a doctor is not clear, it puts that doctor at risk."

So in other words, there are two aspects in the comments of Dr. Barrette. Believe me, he didn't make that up at two o'clock in the night, with friends. That was made consciously and openly for everyone to read — and for us to read, because we're here with the bill, and we have to take a decision with this bill, especially in relation to that very concept of the bill.

• (1740)

You will understand that you, as Minister of Health, come to us and contend that this notion of reasonably foreseeable natural death is applicable, and we have another Minister of Health who has long-standing experience in implementing legislation of medical assistance in dying who tells us that he has the opposite opinion.

We have to take a stand here on the basis of legal arguments that question the constitutionality of the concept, and we also have a comparable Minister of Health who is responsible for the system in Quebec who tells us at the same time that this isn't practicable.

So you will understand how we wrestle to accept that concept in this bill without trying to amend it to remove that legal and professional uncertainty.

**Dr. Philpott:** Thank you. I'm very happy to respond to that, and of course I have the greatest respect for my colleague, Minister Barrette, and I look forward to further conversations with him.

It would be fair to say that the concept of natural death being reasonably foreseeable was a choice that was made to provide deference to the professional judgment of health care providers and their ability to interpret the proximity of death.

You're absolutely right; we could have chosen other language. We could have chosen language like Quebec did around end of life. We could have explicitly said that the health care provider will, in their judgment, say that a person is 6 or 12 months from the end of life. No matter what the case, professional judgment is required; and no matter what the case, that doctor or nurse practitioner would be subject to being able to document their professional judgment. Health care providers are very much in the practice of a tremendous amount of documentation to say that.

My colleague talked about looking back at these cases in retrospect. Just as easily as a lawyer could say to a doctor, "On what basis did you make the decision that this person's natural



death was reasonably foreseeable?" the doctor would be expected to say, "On this basis, this is why I believed that this person's death was reasonably foreseeable."

You can look at the *Carter* case and each of those cases, and I think most health care professionals would agree that in the case of the two women involved, their natural death was reasonably foreseeable.

But to put in a timeline to say, "Why did you, doctor, believe this person was at the end of their life?" or "Why did you, doctor, believe that this person was going to die within six months? What is your exact evidence? Is there a blood test you did on this person that could say yes or no?"

Regardless of how you describe that, professional judgment in all of these criteria is required. Those doctors are under obligation to have documentation and evidence as to why, in their professional judgment, people met the criteria.

I will say that this language has not been something which has presented a challenge to the group that studied doctors' opinions on this to the largest extent of any organization in this country.

**Senator Joyal:** Well, Dr. Barrette is not the only one who has a problem with this. The Canadian Association of Advanced Practice Nurses, who are allowed to, as you know, give medical assistance in dying, testified in front of us on May 12, and here is what they said in relation to natural death that may be reasonably foreseeable:

This is not an acceptable term within health care practice and documentation.

And:

... "reasonably foreseeable" is not measurable . . . .

And then some days before, the Canadian Nurses Association, on May 5, said that not only is this terminology subjective in its interpretation, it could potentially restrict access to MAID for individuals with intolerable suffering as those with a grievous and irremediable condition may not also have a reasonably foreseeable death.

And my colleague Senator Cowan has raised the concern of the Federation of Medical Regulatory Authorities of Canada. I'm not a doctor, but if I were to have a lawyers' federation of regulatory authorities of Canada, they speak on the basis of very strict professional expertise, and here is what Dr. Grant said on May 10:

... our concern is that this is language that doctors will not be comfortable with, language that neither patients nor doctors nor lawyers really understand, and I don't really quite know how to regulate or implement it.

And:

... in the absence of a clear language, physicians will be reluctant to act.

As I explained earlier, we have a legal problem, and I understand from the expert testimony we heard that we also have a medical problem in interpreting that concept. My

suggestion is that, in that context, where on both sides we have a problem, would it not be better to remove that section from the bill and come back to what the Supreme Court has stated in the four essential criteria? Then we would not risk any mistakes, either legally or medically.

**Dr. Philpott:** Thank you for that question. I will say to you that yes, you folks who were part of the Senate committee and many

**Senator Joyal:** I'm a senator, Madam Minister; I'm not a "folk." I'm sorry.

**Dr. Philpott:** My apologies, honourable senator.

**The Chair:** Senator, your time is up. Thank you, minister.

**Senator Wallace:** Minister, Bill C-14 provides, as you well know, certain criteria that would have to be met by a person who is seeking medical assistance in dying. I want to comment on two of those criteria. One is that the person would have to be found capable of making decisions with respect to their health. In other words, they would have to have sufficient mental capacity at this very trying time to make the decision that they are about to make. As well, they're required to give informed consent to receive medical assistance in dying.

On this issue of informed consent, as you well know, that was commented on by the Supreme Court in the *Carter* case, and in that case the court referred to properly qualified and experienced physicians applying the informed consent standard to patients who seek assistance in dying. But the court added a caution that physicians should ensure that patients are properly informed of, number one, their diagnosis; number two, their prognosis; and, number three, the range of available options for medical care, including palliative care interventions aimed at reducing pain and avoiding loss of personal dignity.

That's a heavy responsibility and is obviously geared toward the issue of hope. If a person seeking this assistance in dying has no hope and this is the only option, then that's where they wish to go. However, if there potentially was a cure or a medical means of alleviating their pain and suffering to make life endurable, then they may wish to do that.

The point is that that is a heavy responsibility, and it takes highly qualified medical people to make those determinations and to provide that advice. Under the bill, those assessments are the responsibility of medical practitioners — doctors, physicians — but it also includes nurse practitioners.

I have to be careful with this question; my wife was a nurse at one time. On a matter of this importance, life and death importance, and being able to make those determinations and to be current with the current state of medical assessment of medications that can relieve pain and suffering, it strikes me that it is beyond the professional capability of nurse practitioners. The question I have for you is: Can we feel comfortable with that? Should it be, as seemed to be stated by the Supreme Court, medical doctors who provide that final life advice?

• (1750)

**Dr. Philpott:** I'm very pleased to respond to that question. In the matter of nurses and nurse practitioners, as you know there are several reasons they were included within this proposed legislation. One reason, of course, is the fact that in Canada we face the challenging reality sometimes with the delivery of care in places where there are no doctors and nurse practitioners and nurses provide the large amount of care. That's one reality we have to take into consideration and we have a responsibility to do so.

In terms of nurse practitioners being properly prepared, educated and regulated to deliver medical assistance in dying, this is a topic that I discussed today, actually, with the Canadian Nurses Association. I've had previous conversations with them about this as well, and I've talked to my officials about this. The regulation of nurses, as other health professionals, is somewhat different from province to province across the country. Nurses have a responsibility when they deliver care to make sure that they are appropriately educated and that the care they are delivering is within their scope of practice. If there's any body of health care professionals that understands the concept of "scope of practice," I would argue that nurses and nurse practitioners are among the best.

That means they ask themselves, "Is this particular act that I'm being asked to do something that I have been appropriately educated about? Is this a new treatment?" New treatments come up all the time, perhaps an injection of a shoulder or something in a new fashion, the nurse is responsible, as other health care providers are, to make sure that they've been properly educated on how to do that. They also have to make sure that it is regulated within their scope of practice. They have not, for instance, been regulated to provide brain surgery.

Starting the day after this bill is implemented will every nurse or nurse practitioner in this country be appropriately educated, resourced and regulated to deliver medical assistance in dying? No. Once a bill is in place, and a tremendous amount of work has already been done, you can be sure that the continuing medical education bodies will do their job with education. Those nurses will have the responsibility to make sure that they understand what they're doing, that it meets the criteria within the jurisdiction where they're practicing, and that it's been clearly understood that it's within their scope.

**Senator Wallace:** There's no question in my mind that they well could be capable of administering whatever medication and substance — no question about that. I'm talking about whether somebody has the mental capacity at the time they make this decision to be in a proper state of mind. That's a psychological issue. It would seem to me that it's a physician's issue. Even some physicians might have difficulty with that, as opposed to a nurse practitioner.

It's not the administration of it because they are the ones who will give the advice and provide the opinion required under the act that could well result in the death of this individual. I would think that nurse practitioners, in certain technical ways, are not as qualified as doctors, for obvious reasons. There could well be many circumstances where doctors should be providing that advice and that assessment.

**Dr. Philpott:** I apologize that I didn't exactly answer your previous question. I perhaps misunderstood. The matter that you're talking about is capacity and the ability to give informed consent. On that matter I would say that nurses understand the concept of capacity and of informed consent. They are equipped with mechanisms by which they often may be capable of making that decision and confirming capacity.

For nurses, nurse practitioners and doctors, more nuanced situations arise where they don't feel that they have the tools to clarify capacity. There are people who are professionally trained assessors of capacity. Just like all kinds of other decisions that health care providers make, they have the responsibility to feel that when they are not equipped appropriately to make a decision they refer that decision to someone else. One could see that if a nurse or nurse practitioner did not feel that they could absolutely affirm a person's capacity they would have the responsibility to refer to an alternate practitioner within their profession or perhaps an outside person to clarify that capacity.

[Translation]

**Senator Dagenais:** Minister, my first question has to do with an aspect of the bill that has not been debated much. There are around 4,000 suicides a year in Canada, which I think is unacceptable and tragic.

I was particularly proud when the previous government passed Bill C-300 in December 2012 to create a national framework for suicide prevention. However, I must admit that I was stunned to see that this bill leaves the door wide open to assisted suicide. I would say that setting safeguards for a form of suicide may essentially be trivializing it.

Minister, my question is very simple. Why was assisted suicide included in the bill, since there was no social, political or legal pressure to adopt this option?

[English]

**Dr. Philpott:** I will direct my response to your specific question and not your interesting preamble. As you know, there is a range of ways that medical assistance in dying can be delivered. At times it's actually a little difficult to draw a line in the sand between what's sometimes described as "voluntary euthanasia," which means someone else is delivering the assistance versus the person taking the medication themselves. It was widely supported, for example by the Special Joint Committee, not to draw the line at voluntary euthanasia and not to allow a person to be able to take the medications themselves at home because in many cases that is the choice of that individual. It's my understanding that in many jurisdictions allowing the option to self-administer is not the more common option and that the other option is much more preferred. This was a recommendation that the joint committee gave us and, in the estimation of my colleagues as we drafted the proposed legislation, we believe this was a good recommendation on the basis of all the information we had.

[Translation]

**Senator Dagenais:** On another note, surely some independent legal opinions on the constitutionality of the bill were considered before this bill was drafted.

Would you have any objection to tabling a copy of these legal opinions so that we can consult them? They would be useful to us and would help us make a decision about Bill C-14.

[English]

**Dr. Philpott:** The response to that lies largely within the jurisdiction of my colleague, the Minister of Justice, who took this portion of it upon herself in large part. I hope that you are aware that a document was tabled by her a day or two after Bill C-14 was tabled, I believe, which went through the process of confirming that the bill met, for instance, the criteria of the *Carter* decision. It's actually a document that many of my colleagues in the other place found very helpful. Of course, that is available to you and I can certainly make sure you get it.

If there are other more specific documents that you would like to receive that the Minister of Justice may have at her disposal, I'd be happy to pass on those requests.

**Senator Omidvar:** Minister, my question follows the line explored by many other senators. I put my question to you not so much as to waste your time or our time but to underline what is clearly emerging as a shared concern in this chamber. The Attorney General, in her presentation before your arrival, used the word "flexibility" a number of times to justify the use of certain language in the bill. But, as we well know and as Senator Joyal has pointed out, flexibility means ambiguity and differing interpretations, both in the legal context and in the medical context.

• (1800)

We heard, in the Standing Senate Committee on Legal and Constitutional Affairs, from Professor Jocelyn Downey from Dalhousie, who stated:

"Reasonably foreseeable" is impermissibly vague.

She went on to say:

The government's suggestion that "reasonably foreseeable" be interpreted as "in the not too distant future" or "not too remote" flies in the face of common usage, where it means predictability, not temporal proximity.

I am a common person, not a lawyer, so it speaks to me where it means "predictability" not "temporal proximity."

I fear, and I wonder if you fear — and I wonder if you are ready — that we can expect one challenge after another, with significant human, financial and societal costs, borne particularly by those who are suffering, who are making the most important decision of their life, which is to give up their life, and by the medical community which is surrounding them.

**Dr. Philpott:** Thank you for the question.

The first thing I would like to say is that — and perhaps I have already said this earlier — the reason that that was put in there was to further define some of the language in the *Carter* decision, such as the "grievous and irremediable" condition. I would argue with people who talk about the challenges around defining

whether reasonable foreseeability is helpful. Much less helpful would have been to say only that the person needs to meet the criteria of a grievous and irremediable condition, that that would be deemed to be inadequate and just as difficult, if not more difficult, to define without further clarification as to what the expectations were for a person to meet those criteria.

I had another point I was going to make, and it slipped my mind now.

**Senator Omidvar:** It is late in the day.

I think we all know that, if the bill is given Royal Assent as-is, there will be a number of challenges. I wonder if you can share with us how you think potential and probable court challenges based on this federal ambiguity will affect provincial laws currently in place or in the process of being developed.

**Dr. Philpott:** First of all, I will go back to my other point, which came back to me. That was that I wanted to help you understand, and I really appreciate the fact that you want to be absolutely confident about this. I recognize that there are challenges on a piece of legislation that is addressing such a complex issue.

In most cases where people will ask for medical assistance in dying, the likelihood of the proximity of death or the fact as to whether or not death is reasonably foreseeable is going to be quite clear. You can see that if you look at, for instance, the number of cases that have taken place even in Canada in the last six months.

In most cases, that foreseeability is very clear. I agree with you that there may be some situations or some particular contexts where it might be challenging. One of the advantages of this bill is that it requires a second health care professional to affirm that they agree. They also would be obliged to provide documentation as to why they made that decision themselves. I don't want you to think that, in every single case, there is going to be a whole lot of hand wringing. The majority of cases, I suspect, on the basis of previous experience in other jurisdictions, are going to be cases where someone has terminal cancer. They are in pain that is unable to be controlled. They know they are facing the end of life and they want to be able to die in peace and dignity. That will be the majority type of case. So I wanted to address that.

As to the matter of court challenges, I defer, in large part, to my colleague the Minister of Justice, who has more experience in this area, but I have certainly heard over and over again that people realize that, as with many types of legislation, people will always have the opportunity to go to the court and challenge the status of that legislation. I am hoping, in particular, that we don't see that in the very near future in the context of a legal void, partly because, if legislation is not in place in the very near future, that may be the only mechanism by which people are going to be able to access medical assistance in dying. I think that would be very unfortunate.

Whether we do, with your assistance and support, find a way for this legislation to proceed and, down the road a year, two years, five years from now, there are court challenges, that would not surprise me. That is the reality of life. There will be, for instance, 17-year-olds who wonder why they don't have access. That will not surprise me. But, as I say, my deep hope is that we will find a way to get legislation in place so that there are not

people right now who are in a situation where they would like access to medical assistance in dying next week or the week after and are going to be denied because their provider does not have the legal support that they need.

**Senator Tkachuk:** Minister, it is a little bit unusual, and somewhat unusual for government legislation, to include a preamble. In my experience, it is usually private member's bills or Senate public bills that include them. Can you tell me why the government decided to have a preamble in Bill C-14? What would be the significance of it? Perhaps, for the record, you could summarize it for us and your interpretation of that preamble.

**Dr. Philpott:** Thank you. You have a lot more experience, having looked at a lot more pieces of legislation than I have, I suspect.

I think the purpose of the preamble, in this case, was to lay out the principles that were taken into consideration, which I already outlined in my talk earlier today. It's important, I think, on something that is as fundamental and profound as this, for there to be some clarification, documentation of those considerations. Some of them, like the matter of the protection of conscience rights, were included as a preamble because it was sort of separate from the legal details on this and not necessarily within federal jurisdiction. However, there was a request, at committee stage, in the other chamber, to further clarify that within the legislation itself.

**Senator Tkachuk:** Just so that I am clear, because I am not exactly clear from what the Minister of Justice said, on the question of protection of health care workers who are conscientious objectors to this bill, are doctors obligated to refer, or can they just say, "I am not going to be a party to this."

**Dr. Philpott:** As you say, you will have — as you have read this — read the portions of it that clarify that there is nothing about this bill that obliges a particular health care practitioner to participate in medical assistance in dying.

The matter of referral is a matter that falls largely within the jurisdiction of provinces and territories to make appropriate regulations. Some of them have done so already, and their appropriate colleges have recommended that they would like them to make an appropriate transfer of care as necessary. We expect that those colleges will do so.

**Senator Tkachuk:** But by not making it clear in the legislation that health care workers are protected and are obligated to execute — that's a bad word, maybe — the objectives of the legislation or an institution, don't you cause the medical profession some confusion as to what their obligations are just by not saying anything at all? Don't you think it would have been better to clarify it so that it's clear that they are protected?

**Dr. Philpott:** It's not uncommon that patients are presented in front of health care providers and ask to have a particular type of care or a particular procedure that the doctor is not able to do. They are quite in the habit of transferring care to another person who may do that. We heard this issue of protecting the conscience rights of physicians who even find the concept of making a

referral difficult for them. I acknowledge that; we heard that. We have passed that message along to the appropriate bodies in charge of regulating that.

• (1810)

One of the things that we did offer to do — and it has been received with welcome — is to help facilitate as much as is within our responsibility.

**The Chair:** Minister, on behalf of all senators, thank you for joining us today to assist us with our work on the bill. I would also like to thank your officials.

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

**The Chair:** Honourable senators, is it agreed that I report to the Senate that the witnesses have been heard?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Honourable senators, the sitting of the Senate is resumed.

#### REPORT OF COMMITTEE OF THE WHOLE

**Hon. Nicole Eaton:** Honourable senators, the Committee of the Whole, authorized by the Senate to study the subject matter of C-14, now reports that it has heard from the witnesses pursuant to the order.

[*Translation*]

## ROUTINE PROCEEDINGS

### BUSINESS OF THE SENATE

#### COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**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 move:

That committees have the power to sit today even though the Senate may then be sitting and that rule 12-18(1) be suspended in relation thereto.

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

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** On debate.

**Senator Bellemare:** Honourable senators, since we will be having a relatively short sitting considering the debates we had

[ Dr. Philpott ]

today, I move that the committees scheduled to sit at 6:45 p.m. be authorized to do so.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

[*English*]

### AUDITOR GENERAL

#### ACCESS TO INFORMATION ACT AND PRIVACY ACT—2015-16 ANNUAL REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table, in both official languages, from the Office of the Auditor General of Canada, the 2015-16 Annual Report on the Access to Information Act and the Privacy Act.

[*Translation*]

### THE ESTIMATES, 2016-17

#### MAIN ESTIMATES—FIFTH REPORT OF NATIONAL FINANCE COMMITTEE TABLED

**Hon. Larry W. Smith:** Honourable senators, I have the honour to table, in both official languages, the fifth report of the Standing Senate Committee on National Finance on the expenditures set out in the Main Estimates for the fiscal year ending March 31, 2017.

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

[*English*]

#### BILL TO AMEND THE AIR CANADA PUBLIC PARTICIPATION ACT AND TO PROVIDE FOR CERTAIN OTHER MEASURES

##### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-10, An Act to amend the Air Canada Public Participation Act and to provide for certain other measures.

(Bill read first time.)

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

(On motion of Senator Bellemare, bill placed on the Orders of the Day for second reading two days hence.)

### BANKING, TRADE AND COMMERCE

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF ISSUES PERTAINING TO INTERNAL BARRIERS TO TRADE

**Hon. David Tkachuk:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order of the Senate adopted on Tuesday, February 16, 2016, the date for the final report of the Standing Senate Committee on Banking, Trade and Commerce in relation to its study of issues pertaining to internal barriers to trade be extended from June 10, 2016 to June 30, 2016.

### CANADIAN NATO PARLIAMENTARY ASSOCIATION

#### JOINT MEETING OF THE DEFENCE AND SECURITY, ECONOMICS AND SECURITY, AND POLITICAL COMMITTEES AND OFFICERS OF THE COMMITTEE ON THE CIVIL DIMENSION OF SECURITY AND THE SCIENCE AND TECHNOLOGY COMMITTEE, FEBRUARY 13-15, 2016—REPORT TABLED

Leave having been given to revert to Tabling of Reports from Interparliamentary Delegations:

**Hon. Joseph A. Day:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association respecting its participation at the Joint Meeting of the Defence and Security, Economics and Security, and Political Committees and Officers of the Committee on the Civil Dimension of Security and the Science and Technology Committee, held in Brussels, Belgium, from February 13 to 15, 2016.

#### DEFENCE AND SECURITY COMMITTEE MEETING, JANUARY 26-29, 2016—REPORT TABLED

**Hon. Joseph A. Day:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association respecting its participation at the Defence and Security Committee Meeting, held in Washington, D.C., and Miami, Florida, United States of America, from January 26 to 29, 2016.

• (1820)

### QUESTION PERIOD

#### DELAYED ANSWER TO ORAL QUESTION

**Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate):** Honourable senators, I have the honour to table, in the name of Senator Harder, in both official

languages, the answer to the oral question asked by the Honourable Senator Fraser on April 14, 2016, concerning the selection process for judges.

## JUSTICE

### SELECTION PROCESS FOR JUDGES

*(Response to question raised by the Honourable Joan Fraser on April 14, 2016)*

The Government recognizes the vacancy rate of judges in Canada and the urgency to fill those vacancies.

The Government is considering the full scope of the appointments process, and any potential changes will be examined in light of the Government's objectives to achieve transparency, accountability and diversity in the appointments process.

The Government will be carefully considering how best to achieve this goal, taking into account views of key stakeholders and interested Canadians in this regard. However, it is important to ensure that this is done in a considered way.

---

## ORDERS OF THE DAY

### FINANCIAL ADMINISTRATION ACT

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

On the Order:

Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Day, for the second reading of Bill S-204, An Act to amend the Financial Administration Act (borrowing of money).

**Hon. Joseph A. Day:** Honourable senators, this is a matter on which I intend to speak, but with all of the other activities that have been going on, I haven't had a chance to finalize my research. I would therefore request that this matter be adjourned in my name for the balance of my time.

(On motion of Senator Day, debate adjourned..)

### CONSTITUTION ACT, 1867

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

On the Order:

Resuming debate on the motion of the Honourable Senator Patterson, seconded by the Honourable Senator Enverga, for the second reading of Bill S-221, An Act to

amend the Constitution Act, 1867 (Property qualifications of Senators).

**Hon. Joan Fraser (Deputy Leader of the Senate Liberals):** Colleagues, this bill concerns an important matter which is, indeed, of importance to each of us. I am working on my notes and I intend to speak next week or, at the very latest, the week after that.

In the meantime, I move the adjournment of the debate for the balance of my time.

(On motion of Senator Fraser, debate adjourned.)

### ENDING THE CAPTIVITY OF WHALES AND DOLPHINS BILL

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

On the Order:

Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Dawson, for the second reading of Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins).

**Hon. Larry W. Campbell:** Honourable senators, in the immortal words of Senator Baker, I will be brief. I rise to speak to Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins). I want to thank the sponsor of this bill, Senator Moore, for his patience.

I took the adjournment in my name from Senator Plett. I promised him I would speak at the first chance, and here I am.

I am unable to support this proposed legislation. I would invite you to review the comments made by Senator Plett. I echo his thoughts regarding the constitutionality of this bill and the lack of scientific facts to support this bill.

I confess that I am not well-versed in the operations at MarineLand in Niagara Falls. I am, however, very familiar with the operations of the Vancouver Aquarium, the second facility in Canada that has cetaceans in captivity. The aquarium is a member of Canada's Accredited Zoos and Aquariums, or CAZA. The main objectives of CAZA are stimulating public interest in nature and conservation, conducting conservation-oriented research, and advancing the sciences of animal care and management. To do that, each CAZA institution has a mandate to develop self-sustaining populations of captive species to the degree it is possible.

With regard to the keeping of cetaceans, CAZA recognizes there are emotional and philosophical arguments about housing dolphins, porpoises and whales in zoological parks and aquariums. I agree with CAZA in the belief that with all animals, including cetaceans, the value that seeing the living animal brings to the process of engagement, awareness, learning and motivation far outweighs the negative arguments.

In fact, it is through the public displays of cetaceans and the educational thrust of our zoological parks and aquariums that public concern and appreciation for the plight of cetaceans and their habitat has grown.

Honourable senators, I live on Galiano Island, which is part of the Southern Gulf Islands in the Salish Sea. This sea is home to killer whales. I vividly remember when it was thought that this species would become extinct. The Vancouver Aquarium and other like-minded organizations, as well as private citizens, took up the call. Important studies were conducted to determine the ecological and environmental challenges that caused the decline.

Increased shipping along the coast, noise, contaminants in the water, global warming and how whales communicate have all been studied. As a result, our pod is growing in size. I realize also that in the wild there are high mortality rates, as evidenced by the calves that we found washed up this summer.

Like most people, I do not support the capture of cetaceans from the wild. I accept that orcas are highly intelligent creatures and should be allowed to flourish in the wild. That being said, it would be unjust to not allow those already in captivity to live out their lives alone. These animals should be allowed to share the space and breed if they are so inclined.

On the West Coast, we believe in procreation and are big fans of this activity. Animals born in captivity can be viewed, studied and admired. It makes no sense whatsoever to shut off this line of science. Further, it has been through captive breeding that we have helped species recover from disastrous human decisions.

• (1830)

We know that critical research findings have come from the studies of dolphins and related species in managed care environments, which have provided the vast majority of what is known about their perception, psychology and cognition. This includes both basic facts about these animals, for example, echolocation and how it works, diving physiology, energetics, gestation period, hearing range, signature whistles and so forth, and applied information, such as how they react to environmental stressors and how to diagnose and treat their diseases.

The benefits of such research extend well beyond the animals in zoological facilities. The interpretation of data from field studies is directly informed by what we have learned about the cognition and physiology of these animals in managed care settings. Moreover, because science is inherently a collaborative endeavour, research findings from these animals contribute to our collective understanding across the animal kingdom. Finally, research in managed care settings impacts conservation efforts by providing the baseline information necessary to inform conservation plans and practices, for instance, typical respiration rates, metabolic rates, gestation length, hearing range and thresholds; documenting physiological and behavioural responses to environmental stressors, such as sound and contaminants to inform population managers; and developing and testing techniques and tools for assessing animals in the field.

The advances that have come from this research in marine mammal facilities could not have come from studies of animals in the wild. Field studies are crucial; however, many research questions are unsuited to discovery at a distance. Studies of pregnancy, birth, and fine-scale calf development require the type

of close and consistent observation that is only possible in zoological settings.

The hypothesis testing required for questions about cognition, perception and physiology requires the ability to present animals with specific situations and challenges utilizing the necessary controls, consistency and repetition that are impossible to achieve in the wild. Indeed, as with research in any discipline, a comprehensive understanding of these animals requires a combination of both in-situ and ex-situ studies, studies based in the wild and in zoological settings.

This idea is neither new nor specific to marine animals, but it is critical to the way scientific discovery works.

Honourable senators, I believe this bill is an answer looking for a question. I look forward to this bill getting a fulsome study at committee, and it is my hope that after said study the committee will recommend making amendments to take out sections dealing with the activities of whales in captivity.

I thank you for your attention.

**The Hon. the Speaker:** It was moved by Honourable Senator Tannas, seconded by the Honourable Senator Maltais, that further debate be adjourned until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Agreed.

**Senator Moore:** On division. It's only been since January.

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

## THE SENATE

MOTION TO RESOLVE THAT AN AMENDMENT TO THE REAL PROPERTY QUALIFICATIONS OF SENATORS IN THE *CONSTITUTION ACT, 1867* BE AUTHORIZED TO BE MADE BY PROCLAMATION ISSUED BY THE GOVERNOR GENERAL—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Patterson, seconded by the Honourable Senator Runciman:

Whereas the Senate provides representation for groups that are often underrepresented in Parliament, such as Aboriginal peoples, visible minorities and women;

Whereas paragraph (3) of section 23 of the *Constitution Act, 1867* requires that, in order to be qualified for appointment to and to maintain a place in the Senate, a person must own land with a net worth of at least four thousand dollars in the province for which he or she is appointed;

Whereas a person's personal circumstances or the availability of real property in a particular location may prevent him or her from owning the required property;

Whereas appointment to the Senate should not be restricted to those who own real property of a minimum net worth;

Whereas the existing real property qualification is inconsistent with the democratic values of modern Canadian society and is no longer an appropriate or relevant measure of the fitness of a person to serve in the Senate;

Whereas, in the case of Quebec, each of the twenty-four Senators representing the province must be appointed for and must have either their real property qualification in or be resident of a specified Electoral Division;

Whereas an amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies;

Whereas the Supreme Court of Canada has determined that a full repeal of paragraph (3) of section 23 of the *Constitution Act, 1867*, respecting the real property qualification of Senators, would require a resolution of the Quebec National Assembly pursuant to section 43 of the *Constitution Act, 1982*;

Now, therefore, the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the Schedule hereto.

#### SCHEDULE

#### AMENDMENT TO THE CONSTITUTION OF CANADA

1. (1) Paragraph (3) of section 23 of the *Constitution Act, 1867* is repealed.

(2) Section 23 of the Act is amended by replacing the semi-colon at the end of paragraph (5) with a period and by repealing paragraph (6).

2. The Declaration of Qualification set out in The Fifth Schedule to the Act is replaced by the following:

I, *A.B.*, do declare and testify that I am by law duly qualified to be appointed a member of the Senate of Canada.

3. This Amendment may be cited as the *Constitution Amendment, [year of proclamation] (Real property qualification of Senators)*.

**Hon. Joan Fraser (Deputy Leader of the Senate Liberals):** Honourable senators, this is sort of a matched set with Senator Patterson's bill, to which I referred earlier, and in this case, as in the case of that bill, I plan to speak by the end of the week after next at the latest. Meanwhile, I ask for the adjournment for the balance of my time.

(On motion of Senator Fraser, debate adjourned.)

[*Translation*]

#### BANKING, TRADE AND COMMERCE

#### MOTION TO AUTHORIZE COMMITTEE TO STUDY EXPORT PERFORMANCE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Day:

That the Standing Committee on Banking, Trade and Commerce, when and if it is formed, be authorized to examine and report on Canada's export performance as compared to international best practices in order to provide recommendations to improve Canada's current export performance, the worst in 30 years according to the OECD;

That the committee make a preliminary report on the current export performance to the Senate no later than April 14, 2016; and

That the committee make to the Senate a final report on the implementation of an integrated policy for all partners to improve Canadian exports to all countries, especially those with which Canada has a free trade agreement, no later than December 16, 2016.

**Hon. Pierrette Ringuette:** Honourable senators, you will understand that the motion moved by Senator Hervieux-Payette requires a lot of research. As you know, I do not speak in this chamber without having done my homework. Since I still have work to do, I would like to move the adjournment of the motion for the remainder of my time.

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

**Hon. Senators:** Agreed.

(On motion of Senator Ringuette, debate adjourned.)

[*English*]

#### EFFECTS OF CLIMATE CHANGE ON HUMAN RIGHTS

#### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Jaffer, calling the attention of the Senate to the human rights implications of climate change, and how it will affect the most vulnerable in Canada and the world by threatening their right to food, water, health, adequate shelter, life, and self-determination.



**Hon. Yonah Martin (Deputy Leader of the Opposition):** Honourable senators, I, too, am not prepared to speak, and seeing that it is at day 14, I will adjourn for the balance of my time.

(On motion of Senator Martin, debate adjourned.)

[*Translation*]

#### COURT CHALLENGES PROGRAM

##### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Chaput, calling the attention of the Senate to the Program to Support Linguistic Rights, the importance of ensuring public financing of court actions that seek to create

a fair and just society and to the urgent need for the federal government to re-establish the Court Challenges Program.

**Hon. Ghislain Maltais:** Honourable senators, I move the adjournment of the debate for the remainder of my time, as I was absent for two months because of illness. I have not had the time to review this matter. I am aware that the item is at day 15. With the consent of my colleagues, I would like to postpone this debate to a later date.

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

**Hon. Senators:** Agreed.

(On motion of Senator Maltais, debate adjourned.)

(The Senate adjourned until Thursday, June 2, 2016, at 1:30 p.m.)

---

## **APPENDIX**

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

**THE SPEAKER**

The Honourable George J. Furey

**THE GOVERNMENT REPRESENTATIVE IN THE SENATE**

The Honourable Peter Harder, P.C.

**THE LEADER OF THE OPPOSITION**

The Honourable Claude Carignan, P.C.

**THE LEADER OF THE SENATE LIBERALS**

The Honourable James S. Cowan

---

**OFFICERS OF THE SENATE**

**CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

Charles Robert

**LAW CLERK AND PARLIAMENTARY COUNSEL**

Michel Patrice

**USHER OF THE BLACK ROD**

J. Greg Peters

## THE MINISTRY

(In order of precedence)

(June 1, 2016)

The Right Hon. Justin P. J. Trudeau	Prime Minister
The Hon. Ralph Goodale	Minister of Public Safety and Emergency Preparedness
The Hon. Lawrence MacAulay	Minister of Agriculture and Agri-Food
The Hon. Stéphane Dion	Minister of Foreign Affairs
The Hon. John McCallum	Minister of Immigration, Refugees and Citizenship
The Hon. Carolyn Bennett	Minister of Indigenous and Northern Affairs
The Hon. Scott Brison	President of the Treasury Board
The Hon. Dominic LeBlanc	Leader of the Government in the House of Commons
The Hon. Navdeep Singh Bains	Minister of Fisheries, Oceans and the Canadian Coast Guard
The Hon. William Francis Morneau	Minister of Innovation, Science and Economic Development
The Hon. Jody Wilson-Raybould	Minister of Finance
	Minister of Justice
	Attorney General of Canada
The Hon. Judy M. Foote	Minister of Public Services and Procurement
The Hon. Chrystia Freeland	Minister of International Trade
The Hon. Jane Philpott	Minister of Health
The Hon. Jean-Yves Duclos	Minister of Families, Children and Social Development
The Hon. Marc Garneau	Minister of Transport
The Hon. Marie-Claude Bibeau	Minister of International Development and La Francophonie
The Hon. James Gordon Carr	Minister of Natural Resources
The Hon. Mélanie Joly	Minister of Canadian Heritage
The Hon. Diane Lebouthillier	Minister of National Revenue
The Hon. Kent Hehr	Minister of Veterans Affairs
	Associate Minister of National Defence
The Hon. Catherine McKenna	Minister of Environment and Climate Change
The Hon. Harjit Singh Sajjan	Minister of National Defence
The Hon. MaryAnn Mihychuk	Minister of Employment, Workforce Development
	Minister of Labour
The Hon. Amarjeet Sohi	Minister of Infrastructure and Communities
The Hon. Maryam Monsef	Minister of Democratic Institutions
The Hon. Carla Qualtrough	Minister of Sport and Persons with Disabilities
The Hon. Kirsty Duncan	Minister of Science
The Hon. Patricia A. Hajdu	Minister of Status of Women
The Hon. Bardish Chagger	Minister of Small Business and Tourism

## SENATORS OF CANADA

### ACCORDING TO SENIORITY

(June 1, 2016)

Senator	Designation	Post Office Address
The Honourable		
Anne C. Cools	Toronto Centre-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujuuaq, Que.
Colin Kenny	Rideau	Ottawa, Ont.
Janis G. Johnson	Manitoba	Gimli, Man.
A. Raynell Andreychuk	Saskatchewan	Regina, Sask.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
Wilfred P. Moore	Stanhope St./South Shore	Chester, N.S.
Serge Joyal, P.C.	Kennebec	Montreal, Que.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
George J. Furey, <i>Speaker</i>	Newfoundland and Labrador	St. John's, Nfld. & Lab.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Jane Cordy	Nova Scotia	Dartmouth, N.S.
Elizabeth M. Hubley	Prince Edward Island	Kensington, P.E.I.
Mobina S. B. Jaffer	British Columbia	North Vancouver, B.C.
Joseph A. Day	Saint John-Kennebecasis	Hampton, N.B.
George S. Baker, P.C.	Newfoundland and Labrador	Gander, Nfld. & Lab.
Pana Merchant	Saskatchewan	Regina, Sask.
Pierrette Ringuette	New Brunswick	Edmundston, N.B.
Percy E. Downe	Charlottetown	Charlottetown, P.E.I.
Paul J. Massicotte	De Lanaudière	Mont-Saint-Hilaire, Que.
Terry M. Mercer	Northend Halifax	Caribou River, N.S.
Jim Munson	Ottawa/Rideau Canal	Ottawa, Ont.
Claudette Tardif	Alberta	Edmonton, Alta.
Grant Mitchell	Alberta	Edmonton, Alta.
Elaine McCoy	Alberta	Calgary, Alta.
Lillian Eva Dyck	Saskatchewan	Saskatoon, Sask.
Art Eggleton, P.C.	Ontario	Toronto, Ont.
Nancy Ruth	Cluny	Toronto, Ont.
James S. Cowan	Nova Scotia	Halifax, N.S.
Larry W. Campbell	British Columbia	Vancouver, B.C.
Dennis Dawson	Lauzon	Sainte-Foy, Que.
Sandra Lovelace Nicholas	New Brunswick	Tobique First Nations, N.B.
Stephen Greene	Halifax-The Citadel	Halifax, N.S.
Michael L. MacDonald	Cape Breton	Dartmouth, N.S.
Michael Duffy	Prince Edward Island	Cavendish, P.E.I.
Percy Mockler	New Brunswick	St. Leonard, N.B.
John D. Wallace	New Brunswick	Rothesay, N.B.
Michel Rivard	The Laurentides	Quebec, Que.
Nicole Eaton	Ontario	Caledon, Ont.
Pamela Wallin	Saskatchewan	Wadena, Sask.

Senator	Designation	Post Office Address
Nancy Greene Raine	Thompson-Okanagan-Kootenay	Sun Peaks, B.C.
Yonah Martin	British Columbia	Vancouver, B.C.
Richard Neufeld	British Columbia	Fort St. John, B.C.
Daniel Lang	Yukon	Whitehorse, Yukon
Patrick Brazeau	Repentigny	Maniwaki, Que.
Leo Housakos	Wellington	Laval, Que.
Donald Neil Plett	Landmark	Landmark, Man.
Linda Frum	Ontario	Toronto, Ont.
Claude Carignan, P.C.	Mille Isles	Saint-Eustache, Que.
Jacques Demers	Rigaud	Hudson, Que.
Judith G. Seidman	De la Durantaye	Saint-Raphaël, Que.
Carolyn Stewart Olsen	New Brunswick	Sackville, N.B.
Kelvin Kenneth Ogilvie	Annapolis Valley - Hants	Canning, N.S.
Dennis Glen Patterson	Nunavut	Iqaluit, Nunavut
Bob Runciman	Ontario—Thousand Islands and Rideau Lakes	Brockville, Ont.
Pierre-Hugues Boisvenu	La Salle	Sherbrooke, Que.
Elizabeth Marshall	Newfoundland and Labrador	Paradise, Nfld. & Lab.
Rose-May Poirier	New Brunswick—Saint-Louis-de-Kent	Saint-Louis-de-Kent, N.B.
Salma Ataullahjan	Toronto—Ontario	Toronto, Ont.
Don Meredith	Ontario	Richmond Hill, Ont.
Fabian Manning	Newfoundland and Labrador	St. Bride's, Nfld. & Lab.
Larry W. Smith	Saurel	Hudson, Que.
Josée Verner, P.C.	Montarville	Saint-Augustin-de-Desmaures, Que.
Betty E. Unger	Alberta	Edmonton, Alta.
Norman E. Doyle	Newfoundland and Labrador	St. John's, Nfld. & Lab.
Ghislain Maltais	Shawinigan	Quebec City, Que.
Jean-Guy Dagenais	Victoria	Blainville, Que.
Vernon White	Ontario	Ottawa, Ont.
Paul E. McIntyre	New Brunswick	Charlo, N.B.
Thomas Johnson McInnis	Nova Scotia	Sheet Harbour, N.S.
Tobias C. Enverga, Jr.	Ontario	Toronto, Ont.
Thanh Hai Ngo	Ontario	Orleans, Ont.
Diane Bellemare	Alma	Outremont, Que.
Douglas John Black	Alberta	Canmore, Alta.
David Mark Wells	Newfoundland and Labrador	St. John's, Nfld. & Lab.
Lynn Beyak	Ontario	Dryden, Ont.
Victor Oh	Mississauga	Mississauga, Ont.
Denise Leanne Batters	Saskatchewan	Regina, Sask.
Scott Tannas	Alberta	High River, Alta.
Peter Harder, P.C.	Ottawa	Manotick, Ont.
Raymonde Gagné	Manitoba	Winnipeg, Man.
Frances Lankin, P.C.	Ontario	Restoule, Ont.
Ratna Omidvar	Ontario	Toronto, Ont.
Chantal Petitclerc	Grandville	Montéal, Que.
André Pratte	De Salaberry	Saint-Lambert, Que.
Murray Sinclair	Manitoba	Winnipeg, Man.

## SENATORS OF CANADA

### ALPHABETICAL LIST

(June 1, 2016)

Senator	Designation	Post Office Address	Political Affiliation
The Honourable			
Andreychuk, A. Raynell	Saskatchewan	Regina, Sask.	Conservative
Ataullahjan, Salma	Toronto—Ontario	Toronto, Ont.	Conservative
Baker, George S., P.C.	Newfoundland and Labrador	Gander, Nfld. & Lab.	Liberal
Batters, Denise Leanne	Saskatchewan	Regina, Sask.	Conservative
Bellemare, Diane	Alma	Outremont, Que.	Independent
Beyak, Lynn	Ontario	Dryden, Ont.	Conservative
Black, Douglas John	Alberta	Canmore, Alta.	Conservative
Boisvenu, Pierre-Hugues	La Salle	Sherbrooke, Que.	Independent
Brazeau, Patrick	Repentigny	Maniwaki, Que.	Independent
Campbell, Larry W.	British Columbia	Vancouver, B.C.	Independent
Carignan, Claude, P.C.	Mille Isles	Saint-Eustache, Que.	Conservative
Cools, Anne C.	Toronto Centre-York	Toronto, Ont.	Independent
Cordy, Jane	Nova Scotia	Dartmouth, N.S.	Liberal
Cowan, James S.	Nova Scotia	Halifax, N.S.	Liberal
Dagenais, Jean-Guy	Victoria	Blainville, Que.	Conservative
Dawson, Dennis	Lauson	Ste-Foy, Que.	Liberal
Day, Joseph A.	Saint John-Kennebecasis	Hampton, N.B.	Liberal
Demers, Jacques	Rigaud	Hudson, Que.	Independent
Downe, Percy E.	Charlottetown	Charlottetown, P.E.I.	Liberal
Doyle, Norman E.	Newfoundland and Labrador	St. John's, Nfld. & Lab.	Conservative
Duffy, Michael	Prince Edward Island	Cavendish, P.E.I.	Independent
Dyck, Lillian Eva	Saskatchewan	Saskatoon, Sask.	Liberal
Eaton, Nicole	Ontario	Caledon, Ont.	Conservative
Eggleton, Art, P.C.	Ontario	Toronto, Ont.	Liberal
Enverga, Tobias C., Jr.	Ontario	Toronto, Ont.	Conservative
Fraser, Joan Thorne	De Lorimier	Montreal, Que.	Liberal
Frum, Linda	Ontario	Toronto, Ont.	Conservative
Furey, George, <i>Speaker</i>	Newfoundland and Labrador	St. John's, Nfld. & Lab.	Independent
Gagné, Raymonde	Manitoba	Winnipeg, Man.	Independent
Greene, Stephen	Halifax - The Citadel	Halifax, N.S.	Conservative
Harder, Peter, P.C.	Ottawa	Manotick, Ont.	Independent
Housakos, Leo	Wellington	Laval, Que.	Conservative
Hubley, Elizabeth M.	Prince Edward Island	Kensington, P.E.I.	Liberal
Jaffer, Mobina S. B.	British Columbia	North Vancouver, B.C.	Liberal
Johnson, Janis G.	Manitoba	Gimli, Man.	Conservative
Joyal, Serge, P.C.	Kennebec	Montreal, Que.	Liberal
Kenny, Colin	Rideau	Ottawa, Ont.	Liberal
Lang, Daniel	Yukon	Whitehorse, Yukon	Conservative
Lankin, Frances, P.C.	Ontario	Restoule, Ont.	Independent
Lovelace Nicholas, Sandra	New Brunswick	Tobique First Nations, N.B.	Liberal
MacDonald, Michael L.	Cape Breton	Dartmouth, N.S.	Conservative
Maltais, Ghislain	Shawinegan	Quebec City, Que.	Conservative

Senator	Designation	Post Office Address	Political Affiliation
Manning, Fabian	Newfoundland and Labrador	.St. Bride's, Nfld. & Lab.	Conservative
Marshall, Elizabeth	Newfoundland and Labrador	.Paradise, Nfld. & Lab.	Conservative
Martin, Yonah	British Columbia	.Vancouver, B.C.	Conservative
Massicotte, Paul J.	De Lanaudière	.Mont-Saint-Hilaire, Que.	Liberal
McCoy, Elaine	Alberta	.Calgary, Alta.	Independent
McInnis, Thomas Johnson	Nova Scotia	.Sheet Harbour, N.S.	Conservative
McIntyre, Paul E.	New Brunswick	.Charlo, N.B.	Conservative
Mercer, Terry M.	Northend Halifax	.Caribou River, N.S.	Liberal
Merchant, Pana	Saskatchewan	.Regina, Sask.	Liberal
Meredith, Don	Ontario	.Richmond Hill, Ont.	Independent
Mitchell, Grant	Alberta	.Edmonton, Alta.	Independent
Mockler, Percy	New Brunswick	.St. Leonard, N.B.	Conservative
Moore, Wilfred P.	Stanhope St./South Shore	.Chester, N.S.	Liberal
Munson, Jim	Ottawa/Rideau Canal	.Ottawa, Ont.	Liberal
Nancy Ruth	Cluny	.Toronto, Ont.	Conservative
Neufeld, Richard	British Columbia	.Fort St. John, B.C.	Conservative
Ngo, Thanh Hai	Ontario	.Orleans, Ont.	Conservative
Ogilvie, Kelvin Kenneth	Annapolis Valley - Hants	.Canning, N.S.	Conservative
Oh, Victor	Mississauga	.Mississauga, Ont.	Conservative
Omidvar, Ratna	Ontario	.Toronto, Ont.	Independent
Patterson, Dennis Glen	Nunavut	.Iqaluit, Nunavut	Conservative
Petitclerc, Chantal	Grandville	.Montréal, Que.	Independent
Plett, Donald Neil	Landmark	.Landmark, Man.	Conservative
Poirier, Rose-May	New Brunswick—Saint-Louis-de-Kent	.Saint-Louis-de-Kent, N.B.	Conservative
Pratte, André	De Salaberry	.Saint-Lambert, Que.	Independent
Raine, Nancy Greene	Thompson-Okanagan-Kootenay	.Sun Peaks, B.C.	Conservative
Ringuette, Pierrette	New Brunswick	.Edmundston, N.B.	Independent
Rivard, Michel	The Laurentides	.Quebec, Que.	Independent
Runciman, Bob	Ontario—Thousand Islands and Rideau Lakes	.Brockville, Ont.	Conservative
Seidman, Judith G.	De la Durantaye	.Saint-Raphaël, Que.	Conservative
Sibbeston, Nick G.	Northwest Territories	.Fort Simpson, N.W.T.	Independent
Sinclair, Murray	Manitoba	.Winnipeg, Man.	Independent
Smith, Larry W.	Saurel	.Hudson, Que.	Conservative
Stewart Olsen, Carolyn	New Brunswick	.Sackville, N.B.	Conservative
Tannas, Scott	Alberta	.High River, Alta.	Conservative
Tardif, Claudette	Alberta	.Edmonton, Alta.	Liberal
Tkachuk, David	Saskatchewan	.Saskatoon, Sask.	Conservative
Unger, Betty E.	Alberta	.Edmonton, Alta.	Conservative
Verner, Josée, P.C.	Montarville	.Saint-Augustin-de-Desmaures, Que.	Conservative
Wallace, John D.	New Brunswick	.Rothesay, N.B.	Independent
Wallin, Pamela	Saskatchewan	.Wadena, Sask.	Independent
Watt, Charlie	Inkerman	.Kuujuaq, Que.	Liberal
Wells, David Mark	Newfoundland and Labrador	.St. John's, Nfld. & Lab.	Conservative
White, Vernon	Ontario	.Ottawa, Ont.	Conservative



**SENATORS OF CANADA**  
**BY PROVINCE AND TERRITORY**

(June 1, 2016)

**ONTARIO—24**

Senator	Designation	Post Office Address
The Honourable		
1 Anne C. Cools . . . . .	Toronto Centre-York . . . . .	Toronto
2 Colin Kenny . . . . .	Rideau . . . . .	Ottawa
3 Jim Munson . . . . .	Ottawa/Rideau Canal . . . . .	Ottawa
4 Art Eggleton, P.C. . . . .	Ontario . . . . .	Toronto
5 Nancy Ruth . . . . .	Cluny . . . . .	Toronto
6 Nicole Eaton . . . . .	Ontario . . . . .	Caledon
7 Linda Frum . . . . .	Ontario . . . . .	Toronto
8 Bob Runciman . . . . .	Ontario—Thousand Islands and Rideau Lakes . . . . .	Brockville
9 Salma Ataullahjan . . . . .	Toronto—Ontario . . . . .	Toronto
10 Don Meredith . . . . .	Ontario . . . . .	Richmond Hill
11 Vernon White . . . . .	Ontario . . . . .	Ottawa
12 Tobias C. Enverga, Jr. . . . .	Ontario . . . . .	Toronto
13 Thanh Hai Ngo . . . . .	Ontario . . . . .	Orleans
14 Lynn Beyak . . . . .	Ontario . . . . .	Dryden
15 Victor Oh . . . . .	Mississauga . . . . .	Mississauga
16 Harder, Peter, P.C. . . . .	Ottawa . . . . .	Manotick
17 Lankin, Frances, P.C. . . . .	Ontario . . . . .	Restoule
18 Omidvar, Ratna . . . . .	Ontario . . . . .	Toronto
19 . . . . .		
20 . . . . .		
21 . . . . .		
22 . . . . .		
23 . . . . .		

---



---

 SENATORS BY PROVINCE AND TERRITORY
 

---



---

 QUEBEC—24
 

---



---

Senator	Designation	Post Office Address
The Honourable		
1 Charlie Watt . . . . .	Inkerman . . . . .	Kuujuuaq
2 Serge Joyal, P.C. . . . .	Kennebec . . . . .	Montreal
3 Joan Thorne Fraser . . . . .	De Lorimier . . . . .	Montreal
4 Paul J. Massicotte . . . . .	De Lanaudière . . . . .	Mont-Saint-Hilaire
5 Dennis Dawson . . . . .	Lauzon . . . . .	Ste-Foy
6 Michel Rivard . . . . .	The Laurentides . . . . .	Quebec
7 Patrick Brazeau . . . . .	Repentigny . . . . .	Maniwaki
8 Leo Housakos . . . . .	Wellington . . . . .	Laval
9 Claude Carignan, P.C. . . . .	Mille Isles . . . . .	Saint-Eustache
10 Jacques Demers . . . . .	Rigaud . . . . .	Hudson
11 Judith G. Seidman . . . . .	De la Durantaye . . . . .	Saint-Raphaël
12 Pierre-Hugues Boisvenu . . . . .	La Salle . . . . .	Sherbrooke
13 Larry W. Smith . . . . .	Saurel . . . . .	Hudson
14 Josée Verner, P.C. . . . .	Montarville . . . . .	Saint-Augustin-de-Desmaures
15 Ghislain Maltais . . . . .	Shawinigan . . . . .	Quebec City
16 Jean-Guy Dagenais . . . . .	Victoria . . . . .	Blainville
17 Diane Bellemare . . . . .	Alma . . . . .	Outremont
18 Chantal Petitclerc . . . . .	Grandville . . . . .	Montréal
19 André Pratte . . . . .	De Salaberry . . . . .	Saint-Lambert
20 . . . . .		
21 . . . . .		
22 . . . . .		
23 . . . . .		
24 . . . . .		

---

---



---

**SENATORS BY PROVINCE-MARITIME DIVISION**


---



---

**NOVA SCOTIA—10**

Senator	Designation	Post Office Address
The Honourable		
1 Wilfred P. Moore	Stanhope St./South Shore	Chester
2 Jane Cordy	Nova Scotia	Dartmouth
3 Terry M. Mercer	Northend Halifax	Caribou River
4 James S. Cowan	Nova Scotia	Halifax
5 Stephen Greene	Halifax - The Citadel	Halifax
6 Michael L. MacDonald	Cape Breton	Dartmouth
7 Kelvin Kenneth Ogilvie	Annapolis Valley - Hants	Canning
8 Thomas Johnson McInnis	Nova Scotia	Sheet Harbour
9		
10		

**NEW BRUNSWICK—10**

Senator	Designation	Post Office Address
The Honourable		
1 Joseph A. Day	Saint John-Kennebecasis, New Brunswick	Hampton
2 Pierrette Ringuette	New Brunswick	Edmundston
3 Sandra Lovelace Nicholas	New Brunswick	Tobique First Nations
4 Percy Mockler	New Brunswick	St. Leonard
5 John D. Wallace	New Brunswick	Rothesay
6 Carolyn Stewart Olsen	New Brunswick	Sackville
7 Rose-May Poirier	New Brunswick—Saint-Louis-de-Kent	Saint-Louis-de-Kent
8 Paul E. McIntyre	New Brunswick	Charlo
9		
10		

**PRINCE EDWARD ISLAND—4**

Senator	Designation	Post Office Address
The Honourable		
1 Elizabeth M. Hubley	Prince Edward Island	Kensington
2 Percy E. Downe	Charlottetown	Charlottetown
3 Michael Duffy	Prince Edward Island	Cavendish
4		

---



---

**SENATORS BY PROVINCE-WESTERN DIVISION**


---



---

**MANITOBA—6**

Senator	Designation	Post Office Address
The Honourable		
1 Janis G. Johnson . . . . .	Manitoba . . . . .	Gimli
2 Donald Neil Plett . . . . .	Landmark . . . . .	Landmark
3 Raymonde Gagné . . . . .	Manitoba . . . . .	Winnipeg
4 Murray Sinclair . . . . .	Manitoba . . . . .	Winnipeg
5 . . . . .		
6 . . . . .		

**BRITISH COLUMBIA—6**

Senator	Designation	Post Office Address
The Honourable		
1 Mobina S. B. Jaffer . . . . .	British Columbia . . . . .	North Vancouver
2 Larry W. Campbell . . . . .	British Columbia . . . . .	Vancouver
3 Nancy Greene Raine . . . . .	Thompson-Okanagan-Kootenay . . . . .	Sun Peaks
4 Yonah Martin . . . . .	British Columbia . . . . .	Vancouver
5 Richard Neufeld . . . . .	British Columbia . . . . .	Fort St. John
6 . . . . .		

**SASKATCHEWAN—6**

Senator	Designation	Post Office Address
The Honourable		
1 A. Raynell Andreychuk . . . . .	Saskatchewan . . . . .	Regina
2 David Tkachuk . . . . .	Saskatchewan . . . . .	Saskatoon
3 Pana Merchant . . . . .	Saskatchewan . . . . .	Regina
4 Lillian Eva Dyck . . . . .	Saskatchewan . . . . .	Saskatoon
5 Pamela Wallin . . . . .	Saskatchewan . . . . .	Wadena
6 Denise Leanne Batters . . . . .	Saskatchewan . . . . .	Regina

**ALBERTA—6**

Senator	Designation	Post Office Address
The Honourable		
1 Claudette Tardif . . . . .	Alberta . . . . .	Edmonton
2 Grant Mitchell . . . . .	Alberta . . . . .	Edmonton
3 Elaine McCoy . . . . .	Alberta . . . . .	Calgary
4 Betty E. Unger . . . . .	Alberta . . . . .	Edmonton
5 Douglas John Black . . . . .	Alberta . . . . .	Canmore
6 Scott Tannas . . . . .	Alberta . . . . .	High River

---



---

**SENATORS BY PROVINCE AND TERRITORY**


---



---



---



---

**NEWFOUNDLAND AND LABRADOR—6**


---



---

Senator	Designation	Post Office Address
The Honourable		
1 George Furey, <i>Speaker</i> . . . . .	Newfoundland and Labrador . . . . .	St. John's
2 George S. Baker, P.C. . . . .	Newfoundland and Labrador . . . . .	Gander
3 Elizabeth Marshall . . . . .	Newfoundland and Labrador . . . . .	Paradise
4 Fabian Manning . . . . .	Newfoundland and Labrador . . . . .	St. Bride's
5 Norman E. Doyle . . . . .	Newfoundland and Labrador . . . . .	St. John's
6 David Wells . . . . .	Newfoundland and Labrador . . . . .	St. John's

---



---



---



---

**NORTHWEST TERRITORIES—1**


---



---

Senator	Designation	Post Office Address
The Honourable		
1 Nick G. Sibbeston . . . . .	Northwest Territories . . . . .	Fort Simpson

---



---



---



---

**NUNAVUT—1**


---



---

Senator	Designation	Post Office Address
The Honourable		
1 Dennis Glen Patterson . . . . .	Nunavut . . . . .	Iqaluit

---



---



---



---

**YUKON—1**


---



---

Senator	Designation	Post Office Address
The Honourable		
1 Daniel Lang . . . . .	Yukon . . . . .	Whitehorse

---



---

## CONTENTS

Wednesday, June 1, 2016

	PAGE		PAGE
<b>Criminal Code (Bill C-14)</b>		<b>Canadian NATO Parliamentary Association</b>	
Bill to Amend—Consideration on Subject Matter in Committee of the Whole.		Joint Meeting of the Defence and Security, Economics and Security, and Political Committees and Officers of the Committee on the Civil Dimension of Security and the Science and Technology Committee, February 13-15, 2016—Report Tabled.	
The Chair	743	Hon. Joseph A. Day	777
Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada	743	Defence and Security Committee Meeting, January 26-29, 2016—Report Tabled.	
Senator Carignan	746	Hon. Joseph A. Day	777
Senator Cowan	747	<hr/>	
Senator Bellemare	749	<b>QUESTION PERIOD</b>	
Senator Seidman	749	<b>Delayed Answer to Oral Question</b>	
Senator Jaffer	750	Hon. Diane Bellemare	777
Senator Pratte	751	<b>Justice</b>	
Senator Plett	752	Selection Process for Judges.	
Senator Joyal	753	Question by Senator Fraser.	
Senator Lankin	755	Hon. Diane Bellemare (Delayed Answer)	777
Senator Batters	756	<hr/>	
Senator Tardif	757	<b>ORDERS OF THE DAY</b>	
Senator Wallin	758	<b>Financial Administration Act (Bill S-204)</b>	
Senator Ogilvie	759	Bill to Amend—Second Reading—Debate Continued.	
Hon. Jane Philpott, P.C., M.P., Minister of Health	760	Hon. Joseph A. Day	778
Senator Marshall	761	<b>Constitution Act, 1867 (Bill S-221)</b>	
Senator Cools	764	Bill to Amend—Second Reading—Debate Continued.	
Senator McIntyre	765	Hon. Joan Fraser	778
Senator Boisvenu	767	<b>Ending the Captivity of Whales and Dolphins Bill (Bill S-203)</b>	
Senator Nancy Ruth	768	Bill to Amend—Second Reading—Debate Continued.	
Senator Eggleton	769	Hon. Larry W. Campbell	778
Senator Meredith	769	The Hon. the Speaker	779
Senator Enverga	770	<b>The Senate</b>	
Senator Wallace	774	Motion to Resolve that an Amendment to the Real Property Qualifications of Senators in the <i>Constitution Act, 1867</i> be Authorized to be Made by Proclamation Issued by the Governor General—Debate Continued.	
Senator Dagenais	774	Hon. Joan Fraser	780
Senator Omidvar	775	<b>Banking, Trade and Commerce</b>	
Senator Tkachuk	776	Motion to Authorize Committee to Study Export Performance—Debate Continued.	
Report of Committee of the Whole.		Hon. Pierrette Ringuette	780
Hon. Nicole Eaton	776	<b>Effects of Climate Change on Human Rights</b>	
<hr/>		Inquiry—Debate Continued.	
<b>ROUTINE PROCEEDINGS</b>		Hon. Yonah Martin	781
<b>Business of the Senate</b>		<b>Court Challenges Program</b>	
Committees Authorized to Meet During Sitting of the Senate.		Inquiry—Debate Continued.	
Hon. Diane Bellemare	776	Hon. Ghislain Maltais	781
<b>Auditor General</b>		<b>APPENDIX</b> . . . . . i	
Access to Information Act and Privacy Act—2015-16 Annual Report Tabled	777		
<b>The Estimates, 2016-17</b>			
Main Estimates—Fifth Report of National Finance Committee Tabled.			
Hon. Larry W. Smith	777		
<b>Bill to Amend the Air Canada Public Participation Act and to Provide for Certain Other Measures (Bill C-10)</b>			
First Reading.			
The Hon. the Speaker	777		
<b>Banking, Trade and Commerce</b>			
Notice of Motion to Authorize Committee to Extend Date of Final Report on Study of Issues Pertaining to Internal Barriers to Trade.			
Hon. David Tkachuk	777		



---

**Published by the Senate**

**Available on the Internet: <http://www.parl.gc.ca>**