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(HANSARD)

Thursday, June 2, 2016

The Honourable GEORGE J. FUREY
Speaker

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THE SENATE

Thursday, June 2, 2016

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

Prayers.

SENATORS' STATEMENTS

NATIONAL HEALTH AND FITNESS DAY

Hon. Nancy Greene Raine: Honourable senators, I would like to remind you that this coming Saturday is National Health and Fitness Day. This is Canada's day to get up, get out and get active. It is a day that was initiated with a Senate bill that received unanimous support from all parties in the House of Commons and the Senate two years ago.

It is a day when Canadians get active in any way they wish, by joining local events or by simply being active on their own or with their families. I know my hometown of Kamloops is having a kids' zone and a yoga class in the park for anyone who wants to participate. Other municipalities are opening up their recreation facilities for free or at a discount. There is even a big event planned right here on Parliament Hill with a fitness specialist leading a free boot-camp-style fitness class at 9 a.m.

Every year more and more municipalities come on board and pass resolutions saying they will celebrate National Health and Fitness Day. So far approximately 270 municipalities from all across Canada have passed resolutions. We are still waiting for Toronto, but we're working on them. All the other major cities have proclaimed. You can check out our website to see a map showing all the municipalities that have joined in. Let's keep working on this until we have over 300 municipalities joining the celebration next year.

In closing, honourable senators, please watch for National Health and Fitness Day activities where you live. Let's work together to make Canada the fittest nation on earth!

Hon. Senators: Hear, hear.

MULTIPLE SCLEROSIS AWARENESS MONTH

Hon. Jane Cordy: Honourable senators, I would draw to your attention that the month of May is dedicated as Multiple Sclerosis Awareness Month. Multiple sclerosis is the most common neurological disease affecting young adults in Canada. Most people with MS are diagnosed between 15 and 40 years of age, and the unpredictable effects of MS last for the rest of their lives.

Even though the month of May has now passed, I urge you to consider those who live with multiple sclerosis not just for the month of May but for every month of the year. I have had the

privilege the last few years of attending the Canadian Neurovascular Health Society conferences. I would like to thank the Canadian Neurovascular Health Society for the work they are doing serving as a resource for those with MS and their families and, in fact, all Canadians. I would especially like to thank the president of the society, Dr. Sandra Birrell, for her dedication and hard work in the promotion of making things better for those with MS.

Their conferences are exceptional with presenters from around the world. Over the past few years, researchers have learned that there are similarities between MS, Parkinson's, chronic fatigue, Lyme disease and dementia.

Honourable senators, we know that we need research in this field, and we know that there is no one-size-fits-all solution for those with MS. We also know that we have to improve the diagnosis, the screening and the treatment for those with MS. The training for those doing the screening must also be improved.

Honourable senators, when we talk about screening, diagnosis and treatment of those with MS, we must look beyond what is happening now. We know that a healthy diet, movement and exercise are helpful, and of course that would be true for all Canadians. As I have stated before, honourable senators, we must move forward with better treatment and research for those with MS for their families. The status quo is not good enough.

Honourable senators, this year's Canadian Neurovascular Health Society conference will be held in Ottawa in October. At the meeting you will hear from outstanding doctors and researchers. You will also get to speak with wonderful, brave people who have MS and who continue to push for changes, not for themselves but for their children and the children of the future.

NADIYA SAVCHENKO

RELEASE FROM RUSSIAN CUSTODY

Hon. A. Raynell Andreychuk: Honourable senators, I rise to join others in welcoming the release of Ukrainian pilot, member of Parliament and political prisoner Nadiya Savchenko.

Captured by Kremlin-backed separatists in June 2014, Lieutenant Savchenko spent 708 days illegally imprisoned in Russia. Despite international outcry for her release, she was charged and subsequently convicted of complicity in the deaths of two Russian journalists and of illegally crossing the border. Her trial, marred by a lack of transparency and due process, was the subject of significant international criticism.

On May 25, 2016, Lieutenant Savchenko was released from Russian custody in a prisoner exchange and returned safely to her Ukrainian homeland. A symbol of resistance and bravery, Savchenko has inspired a nation with her unwavering commitment and patriotism. Upon arrival she was awarded the country's highest honour, the Gold Star of the Hero of Ukraine award.

I trust senators will join me in welcoming her release and wishing her a swift recovery from her ordeal. Savchenko's commitment to the people of Ukraine in their fight against Russian aggression has only intensified in the wake of her release. She reaffirmed her commitment in her first parliamentary address earlier this week, and I quote her:

I'm back and will not let you forget — you who sit in these seats of Parliament — about all those guys, who laid down their lives for the country. . . . nobody is forgotten, nothing is forgotten

While the focus has remained on the illegal annexation of Crimea and the war in Donbass, Russia's ongoing crackdown on political dissidents continues to intensify. At least 20 Ukrainian citizens continue to languish in Russian custody. Among them are Crimean activists Oleh Sentsov and Oleksandr Kolchenko. Both men were arrested on charges related to terrorism after refusing to recognize Russia's illegal annexation of Crimea in 2014.

Further, the Crimean Tatars, a Turkic ethnic minority group in Crimea, suffer continuous persecution at the hands of Russia and Russian-backed authorities. Their self-governing body was banned and declared an extremist organization earlier this year.

• (1340)

This week Moscow declared those belonging to Islamic groups in Crimea extremists and likely to commit acts of terrorism. These declarations have further empowered Russian authorities to conduct illegal searches, kidnappings and arrests.

Honourable senators, Canada has a responsibility to ensure that international human rights standards and the rule of law are honoured by members of the international community. Let us continue to call for the release of those illegally detained in Russia.

TIANANMEN SQUARE MASSACRE

TWENTY-SEVENTH ANNIVERSARY

Hon. Jim Munson: Honourable senators, each year at this time, I remind the house of the horrible things which took place in Tiananmen Square on June 3 and 4, 1989. What took place was a massacre. I know what happened. I was there.

But if you live in China today, you wouldn't know anything happened. Why? Because the Chinese government has erased that memory. Officially it never happened.

It doesn't want its population to know that a million people marched on Chang'an Avenue through the heart of Beijing — ordinary Chinese students, teachers, doctors, labourers, moms and dads, children.

What did they want? They just wanted a voice on how they were governed. They weren't in the square to topple a government. They were exercising a human right — the right to free speech.

Yesterday, honourable senators, we heard in this city the authoritarian voice of today's China. Little has changed since 1989. In fact, I would argue human rights have gotten worse. Yesterday, we heard China's foreign minister lash out at a Canadian reporter for daring to ask about human rights in China. Here are the words of Wang Yi:

Your question is full of prejudice and against China. . . . This is totally unacceptable.

. . . don't ask questions in such an irresponsible manner.

Do you know China has written protection and promotion of human rights into our constitution?

Mr. Wang Yi, I have more questions for you: Why do you keep throwing into prison people who just want to exercise a basic human right of free speech, not to mention a free press?

I'm only going to mention one dissident here. He is Liu Xiaobo, a Nobel Peace Prize winner, who is languishing in Jinzhou Prison in Liaoning Province.

Mr. Foreign Minister, what is Mr. Liu's crime? Is it because, as he said:

Simply for expressing divergent political views and taking part in a peaceful and democratic movement, a teacher lost his podium, a writer lost the right to publish and a public intellectual lost the chance to speak publicly. This was a sad thing, both for myself as an individual and, after three decades of reform and opening, for China.

Those are the words of Mr. Liu.

Mr. Foreign Minister, Mr. Liu is serving an 11-year prison term. Why are you so afraid? Why does your government keep imprisoning so many of your citizens?

Mr. Foreign Minister, I remember everything I saw in Tiananmen Square in 1989. I will never forget. I will keep asking questions. I owe it to the families of those whose children were killed in and around Tiananmen.

Honourable senators, it is ironic in a country like Canada where free speech is allowed that the foreign minister chastised a Canadian reporter for asking a simple question on free speech and about human rights abuses in China. If a similar question was asked in Beijing today about Tiananmen in 1989, here is the question, Mr. Foreign Minister, I have for you: What would happen to that reporter? I shudder to think of the consequences.

Thank you, honourable senators.

Hon. Senators: Hear, hear.

TRUTH AND RECONCILIATION COMMISSION

Hon. Murray Sinclair: Honourable senators, one year ago today, the Truth and Reconciliation Commission of Canada released its summary report setting out its findings and its conclusions about the history of Canada's residential schools. From the early years of Confederation until 1996, the First Nations, Inuit and many Metis children of this country were taken away from their families against the wishes of their parents and sent to schools ostensibly for education purposes but, in reality, to be indoctrinated into another foreign way of life.

John A. Macdonald had a dream to expand this nation, and he did not see indigenous people as part of his team of nation builders. He said this in the House of Commons in May of 1883:

When the school is on the reserve, the child lives with its parents, who are savages, and though he may learn to read and write, his habits and training mode of thought are Indian. He is simply a savage who can read and write.

It has been strongly impressed upon myself . . . that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.

In 2006, the Government of Canada, along with representatives of the major churches in this country, settled over 30,000 lawsuits that had been filed against them for physical and sexual abuses that had occurred in those schools. It was and remains the largest class action settlement in Canadian history. And so far it has cost the defendants, including the Government of Canada, almost \$4.5 billion in compensation payments. If the government had spent that much money over the years to educate those children properly in their home communities, as they had promised to do in the treaties after Confederation, things might be a lot different today.

Instead, the schools were massive educational failures. Children received little in the way of formal education over the years, teachers were not required to be trained or certified, and there is no instance of a child being able to rely on a residential school education to get into an institution of higher learning.

In those schools, they were taught that their languages, cultures and people were inferior and that the languages, cultures and people of European ancestry were superior to them.

The same sort of education was taught to all students in public schools, including all of us.

Is it any wonder why Aboriginal children feel like they don't belong today? Is it any wonder why non-Aboriginal children educated in the schools of this country came to see their Aboriginal classmates as inferior?

I accepted a summons to join this chamber in the hope that I could continue to work towards reconciliation through education and understanding, through and from this position, while also ensuring that the governments analyze what they are doing with an eye towards their obligation for reconciliation.

Getting to the truth is hard, but achieving reconciliation will be harder. To achieve it, we in Canada must all work together.

Thank you.

Hon. Senators: Hear, hear.

[*Translation*]

DAIRY INDUSTRY

Hon. Pierrette Ringuette: Honourable senators, you have certainly seen and heard the farmers' demonstration today on Parliament Hill.

I want to take this opportunity to welcome them and tell them that their concerns are certainly being heard in this chamber. The Standing Senate Committee on Agriculture and Forestry is currently examining the effects of various trade agreements on dairy production.

In my opinion, there is a question of sovereignty that we should not ignore when it comes to our dairy farmers. We can all agree that any society, any country that cannot secure its food sovereignty is not really sovereign.

In light of that, we must recognize the challenges our dairy farmers are facing. We must recognize that these families live in rural areas, in isolated communities, and that these farmers are working to provide us with a staple of *Canada's Food Guide*: milk and other dairy products, such as cheese. These people work seven days a week for us.

• (1350)

We seem to have little regard for their future. Today, as they are present on the Hill, I would like to remind senators that these people are part of our sovereignty and that their work provides us with the food we need.

I believe that we should support them in our studies of bills. Thank you very much.

[*English*]

QUESTION PERIOD

FOREIGN AFFAIRS

RUSSIA—DUMPING OF TOXIC CHEMICALS— ARCTIC SOVEREIGNTY

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

Senator, in a May 18, 2016, article in the *National Post*, Dr. Michael Byers, Canada Research Chair in Global Politics and International Law, drew Canadians' attention to the imminent

launch of a Russian hydrazine-fuelled missile with debris from this rocket stage projected to land in Baffin Bay in the High Arctic two days from now.

Honourable senators, the negative effects of hydrazine are well documented. More recently, articles were published yesterday reporting the outrage Canadians feel about the chemical pollution of a Canadian exclusive economic zone subject to protection under the Arctic Waters Pollution Prevention Act.

Marty Kuluguktuk, the senior administrative officer of Grise Fiord in Nunavut, told me, “Polar bears, seals, whales, birds and indeed all wildlife utilize this area in Baffin Bay, and, in turn, we harvest these animals for food. We feel the North is pristine, and dumping of these extreme toxins will go up the food chain and affect our health in the High Arctic.”

The missile debris is set to fall into Baffin Bay this Saturday.

Just a last bit of background before I ask my question. Canada’s new approach is to re-engage with Russia. I’m aware that all Global Affairs Canada has done on this issue is to give a moderate statement saying they have “. . . sought clarification from the Government of Russia regarding the lack of sufficient notification of this rocket launch,” and they have “. . . stressed to the Government of Russia the need for greater advance warning of planned launches to ensure that all precautions, relating both to the safety and security of our airspace and any potential environmental concerns, can be appropriately addressed.”

What more will Canada do to protest this violation of Canadian law and reinforce its sovereignty in the Arctic? Is Canada prepared to pursue legal options it has to recover the cost of environmental cleanup in Baffin Bay as they’re entitled to do under the 1972 Space Liability Convention?

Hon. Peter Harder (Government Representative in the Senate): I want to thank the honourable senator for his question and for the courtesy of giving me notice of the question. I appreciate that and can inform the Senate, as he has referenced, that the Government of Canada has conveyed directly to the Government of Russia its concern about this launch and has protested its displeasure in not receiving earlier notice of the launch and has stressed to the Government of Russia the need for greater advance warning of launches in order to take necessary precautions with respect to our safety, environment and security.

We have also informed the Government of Russia that we expect them to make every effort to ensure that the debris does not land on Canadian territory.

These messages were strongly conveyed, and the Government of Canada is reflecting on its next steps when, and if, this launch takes place with the consequences that the honourable senator has referenced.

Senator Patterson: Senator, my understanding is that the debris will land in Canadian waters. It will land on the North Water Polynya, an 85,000 square kilometre ice-free area. Canada knows that because a NOTAM has been issued precisely defining an area in which that debris will fall, and information about the launch, the type of rocket and fuel and the likely location of the debris field was publicly available in early May.

I think Canada has had some significant notice of this. I believe that blaming Russia for a lack of notification might seem, to some, to be a bit of a diversion, because the government has known about this for some time.

Will Canada be deploying search and recovery teams with the necessary equipment, helicopters, haz-mat suits, to Grise Fiord in anticipation of this debris falling into Canadian waters this Saturday?

Senator Harder: I can assure the honourable senator that the Government Operations Centre is monitoring the situation closely to ensure that in the event of any requirement, response is available as quickly as possible.

Senator Patterson: Hydrazine is an extremely toxic substance, so toxic that pressurized haz-mat suits are required by technicians who work with it. The United States ended their Titan missile program 10 years ago due to health and environmental risks after one of their last U.S. missile stages dumped two tonnes of hydrazine into the environment.

Greenpeace — and I don’t usually, or maybe never, align with Greenpeace — has stated that dumping these chemicals from a ship would be a clear violation of international and Canadian law, and it is no more acceptable when it is dumped from the air.

In light of this outrage, will Canada lead an effort to push for an international ban on hydrazine-fuelled rockets?

Senator Harder: Again, I welcome the senator’s question and would like to convey that the Government of Canada is reviewing all its options. I will particularly make reference to your suggestion.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

BROADCASTING OF SENATE CHAMBER PROCEEDINGS

Hon. Art Eggleton: Honourable senators, my question is to the Chair of Internal Economy, who I believe is also the Chair of the Subcommittee on Communications. It is in that regard I particularly want to ask the question.

Yesterday was a remarkable day in this chamber, with a very high level of questioning and response from government ministers over a four-hour period of time. It attracted a lot of notice, a good kind of notice, because some of the tweets that came out afterwards were very supportive of the work that senators were doing yesterday.

We also had two cameras in here, which is very unusual. The only time I have seen cameras in the 10 years I have been here is at the opening of Parliament, the Throne Speech or some other special ceremonial occasion, but never during a session of the Senate, albeit a Committee of the Whole.

• (1400)

One comment, for example, came from a reporter, Michael Den Tandt, and he said:

. . . Senate back-and-forth today has been more substantive than any conversation I've heard in the HoC maybe ever.

Some Hon. Senators: Hear, hear.

Senator Eggleton: Jordan Press said: "Cameras in the Senate. Hopefully they stay."

This has been the subject of a lot of discussion for some time, and I don't expect cameras are suddenly going to appear in the Senate over the next couple of years as we prepare to move out of here to the special facility across the street. But when we come back, hopefully that will all be part of normal day-to-day proceedings in here, to be decided, of course.

Meanwhile, a small step was taken yesterday. Can we add to that small step, I ask the Chair of Internal Economy and Chair of the Communications Committee, to invite them back again? I understood they came via request from the press gallery and that, in fact, CPAC used its mechanisms to get it on air and a lot of people did see it. In fact, I saw a portion of it for a while and it was impressive, with only two cameras.

Could we invite them back? We are about to get into second reading debate and next week third reading debate on Bill C-14, and occasionally there might be some other major pieces of legislation that I think would be of most value to have broadcast. I think it does a lot for the reputation of this institution.

Some Hon. Senators: Hear, hear.

Senator Eggleton: My question to the chair is to that effect: Will he invite them back?

Hon. Leo Housakos: Thank you, Senator Eggleton, for the comment, I guess, more than a question, comments that I wholeheartedly concur with.

As he knows full well, a couple of years ago we engaged in a review of the whole Communications Directorate in the Senate at the initiative of this chamber. A detailed report was tabled at Internal Economy and in this chamber, the blueprint report, with a number of recommendations, many of which have been implemented. I think many senators have seen the result in how we have been communicating with the press and with the public, which has taken us a few steps forward, and there are more to come.

One of the recommendations in that blueprint report, after consultation with the National Press Gallery, with stakeholders and with many senators in this chamber, was indeed to install cameras in the Senate as a whole. We decided to be prudent at the time and we recommended to Public Works that they wire the new temporary Senate at the Conference Centre to have the capacity to broadcast.

I agree, Senator Eggleton, that yesterday was a watershed moment, because we live in an era where digital and visual communications are far more important than even audio. The

[Senator Eggleton]

Communications Directorate monitored on Twitter and on Facebook the reaction of the public and the press, and it was overwhelmingly positive. Countless numbers of emails have come in to the Communications Directorate also pointing out how impressed they were with the quality of the questions, the quality of the answers and the general decorum in this institution.

I do agree, but to answer the question, of course it is a decision of the Senate and it's a question for this chamber to decide when and how long and in what context we will allow cameras in the chamber. Internal Economy has already given approval to the recommendation. I know the Modernization Committee is also weighing in and looking at the pros and cons.

From my point of view, I am in agreement with Senator Eggleton in that the chamber should eventually come to the realization that we should put out for public display all the wonderful work we do.

Some Hon. Senators: Hear, hear.

Senator Eggleton: Well, we are in agreement going back and forth here, but how do we get them back here for the rest of the debate on Bill C-14? There was a motion — I don't know if it came from Mr. Harder or not — with respect to going into Committee of the Whole, and there was a subclause in there about television cameras. Nobody said anything about it; everybody was happy for it.

So maybe Senator Harder could invite them back or you could do so. Could one of you please put a motion on the Order Paper to invite them back?

Senator Housakos: I think we should allow leadership to continue to have discussions, along with the Speaker. If they come to consensus, they can bring it to the floor and we will all weigh in on it at that point in time.

JUSTICE

JUDICIAL VACANCIES

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): I have a question for the Leader of the Government in the Senate.

Leader, seven weeks ago today I asked a question, and yesterday you kindly tabled in this chamber what purports to be the government's answer. Unfortunately, it's not an answer.

The question was: When can we expect the vacant positions for judges that exist across this country to be filled? The purported answer was that the government recognizes the urgency to fill the vacancies, but the government is considering the full scope of the appointments processes and how best to achieve the goals of transparency, accountability and diversity in the appointments process; however, it is important to ensure that this is done in a considered way. End of answer.

So I would ask you to go back to the government and ask for an answer to the question: When may we hope to see the judgeships filled?

Hon. Peter Harder (Government Representative in the Senate): Of course, I am always happy to ask the government to respond to questions. I have conveyed the response to the question on which I took notice, and of course the Senate is free to make its own judgment as to the quality of the answers.

Senator Fraser: Will you convey that I would like a more detailed answer to my question?

Senator Harder: I started my response by saying I would be happy to convey again —

Senator Fraser: Thank you.

Senator Harder: — but I do note that the answer was in fact the answer to the question that was posed.

ORDERS OF THE DAY

BILL TO AMEND THE PUBLIC SERVICE LABOUR RELATIONS ACT, THE PUBLIC SERVICE LABOUR RELATIONS AND EMPLOYMENT BOARD ACT AND OTHER ACTS AND TO PROVIDE FOR CERTAIN OTHER MEASURES

SECOND READING

Hon. Larry W. Campbell moved second reading of Bill C-7, An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures.

He said: Honourable senators, I'm pleased to have this opportunity to speak in support of Bill C-7. This legislation marks an historic milestone for the Royal Canadian Mounted Police, Canadian labour relations and for Canadians as a whole.

With the passage of this bill, RCMP members and reservists would for the first time have the same collective bargaining rights as other police forces in Canada. They would have the right to choose an employee organization to represent them in labour relations with their employer, the Treasury Board of Canada.

Colleagues, this legislation will amend both the Public Service Labour Relations Act and the Royal Canadian Mounted Police Act to create a new labour relations regime for RCMP members and reservists. In fact, Bill C-7 would bring the labour rights governing this group of federal employees in line with the fundamental freedoms enshrined in the Charter of Rights and Freedoms.

As you know, the legislation being considered addresses the Supreme Court of Canada's decision in the *Mounted Police Association of Ontario v. Canada (Attorney General)*. The Supreme Court's ruling in that case was that key parts of the current RCMP labour relations regime are unconstitutional. For one, the court struck down the exclusion of RCMP members from

the definition of "employee" in the Public Service Labour Relations Act as unconstitutional. However, the court held that a section of the Royal Canadian Mounted Police Regulations infringed on the Canadian Charter of Rights and Freedoms. The court affirmed that section 2(d) of the Charter "protects a meaningful process of collective bargaining that provides employees with a degree of choice and independence sufficient to enable them to determine and pursue their collective interests."

• (1410)

In the case of the RCMP, the court determined that "The current RCMP labour relations regime denies RCMP members that choice, and imposes on them a scheme that does not permit them to identify and advance their workplace concerns free from management's influence."

The court found that the Staff Relations Representative Program did not meet the criteria necessary for meaningful collective bargaining. Under this program, RCMP members were represented by an organization that they did not choose. What is more, they had to work within a structure that lacks independence from management. Therefore, the court held that this violated the Charter right to freedom of association.

Under this legislation, RCMP members and reservists will be free to choose whether they want to be represented by a bargaining agent that is independent of the influence of RCMP management. In addition, to be certified as a bargaining agent, an employee organization would need the support of a majority of RCMP members appointed to a rank, as well as reservists, in a single national bargaining unit.

Taken together, the proposed legislation will provide a single national RCMP bargaining unit, composed solely of RCMP members appointed to a rank, and reservists; the requirement that the RCMP bargaining agent have as its primary mandate the representation of RCMP officers; that officers, as well as other managerial and confidential positions, be excluded from representation; that the Public Service Labour Relations and Employment Board be the administrative tribunal for matters related to the RCMP unit collective bargaining, as well as grievances related to a collective agreement; and that independent binding arbitration be the dispute resolution process for bargaining impasses, with no right to strike.

I note, however, that the proposed legislation would restrict certain matters from being included in a collective agreement or arbitral award.

Colleagues, 40 years ago I was a member of the Royal Canadian Mounted Police, stationed in British Columbia. At that time in the Lower Mainland, there was a fervent push to unionize the RCMP. There was no overtime and no wage negotiation. At that time there was no legal way to express displeasure with anything the force chose to do. It was highly illegal to even meet to discuss unionization.

After some effort, however, the system of divisional representation was put forward and accepted. This remained the status quo until the Supreme Court decision in the case of *Mounted Police Association of Ontario v. Canada (Attorney General)*.

I think of my sergeant now and retired Staff Sergeant Fred Hardy, who led this movement. In the 1970s he was forever known in the force as “red Fred.” I present this bill in his name.

Without question, this bill is a huge step forward in modernizing the RCMP. For too long, the force has been beset with problems stemming from a military culture being applied to a policing function. Allowing members to be represented by a union is forward-looking. In saying this, however, I would be remiss if I did not state that this bill is far from perfect and needs careful study to ensure that it gets it right for the members of the force. This means loosening the grip that senior management has on the rights of members to help make the force better.

This bill excludes the following from the collective bargaining: law enforcement techniques; transfers from one position to another and appointments; appraisals; probation; demotions or discharges; conduct, including harassment; the basic requirements for carrying out the duties of an RCMP member or reservist; uniform, order of dress, equipment or medals of the Royal Canadian Mounted Police.

These exemptions continue the paramilitary mindset of the RCMP and deny the fact that the actual on-the-ground members of the RCMP can and should contribute to moving forward. Surely these exclusions go to the very heart of the collective bargaining process and should not be the exclusive purview of the commissioner.

The argument has been made that the RCMP will be part of the public service and, as such, should be governed by the rules in place. I would counter these points.

Mounties are not public service employees. They are police officers who happen to be employed by the federal government.

Secondly, the Royal Canadian Mounted Police, while iconic, are not special in the police world. Unlike public servants, they operate in the police world with the same dangers, problems and issues as any other police department. No other Canadian police force has exemptions such as found in this bill.

One of the aims of collective bargaining for the RCMP is to allow them to raise their standards to the levels of other police agencies. They should not be fifty-second when it comes to wages; they should not find themselves outgunned in a shootout; and they should have the finest of equipment and uniforms.

Collective bargaining starts with everything on the table.

Hon. Senators: Hear, hear.

Senator Campbell: Issues are resolved or removed with the consent of both sides. Every other police agency has a chief, commissioned officers and non-commissioned officers. Look at the history and explain how these police forces operate well without the exemptions. My thought is that both parties have the good of the citizens at heart and work toward agreements that reflect both good policy and good law enforcement.

[Senator Campbell]

I know that the committee will do their job and listen carefully to witnesses regarding the merits of this bill. I look forward to the committee’s report on what I consider to be a vitally important piece of legislation.

Thank you for your attention.

Hon. Senators: Hear, hear!

Hon. Terry M. Mercer: Would the senator accept a question?

Senator Campbell: Of course.

Senator Mercer: It seems to me that the exemption of discussing occupational health and safety issues — I understand that is exempted by this bill, which talks about implementation and monitoring of workplace safety programs dealing with safety issues. But this is really not a subject for an occupational health and safety committee; this is a matter of life and death for members of the RCMP every day.

Do you think that the bill in its present form is the proper one to serve and to protect those members of the Royal Canadian Mounted Police?

Senator Campbell: Thank you for your question, senator.

I believe that this bill is a good start, and I believe it has to be looked at by the committee and debated. It’s my understanding that these exemptions are in there not out of any kind of wish to control the mounted police but, rather, to ensure that the bargaining rules for the public service, which have these exemptions built in, are not changed.

My answer to that is that while I love the public service and I think they do a great job, I couldn’t care less whether those exemptions apply to them. I’m simply here speaking to the Royal Canadian Mounted Police, and from their point of view this bill should be amended to get those exemptions out of the bill.

Hon. Colin Kenny: Would you take a question, Senator Campbell?

Senator Campbell: Yes, sir.

Senator Kenny: Given your experience, could you list the exemptions that you find most egregious?

Senator Campbell: Senator, I find all of the exemptions equally wrong. I believe that this is collective bargaining, and you don’t go into collective bargaining with one side saying, “We aren’t going to talk about this.” You go into collective bargaining with everything on the table, and the two sides decide what goes off the table. Things falling off the table, of course, comes at a cost to each side. They have to make a decision about what is important to them.

• (1420)

I don't know how many times we have to see the Alberta and New Brunswick situation before we realize that something is desperately wrong here, and I can tell you it has been desperately wrong for years. In the 1970s we had a bullet in our revolvers that wouldn't go through a windshield. We actually loaded our own so that we could have a weapon that could go through the windshield. This is not acceptable.

We have a yellow stripe down our pant leg. There is a reason for no other police forces having a yellow stripe down their pant legs: it's a running target. It shows where you should be shooting. Go to the top of the yellow stripe and that's what you should be aiming for.

The idea that the members of the RCMP would not be involved in solving the harassment issue is ludicrous to me. This is where the problem lies. This is where they have to address it. We have to do better.

Honourable senators, I can't list one over another. I think they all should be taken out. They shouldn't be on the table.

Hon. Pierrette Ringuette: I certainly agree with all the comments the honourable senator has made. Another issue that I believe is important for this chamber to understand is that once again we have a bill in front of us that has a deadline with regard to a Supreme Court decision.

Could you elaborate a little on this issue?

Senator Campbell: Certainly.

I have the utmost respect for the Supreme Court. Quite frankly, I don't know where we'd be without them most of the time. I think with this bill, as with Bill C-14, while they say there is a deadline, I don't believe that there is such a thing.

What is going to change if we don't have it done by the deadline? Nothing. What is going to change if we take the time and we look at this? Everything. Everything to do with the RCMP is going to change as a result of this act. I would like it to be done before that, but quite frankly I don't think the world will end if it's not.

Hon. Nancy Greene Raine: Would the honourable senator take another question?

Senator Campbell: Certainly.

Senator Raine: I'm very curious. I note that it doesn't call for a secret ballot vote in the union when they are doing their voting. I would be concerned that without a secret ballot vote in any kind of voting that's being done in the membership of the unions, it might set up some ill will. I feel that a secret ballot is not that hard to do. Why would we not do that for members of the RCMP union?

Senator Campbell: I agree with you. I think that issue should be explored at the committee.

Honourable senators, I think you have to be a former member to understand this, but I am blown away by the number of emails that I've received from people who put their regimental number down and where they are from. That is a complete act of bravery as far as I'm concerned. I believe that in fact a secret ballot should be in place but this should be up to the committee to explore.

There are lots of issues in this bill that some people agree with or do not. My reason for speaking out here are those exemptions, which I think basically negates the bill from the point of view of being an RCMP member and wanting, as these emails say so graphically, to be a part of the solution. They want to be involved in all of this. At the end of day, they're the sharp end of the stick and they should be listened to.

Hon. Vernon White: Would the honourable senator take a question?

Senator Campbell: Certainly.

Senator White: In the past year or so, the RCMP members have lost medical and health care benefits and been moved to new programs without any discussion between the bargaining agent and the organization or the Government of Canada.

My question to you — now that I find you are the critic, not the sponsor — is if salary and benefits are to be arbitrated, and with all of these things that are exempted, what would a union even negotiate?

An Hon. Senator: Not much!

Senator Campbell: I should state publicly that had they chosen Senator White as commissioner, we probably wouldn't be sitting arguing about this — but that's another issue.

That's exactly the problem. There is no negotiation. There is no ongoing dialogue between rank and the top. It's all top-down. As we saw in these emails, it ranged from people with one year to people with 25 years. It's heartbreaking to listen to a young constable say this is all he or she ever wanted to do and, suddenly a year later, that they don't know why they made the choice because there is no way of expressing what should happen.

This bill is historical; it's huge. From 1873 until now, we have been a military outfit. We have been run like a military outfit and disciplined like a military outfit. That has to change. It's 2016.

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

Senator Campbell: Yes.

Senator Lankin: This is following up on your observation about secret ballot votes. As you introduced this bill, you made reference to the fact that it is bringing the opportunity for unionization and collective bargaining under the regime of the Public Service Labour Relations Act. I assume — I don't know if you're aware — that all sorts of provisions regarding secret ballot votes and the conducting of votes are contained therein as they are within provincial jurisdiction labour relations acts, so it might be a redundant area of study for the committee. Perhaps you can

look to that and provide the committee that advice. It seems that it is not correctly placed in this bill but it is already in the regime of the Labour Relations Act.

Senator Campbell: I'm certain that the Defence Committee, with their able chair, will be looking into all of that. I was simply stating a personal opinion.

In closing, it's wonderful to be independent to introduce a bill and then to be able to actually talk about it. Thank you.

[Translation]

Hon. Claude Carignan (Leader of the Opposition): Honourable senators, I would like to thank the bill's sponsor and congratulate him on his objectivity. I think all senators strive to consider bills objectively and seek ways to improve them. The first time I read Bill C-7, several things jumped out at me, basic elements that should be part of a certification and collective bargaining system. I am therefore very pleased, honourable senators, to speak to Bill C-7 today.

This bill comes as a response to years of court proceedings. That is why we have to study it closely, particularly from the constitutional perspective laid out in *Mounted Police Association of Ontario*, a seminal 2015 Supreme Court decision on labour law.

It was a constitutional challenge brought by two private RCMP member associations seeking the right to bargain collectively on behalf of police officers. The justices had to rule on two issues. The first was the exclusion of RCMP members from the collective bargaining regime set out in the Public Service Labour Relations Act. The second was the non-unionized labour relations regime that had been in place for a number of years under the RCMP Regulations, the so-called Staff Relations Representative Program.

In *Mounted Police Association of Ontario*, the Supreme Court interpreted the constitutionality of the regime for negotiating working conditions in place at the RCMP in light of section 2(d) of the Canadian Charter of Rights and Freedoms. Paragraph 2(d) of the Charter is supposed to guarantee employees' right to associate in order to pursue their collective interests regarding their working conditions.

• (1430)

I must say, it is quite interesting to be debating Bill C-7 at the same time as Bill C-14, because they both involve issues on which the Supreme Court ruled in the past, in the 1990s and early 2000s. More recently, however, the Supreme Court completely changed its position on medical assistance in dying and on including the constitutional protection of the right to collective bargaining.

The judges found that the Staff Relations Representative Program excluded RCMP members from the scope of the Public Service Labour Relations Act and imposed a labour relations regime that left a lot of room for arbitrary decisions. "The Program," as it was known, was found to be unconstitutional.

[Senator Lankin]

The Supreme Court found, and I quote:

... a process of collective bargaining will not be meaningful if it denies employees the power to pursue their goals.

I want to draw your attention to this excerpt. The Supreme Court also stated:

... excluding a specific class of employees from the labour relations regime in order to deny them the exercise of their freedom of association impermissibly breaches the constitutional rights of the affected employees.

Furthermore:

... Parliament must not substantially interfere with the right of RCMP members to a meaningful process of collective bargaining. . . .

Honourable senators, the court found that the program's measures disrupted the balance that must exist between employees and employer.

[English]

I'm in total agreement with the principle on which this bill is based. I do not believe that we can compromise on the obligation to respect the constitutional right of the RCMP members to, as the Supreme Court has said: "associate for the purpose of meaningfully pursuing collective workplace goals."

[Translation]

However, we must consider the specific case before us now. We all recognize that the RCMP, as our national police force, is unique and that its members therefore need a proper balance of power in their collective bargaining.

Throughout the study, we must remember that the men and women affected by this bill, the front-line RCMP officers, put their lives in danger every day to protect us.

[English]

We must keep in mind the four RCMP officers who were shot in Mayerthorpe, Alberta. Recently, we were shocked by the brutal deaths of RCMP officers in Moncton, while they were serving our communities. These tragic events resonated during the testimony on Bill C-7 in the House of Commons, because this bill targets, in particular, the working conditions of the RCMP and their security equipment.

During the hearings at the House of Commons, MPs heard from a representative of the Mounted Police Professional Association of Canada, who reminded parliamentarians that RCMP agents, because of their work, are not civil servants. He said:

We are not civil servants, yet we're being compared to civil servants. We are a national police agency and should be compared to the large police agencies like the OPP, Sûreté Du Québec, Toronto Metro, Vancouver PD and Winnipeg police.

[*Translation*]

Honourable senators, if this bill passes in its current form, it will have a serious impact on the collective bargaining rights of RCMP members and reservists. During the study in the House of Commons committee, witnesses, most of whom were current or former RCMP officers, shared some legitimate concerns. They referred to some real examples from other Canadian police forces.

Dear colleagues, as a lawyer who has argued many cases in public and labour law, and as someone who has taught labour relations in faculties of law, I must admit that I was shocked to learn how outdated the RCMP's labour relations regime was. I was also shocked to learn that this outdated regime at the RCMP, which was known as "the Program," could have serious consequences.

However, it is equally worrisome to see that, as Senator Campbell pointed out, the new collective bargaining regime proposed by the RCMP and the President of the Treasury Board is extremely limited in scope and application. It is a far cry from the parameters and structures around labour relations today.

Bill C-7 is very restrictive when it comes to what issues can be bargained collectively. Senator Campbell mentioned them, and I would like to reiterate them because I believe they are fundamental issues that need to be part of a collective agreement. They have been deliberately left out.

A collective agreement could not include transfers, which are a fairly frequent occurrence in a police force like the RCMP. The bill also excludes all of the following issues from the collective bargaining process: appointments; probation; discharges or demotions; conduct, including harassment; the basic requirements for carrying out the duties of an RCMP member; and the uniform, order of dress and equipment. Yes, you heard me right.

Personally, I have never seen something like this. Just about the only things left are pay, leave and binding arbitration, if the parties do not agree.

Honourable senators, as the Supreme Court said, when it comes to labour law, one of the fundamental purposes of section 2(d) of the Charter is to ensure that, by banding together in the pursuit of common goals, individuals are able to prevent more powerful entities from thwarting their legitimate goals and desires.

Obviously, it is legitimate for workers to want to negotiate issues related to workplace safety. An RCMP officer appeared before the House of Commons committee to explain how important it was, when negotiating working conditions, to be able to negotiate vital equipment, such as safety or bulletproof vests that can protect police officers from long-range rifles. However, as I said, this is excluded.

Over the past few years, we have heard troubling stories in the media about workplace harassment, including at the RCMP. It is surprising that the bill excludes conduct at work from collective

bargaining. In fact, the legislation even expressly proposes to exclude harassment. It was not clear that this issue was related to conduct, so it is specified for greater certainty.

A number of witnesses in the other place shared similar concerns about such a sensitive issue, at a time when our national police force is working on becoming more diverse.

• (1440)

Honourable senators, I think it is important for the Standing Senate Committee on National Security and Defence to take a close look at what is excluded from negotiation. If the Supreme Court recognized that RCMP members have the right to form an association to negotiate their working conditions, how can Parliament exclude so many of the factors that should be part of the negotiations to the point that negotiation becomes virtually meaningless?

The clauses relating to arbitration cover only elements that can be included in negotiation, yet arbitration is an essential process when problems arise during collective bargaining.

[*English*]

Leland Keane, a board member from the Mounted Police Professional Association of Canada declared:

In regard to arbitration, we want an arbitrator to independently consider all relevant factors and weigh those. Factors such as classification of employees would be something that we would be interested in having in the collective agreement. RCMP members are not civil servants, and it's not relevant to compare us to other civil servants.

[*Translation*]

That, dear colleagues, is something else the committee could examine.

I would also like to draw your attention to another point arising from the Supreme Court ruling. The court determined that section 2(d) guarantees the right to meaningful collective bargaining and the right to make meaningful collective representations. The Supreme Court went even further by clarifying that there are two parts to these two concepts.

The first is employee choice. In a democratic organization, the certification process or the selection of the bargaining agent must involve a secret ballot vote to ensure that all members can make their choice with respect to certification freely. However, Bill C-7 does not codify that employee choice, which, in our modern democracy, involves a secret ballot in the legislation of nearly every Canadian province.

The collective rights of RCMP members under section 2(b) of the Charter can be exercised by their employee choice at the first instance, saying whether they want an association or not, and that

vote should be conducted in a way that conforms to our democratic principles, which is by secret ballot. Bill C-7 should reflect that, because it is a fundamental principle.

In my labour law practice — and my colleagues who were RCMP members can confirm this — I learned that there can be no balance of power in the collective bargaining process if the only issue on the table is salary. The court said so itself when it stipulated, and I quote:

The process fails to achieve the balance between employees and employer that is essential to meaningful collective bargaining, and leaves members in a disadvantaged, vulnerable position.

... The guarantee entrenched in s. 2 (d) of the *Charter* cannot be indifferent to power imbalances in the labour relations context. To sanction such indifference would be to ignore “the historical origins of the concepts enshrined” in s. 2 (d).

[English]

Therefore, we must ask ourselves whether this bill, in its current form, respects the rights of the men and women dedicated to the services of the RCMP, those men and women who put their lives on the line to protect the security of Canadians.

[Translation]

We must ask ourselves, honourable senators, whether Bill C-7 is consistent with the spirit and the letter of what the Supreme Court deliberately chose to require of Parliament. I would add that we need to determine whether this bill is consistent with the case law.

The Supreme Court was very clear in its interpretation as set out in *Mounted Police Association of Ontario*, and I quote:

Just as a ban on employee association impairs freedom of association, so does a labour relations process that substantially interferes with the possibility of having meaningful collective negotiations on workplace matters. Similarly, a process of collective bargaining will not be meaningful if it denies employees the power to pursue their goals.

I therefore invite you, dear colleagues, to vote in favour of Bill C-7 at second reading so that it can be sent to the Standing Senate Committee on National Security and Defence for an in-depth study. I am confident that the questions that Senator Campbell and I raised about the bill will be examined.

Who knows? Perhaps we will find ways to improve this bill, since the Senate has a duty to ensure that bills are consistent with our country's legal framework, including the Canadian Charter of Rights and Freedoms. It would be unfortunate if this bill, which is supposed to respond to RCMP officers' wishes, were to become just another burden for them to bear.

Thank you.

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

[Senator Carignan]

[English]

Hon. A. Raynell Andreychuk: I have heard the proponent and the critic of the bill question the bargaining concepts under this bill. I taught at Depot for 12 years, so I'm well aware of the Royal Canadian Mounted Police, their job. I prosecuted on behalf of the government along with the officers who provided the evidence. It is a compelling argument that both of you make, but the essence of bargaining is being exempted.

Senator Carignan: Yes.

Senator Andreychuk: Why would we then support, in principle, this bill?

[Translation]

Senator Carignan: Bill C-7 was introduced in response to a Supreme Court ruling that set out a number of essential structural elements for establishing a union. These structural elements are good. They are the same as many of the elements of the system set out in the Public Service Employment Act.

One of the major problems with the bill relates to the issues that can be negotiated. Many of the issues that would normally be included in a collective agreement are excluded. We must therefore carefully consider those excluded issues to determine which ones are essential in order to comply with the Canadian Constitution and the right to collective bargaining that results from sections 2(d) and 2(b) of the Canadian Charter of Rights and Freedoms.

[English]

Senator Andreychuk: You then say that we are complying in principle with what the Supreme Court defined as necessary for compliance.

It seems to me a shell isn't what the court was saying. It was talking about a true bargaining unit with all of the capacities. Otherwise, it is not a shell; it is smoke and mirrors.

[Translation]

Senator Carignan: I will use an image to answer you: the bill is putting in place a car with the structural elements of a car, but without an engine to move this vehicle forward.

It is possible, in committee, to make recommendations in order to add an engine that meets 2016 requirements — it could be a hybrid vehicle — and would at least help achieve the objectives of unionizing and respecting the rights and freedoms of our police officers.

• (1450)

[English]

Senator Campbell: On this question, my response would be that you have to start somewhere, and this is where we start it. We have to recognize that this came through the house.

The Hon. the Speaker: Senator Campbell, excuse me. I can only assume you are leading to a question to Senator Carignan. Can we assume that?

[English]

Senator Carignan: That is my understanding.

Senator Campbell: My apologies, Mr. Speaker, I am just overwhelmed by the moment.

[Translation]

Hon. Serge Joyal: Would Senator Carignan take another question?

Senator Carignan: Yes, of course.

Senator Joyal: In your response to the Honourable Senator Andreychuk, you compared the bill to a car without an engine. Do you think that the reason for the lack of engine has to do with the public interest and the unique role played by the Royal Canadian Mounted Police? Or, as Senator Campbell seemed to say, is it simply that we haven't reached the point where this system can have all the characteristics of a real collective bargaining system?

Senator Carignan: I think that Senator Campbell gave a good description of the military culture that still exists within the RCMP, and he talked about the fact that the RCMP commissioner has a lot of power. The leadership seems to be reluctant to let go of some aspects of collective bargaining or some management rights that it has always held and always managed, if I can put it that way.

I think they're having a hard time letting go of the culture of management rights. However, as I said, it's 2016, and this bill, as Senator Campbell said, is obviously a first step. I think that the Standing Senate Committee on National Security and Defence will be able to take it from being a first step to a full system.

I am willing to pass the bill at second reading and send it to committee, but I think that the bill needs to be fleshed out. It needs some structure.

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

Hon. Senators: Question!

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Harder, bill referred to the Standing Senate Committee on National Security and Defence.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

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

The Hon. the Speaker: Honourable senators, before calling on Senator Baker, I have been informed that given the importance of this bill, there is agreement of both sides to designate two critics, Senator White for the opposition, Senator Joyal for the Senate Liberals, thereby giving both critics 45 minutes of time to speak.

Is there leave to proceed in this matter, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted.

Senator Baker: Honourable senators, before making a few remarks on this bill, I would like to mention, as I always do, that over the past four weeks we have had several references to the Senate committees in our courts in Canada. I would like to cite a couple of them: 2016, the Federal Court of Appeal, 93, in which it references and quotes from the Standing Senate Committee on Social Affairs, Science and Technology; the Alberta provincial court, 2016, 70, references the Standing Senate Committee on Social Affairs, Science and Technology; the B.C. Supreme Court, 2016, 661, quotes with approval the Standing Senate Committee on Transport and Communications.

At 2016, the B.C. Human Rights Commission — this is where the Senate committees are quoted seven times more than the House of Commons, namely, in tribunals and quasi-judicial bodies in Canada — there is a particular reference to the Standing Senate Committee on Legal and Constitutional Affairs. Then the Alberta Court of Queen's Bench 2016, 230, references the proceedings of the Standing Senate Committee on Energy, the Environment and Natural Resources.

Having done that, I want to congratulate and thank the senators who participated in the joint committee on this bill, particularly Senator Ogilvie, who served as a joint chair of that committee. He did a great job.

Hon. Senators: Hear, hear.

Senator Baker: The committee is quoted extensively in the superior courts of Canada. In the eight cases that were quoted across Canada concerning *Carter v. Canada*, the joint committee and its recommendations were dealt with in each one of those superior court decisions across Canada.

The other committee members were Senator Cowan, Senator Joyal, Senator Nancy Ruth and Senator Seidman.

I would also like to thank members of the Legal and Constitutional Affairs Committee, who did a pre-study of this bill. They did a remarkable job and forwarded to every single

member of the House of Commons — in fact, twice to the committee members in the House of Commons — all of the recommendations from the Standing Senate Committee on Legal and Constitutional Affairs in their pre-study. They were not only the recommendations of the committee that were passed, but those that were defeated and general recommendations.

We can see the results of that in the third reading debate in the House of Commons and in some of the amendments that were moved as they got into third reading and as they left report stage of the house.

So a tribute to these members, and a special tribute to the chair of the committee, a wonderful chairman, former cabinet minister of three administrations in the Ontario government, Senator Runciman —

Senator Plett: Hear, hear.

Senator Baker: — and also to the deputy chair of the Legal and Constitutional Affairs Committee, Senator Jaffer, QC; Senator Batters, QC, who used to be the legislative assistant to the Minister of Justice in the Province of Saskatchewan; Senator Boisvenu who is an expert on victims' rights; Senator Dagenais, past president of all the police officers in the Province of Quebec, great knowledge of the law; Senator Cowan, QC, leader of the Liberal independents in the Senate; Senator Joyal, a recognized constitutional expert, author, and lawyer; Senator McInnis, career lawyer, and the chair of our modernization committee; Senator McIntyre, QC, the chair of the NBR Board for 25 years and prior to that a distinguished criminal defence lawyer in the province of New Brunswick; Senator Plett, who is the former President of the Conservative Party of Canada; and Senator White, as we all know, a former Assistant Commissioner of the RCMP and Chief of the Ottawa Police Force.

• (1500)

We also had attending at our committee meetings Senator Lankin, former provincial cabinet minister and legislator in this province; Senator Omidvar, author, recognized expert on human rights and diversity; and Senator Pratte, respected author, former editor of *La Presse*. They attended each one of those committee meetings, although they weren't voting members of the committee.

That pre-study, as I say, went to each and every member of the House of Commons, and a lot of the material was used at report stage and third reading in the House of Commons.

Having said that, let me just deal briefly with the history of this particular bill. As you can imagine, as a reader of case law for the last 45 years, I paid particular attention to the previous cases.

The *Rodriguez* case. I met Sue Rodriguez in Ottawa, and Svend Robinson, at the time. In her case, I read the court judgments that went up through a special group of defence lawyers with the BC Civil Liberties Association. They did a wonderful job. They lost the case at the Supreme Court of Canada by one vote.

In 2012, the case that forms the basis of this bill was started, again in British Columbia, again with a group of lawyers associated with the BC Civil Liberties Association and a lawyer

by the name of Grace M. Pastine. That was the case of Gloria Taylor.

It's interesting when you read the court judgment, the Court of Appeal judgment and then the Supreme Court of Canada judgment. It was about the Charter rights of Gloria Taylor. The bill we have before us today is the result of that.

Now, there were other litigants who joined the case along the way. You may wonder why it is recognized as *Carter v. Canada*. There is a rule, as some senators who were previous judges would know, for the style of cause. You, Your Honour, would know what the style of cause is, and that is how you recognize the case. When you have in civil law more than one person, you go alphabetically.

Sometimes when you research something, it's called, say, *Baker v. Canada*, and it could actually be Mr. McDonald you are researching as being the person who formed the basis of the decision, in other words, the violation of section 7 of the Charter and the violation of section 15 of the Charter.

During that case, at the trial judge level, the trial judge dealt with a change of circumstances from *Rodriguez*. She found that the definition of section 7 of the Charter had changed to a certain degree over the years and there was a public change. There was what was called a change of the landscape. In other words, we now had five or six states in the United States with physician-assisted death. We had four or five jurisdictions in Europe with physician-assisted death.

The trial judge examined the evidence and all of those particular jurisdictions and what the requirements were. She also examined public opinion polls in Canada as part of the change of the landscape.

Here is the poll that she mentioned; it is a poll of Canadians done by Angus Reid, a public opinion survey on a patient who is in a coma, with little or no hope of waking. The patient had previously specified they wished to have their life terminated if they were ever to be in this condition. Support in Canada, 81 per cent for physician-assisted death; opposed, 13 per cent; 6 per cent not sure.

Then the survey asks about a patient who is terminally ill and will die in less than six months. The patient is expected to suffer a great deal of physical and mental anguish during that time. According to the survey, 78 per cent of Canadians supported the end of the patient's life by a doctor: 78 per cent in favour, 15 per cent opposed.

Then the polling results, when it came down to "not life-threatening" changed.

Now, in examining the other jurisdictions that had physician-assisted death, she examined California, for example. The California law is called the End of Life Option Act, and in it, it defines "terminal disease."

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

She examined the other states in the United States. Here is another one, Oregon. It's called the Oregon Death with Dignity Act.

In that act, section 12 defines "terminal disease."

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

Those examples go on and on, from "terminal disease" to "terminal condition."

"Terminal condition" is in the state legislation of Vermont, which is called An Act Relating to Patient Choice and Control at End of Life. "Terminal condition," which is one of the requirements of the person seeking physician-assisted death, ". . . means an incurable and irreversible disease" — this is "terminal condition," not "terminal disease" — "which would, within reasonable medical judgment, result in death within six months." Each one of the states in the United States had that as a condition.

She then looked at Europe. The example used in Europe by the trial judge, the Court of Appeal and the Supreme Court of Canada dealt with the Belgian act, called the Belgian Act on Euthanasia. It was passed May on 28, 2002.

The conditions and procedure fairly reflect what we have in in bill. However, it says that it would be:

. . . a medically futile condition of constant and unbearable physical or mental suffering that can not be alleviated, resulting from a serious and incurable disorder caused by illness or accident;

Then it goes on to say the requirements of the medical physician to check with another physician, to constantly be in touch with the patient, and the requirements go on. From time to time the person must be interviewed. There must be a written request.

• (1510)

Then section 3 of that bill says this:

If the physician believes the patient is clearly not expected to die in the near future, he/she must also:

Also, in addition to all of those requirements, now the physician must consult a second and third physician. The third physician is a psychiatrist.

Then there are further requirements. At least one month between the patient's written request and the act of euthanasia, there must be a constant checking. So the assumption is made, even in the Belgian act, not of terminally ill but expected to die in the near future.

I'll read the conclusion of the court. The court established that section 7 and section 15 Charter rights were violated in not allowing Ms. Taylor to receive physician-assisted death. I'll read for you paragraph 1414:

I have concluded that, in order to ensure that Ms. Taylor, a successful litigant, has an effective remedy, during the period of suspension of the declaration of constitutional invalidity there will be a constitutional exemption permitting Ms. Taylor to obtain physician-assisted death, under the following conditions:

(a) Ms. Taylor provides a written request.

(b) Her attending physician attests that Ms. Taylor is terminally ill and near death, and there is no hope of her recovering.

That is the trial judge's decision, 330 pages long, and almost all of it deals with Ms. Taylor, apart from the law, and that is the basis on which the decision of the trial judge was made.

Now, in questioning, as far as terminal illness is concerned, how do you judge if an illness is terminal in Canada? Is there any legal reference to it? I thought about a couple of instances. One of them was the medical use of marijuana in which there were four categories. One of them was that somebody was suffering from a terminal illness, and there was a special procedure. The other sections dealt with other illnesses.

The definition copied another definition that was — of course, this is the Controlled Drugs and Substances Act, the Criminal Code and health. The definition here in Canada regarding that, terminal illness means a medical condition for which the prognosis is death within 12 months.

I mention those findings of the court because when we go to the Court of Appeal and the Supreme Court of Canada, of course we don't find any reference to terminal illness. We don't find any reference to near death at all.

In the Supreme Court of Canada decision, I will read a sentence from each of the key paragraphs that I found interesting. Paragraph 11:

The impetus for this case arose in 2009, when Gloria Taylor was diagnosed with . . . amyotrophic lateral sclerosis (or ALS), which causes progressive muscle weakness.

Then at paragraph 30:

In addition, it also impinged on Ms. Taylor's security of the person by restricting her control over her bodily integrity. While the trial judge rejected a "qualitative" approach to the right to life, concluding that the right to life is only engaged by a threat of death, she concluded that Ms. Taylor's right to life was engaged insofar as the prohibition might force her to take her life earlier than she otherwise would if she had access to a physician-assisted death.

This is the Supreme Court of Canada decision in 2015. Paragraph 32:

In the result, the trial judge declared the prohibition unconstitutional, granted a one-year suspension of invalidity, and provided Ms. Taylor with a constitutional exemption for use during the one-year period of the suspension. Ms. Taylor passed away prior to the appeal of this matter, without accessing the exemption.

Then a sentence from paragraph 98:

On the one hand, as the trial judge noted, physician-assisted death involves complex issues of social policy and a number of competing societal values. Parliament faces a difficult task in addressing this issue; it must weigh and balance the perspective of those who might be at risk in a permissive regime against that of those who seek assistance in dying.

The conclusion of their judgment is one sentence of paragraph 126:

We have concluded that the laws prohibiting a physician's assistance in terminating life (*Criminal Code*, s. 241(b) and s. 14) infringe Ms. Taylor's s. 7 rights to life, liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice, and that the infringement is not justified under s. 1 of the Charter.

Period.

Then the court goes to paragraph 127. As each senator in this place knows, paragraph 127 is what prevails now as the law in Canada. The court said in a judgment shortly after this one, in 2016, that until June 6, instead of this complex regime of protection for the vulnerable, the superior courts of each province would have the jurisdiction to be the gatekeeper of this matter in applying paragraph 127 as being the law.

So that brings us to today. When we look at the judgments of the superior courts in the provinces, let me start with Madam Justice Martin of Calgary, Alberta Court of Queen's Bench. That's the superior court in the province of Alberta. She was faced with an application, and I want to read a couple of paragraphs from her judgment, paragraph 32 and one sentence in paragraph 33.

In setting up her judgment, she said:

[32] The trial judge also granted a personal constitutional exemption to Ms. Taylor during that period of suspension and the final order outlined certain requirements before Ms. Taylor could avail herself of that exemption.

I read out what the two primary requirements were.

[Senator Baker]

Then at paragraph 33:

The Court held at para 125 that legislators were best suited to enact the type of complex regulatory regime required and that stand-alone constitutional exemptions had the potential to create uncertainty, to undermine the rule of law and to usurp Parliament's role.

That was in reference to the Supreme Court of Canada's decision in 2015.

• (1520)

The trial judge of Alberta goes on to say this at paragraph 63:

. . . the Chief Justice of the Ontario Superior Court of Justice —

Now, this is Alberta we're talking about.

— published a *Practice Advisory - Application for Judicial Authorization of Physician Assisted Death*. In addition, on the day of the hearing of this application, the Chief Justice of the British Columbia Supreme Court published a Notice Regarding Applications for Exemption from the Criminal Code Prohibition Against Physician Assisted Death. . . .

While both protocols are based on the two *Carter* decisions and have certain similarities, each province has adopted slightly different rules . . . In my view, some of the suggestions or requirements are broader and more onerous than how I read the *Carter 2015* requirements.

Then she goes on. What she is doing here is she is establishing the law in Alberta. As senators know, there is such a thing as *stare decisis*, where the matter is decided. Unless the Court of Appeal intervenes, the law is the superior court decision, unless somebody is proactive and rather adventuresome and decides to say otherwise.

At paragraph 91 and 92, two sentences. It says this:

This record is not deficient simply because it is not as extensive or in the form proposed by Ontario's *Practice Advisory* or British Columbia's *Notice*. For example, no affidavits have been provided from Ms. S's attending physician, from a consulting psychiatrist or from the physician proposed to assist death. The Ontario protocol provides what "should" be done and contemplates affidavit evidence from four persons: the applicant, the attending physician, a consulting psychiatrist and the physician proposed to assist death.

That's Ontario.

The British Columbia protocol requires affidavits from the applicant and two physicians. The two physicians can be the treating physician and the physician assisting in the death. There is no requirement for an affidavit from a psychiatrist or psychologist. By way of further contrast, the Québec legislation does not require sworn testimony at all.

She goes further and she says this at paragraph 96:

In the absence of any suggestion that Ms. S lacks competence, there is no need to have evidence from a psychiatrist. Nowhere in the Supreme Court's decision is there a requirement for psychiatric evaluation. Such is not required in the Québec legislation or the British Columbia *Notice*. Only the Ontario *Practice Advisory* suggests that the applicant should include evidence from a psychiatrist. I am confident in these circumstances that the Court may make findings in respect of the *Carter 2015* criteria without the assistance of a psychiatrist.

Then at paragraph 102 she says:

The Attorney General of British Columbia argued that any order should require that competence be established both at the time of application to the superior court and at the time of death.

You recall, senators, that this was a matter pointed out to us: at the time of application and at the time of death.

The judge goes on:

I do not believe this is necessary for two reasons. . . . if her application is granted, Ms. S will seek a physician-assisted death in the very near future.

The court finally mentioned the following at 121:

Other considerations also arise as Ms. S has averred that she intends to have the assistance of two physicians in British Columbia and to die on private property in Vancouver. These physicians are named in the documents filed in Court but will not be specifically mentioned in the order. The Québec legislation requires that the physician personally perform what is called "medical aid in dying" and stay until death ensues. . . .

The Attorney General of British Columbia questions whether an Alberta order would grant the necessary authority for medical practitioners in British Columbia . . .

She says at paragraph 124:

The Supreme Court of Canada at para 40 of *Carter 2015* defined "physician-assisted death" or "physician-assisted dying" as ". . . the situation where a physician provides or administers medication that intentionally brings about the patient's death, at the request of the patient." Exactly who is protected under the Supreme Court's use of that term has generated much debate, especially in health care settings where physicians work as part of treatment teams that involve nurses, nurse practitioners, pharmacists, technicians and others. Given the evidence that only physicians will be involved with Ms. S, it is not necessary for this Court to address this question in respect of nurses and others.

You can see, senators, that there is quite a difference — and this is only one judgment — in the regimes that are in effect right across this country.

I also noted that the rules in Ontario are unusual — well, they may not be unusual to some people, but it struck me as being rather strange that a requirement in the province of Ontario called *Practice Advisory - Application for Judicial Authorization of Physician Assisted Death*, says this:

Evidence of the Attending Physician

10. The application record should include an affidavit from the applicant's attending physician addressing whether,

a. the applicant has a grievous irremediable medical condition (illness, disease, or disability) that causes suffering;

b. as a result of his or her medical condition, the applicant is suffering enduring intolerable pain or distress that cannot be alleviated by any treatment acceptable to the applicant; . . .

Then you go down to (e):

. . . the applicant is or will be physically incapable of ending his or her life without a physician assisted death.

That's Conlan, J., in *A.B. v. Ontario (Attorney General)* 2016 ONSC 2188. And Perell, J. 2016, *Carswell Ontario* 4088, makes the same observation of that requirement.

You might say, well, all of this connotes quite a difference in the requirements from one province to another. But what is more disturbing to me in this regime — because if this bill does not pass as of Monday, these are the regimes that will be in place.

Just listen to the chief judge of the Province of British Columbia in the matter of *A.A. (Re)* 2016 BCSC 570. Let's have a look. Let me read from paragraph 30, one sentence, 31 and 32:

Carter 2015 requires that to justify an exemption from the suspension of the declaration of invalidity . . . the petitioner's grievous and irremediable condition must cause enduring suffering that is intolerable in the circumstances.

The judge goes on:

During the oral submissions I raised with counsel for the petitioner —

That's the person seeking physician-assisted death.

— a concern that the proposed period until June 6 of this year within which the petitioner sought to be exempted from the extension of the suspension of the declaration of invalidity . . . was inconsistent with a finding that her condition was intolerable as required by *Carter 2016*.

• (1530)

Now, this is March 23, 2016. The petitioner asked to have physician-assisted death available to her April, May, and so that's two months and one week. The judge is saying this:

. . . was inconsistent with a finding that her condition was intolerable as required by *Carter 2016*.

[32] I was advised that the full time period proposed was not expected to be necessary, and since the oral submissions, the petitioner has confirmed that a shorter period would be sufficient. I accept her evidence that for personal reasons, she wishes to have a period until May 4th of this year within which to access a physician-assisted death.

[33] In the result, I am satisfied that the petitioner meets all the criteria under para. 127 of *Carter 2015*.

What's the difference? The judge is saying that if your suffering is intolerable, he doubts whether you have met the requirements of the *Carter* decision if it's intolerable for two months and one week. But if it's only for one month and one week, that meets the requirements of *Carter*.

That's the decision not just of the Supreme Court of British Columbia, but that's the decision of Hinkson, CJSC, Chief Judge of the Supreme Court of B.C. *stare decisis*. That's the rule. If you are defining terms and you are wondering what does "intolerable" mean, and somebody is against your proposal — maybe the judge doesn't like it — of "intolerable condition," is it "tolerable" or "intolerable?" Here we have the chief judge saying if it's two months and one week, it's really tolerable. It's not intolerable. But if you back that up by a month, okay, it could be intolerable for a month and one week.

Those are the regimes that would be in place if we don't pass the bill.

Much has been made of the Alberta Court of Appeal decision. The Alberta Court of Appeal decision was quoted in this chamber and in the other chamber time and time again as saying, well, the Alberta Court of Appeal says that somebody's condition need not be terminal or need not be approaching the end of life, and so on.

I read the Alberta Court of Appeal decision, and I took notice of the fact that the Alberta Court of Appeal, at paragraph 28, gave this as one of its reasons for arriving at its conclusion:

A legislative background document published by the Canadian government and provided to the court by counsel for Canada notes that the declaration describes a broad right, that the terms used to describe it, such as "grievous and irremediable medical condition", are not defined but could include conditions that are not life-threatening or terminal, and that the declaration is framed largely in terms of subjective criteria.

In other words, not life-threatening. This is a legislative background document. When I go to the legislative background document referred to by the Court of Appeal, it says, "Footnote:

Canada, Department of Justice, legislative background, medical assistance in dying, Bill C-14, Department of Justice."

The full significance of it is that the Court of Appeal of Alberta was using the background document for this bill to prove that somebody's death doesn't have to be near death or terminal. Of course, when you go to the background document, the government explains it. Even more conclusive than this, the background document says:

This language was deliberately chosen to avoid limiting assistance to those suffering from fatal or "terminal" conditions

That's the wording of the background by the Department of Justice to this bill. A court in the future will look at this bill and say, "What does the bill mean as far as expectation of life is concerned?" They will go to this background document and they will say, "That's what this means in this bill." Why? Because that's what the Government of Canada says in their background document.

Now, that is quite a relevant consideration. It was interesting that the Minister of Health said yesterday in this chamber — and that will be quoted in future court proceedings — that the reasonableness of the expectation of life that is reasonably foreseeable does not include somebody who has ALS. That's what she said, sitting right here in this proceeding, which will undoubtedly be used as the interpretation of the words "reasonably foreseeable."

So the government, in its background documents, in its evidence before this Senate, has defined the words.

I don't want to go on too long because other people want to speak, but I am seized with the prospect that has been proffered by persons who have a great knowledge of the Constitution. There are constitutional experts in this place — foremost among them, of course, is Senator Joyal. In the other place, experts appeared before the committee. They were quoted. They seemed to suggest that if there was a bill that was introduced in Parliament that went outside of the parameters of the Supreme Court of Canada decision, which was the setting for the requirement of the legislation, somehow, it is unconstitutional; or somehow, you can't do that.

Well, I can list several examples. You can, too, Your Honour; you're a trial lawyer. So can the other people here. The one that really comes to mind is from 1999, *R v. Mills*. That was a decision that involved sexual assault. It involved an accused who was seeking the medical records of the victim. The Supreme Court of Canada struck down the requirements of the law in a decision called *O'Connor*. So as the trial lawyers here know, you put in an application — an O'Connor application at that time.

There's another O'Connor application with the same words but not applying to the same thing.

Then Parliament, in a bill called C-46, introduced the law with a preamble the same as this. It mirrors the facts here. The Supreme Court of Canada went through a procedure in which the trial

[Senator Baker]

judge and the Court of Appeal said, “No, it’s outside of the parameters of what the Supreme Court of Canada has ruled in *O’Connor*, so, therefore, you can’t do that. You’ve gone beyond. In fact, you’ve actually negated some of what the Supreme Court of Canada had said.” So they took it to the Supreme Court of Canada.

• (1540)

The Supreme Court of Canada said this at paragraph 55 in the Mills case, 1999.

The respondent and several supporting interveners argue that Bill C-46 —

This is Bill C-14 which mirrors it.

— is unconstitutional to the extent it establishes a regime for production —

That’s production of medical documents.

— that differs from or is inconsistent with that established by the majority in *O’Connor*. However, it does not follow from the fact that a law passed by Parliament differs from a regime envisaged by the Court in the absence of a statutory scheme, —

—which is what we have —

— that Parliament’s law is unconstitutional. Parliament may build on the Court’s decision, and develop a different scheme as long as it remains constitutional. Just as Parliament must respect the Court’s rulings, so the Court must respect Parliament’s determination that the judicial scheme can be improved. To insist on slavish conformity would belie the mutual respect that underpins the relationship between the courts and legislatures that is so essential to our constitutional democracy.

The Hon. the Speaker: Senator Baker, your time has expired. Are you seeking five minutes?

Senator Baker: Five minutes.

The Hon. the Speaker: Leave granted, honourable senators?

Hon. Senators: Granted.

Senator Baker: It underpins the relationship in the court. Then the Supreme Court of Canada went on:

A posture of respect towards Parliament was endorsed by this Court in *Slaight Communications*. . . where we held that if legislation is amenable to two interpretations, a court should choose the interpretation that upholds the legislation as constitutional. Thus courts must presume that Parliament intended to enact constitutional legislation. . .

I wanted to make reference to reasonable foreseeability. People say where does that come from? It comes from the law. It comes from the Criminal Code, the requirement of reasonable foreseeability of death. It is an essential element of 215 of the Criminal Code. You have somebody in your care and they’re killed. As the judge knows, an essential requirement is what has to be an essential element of the offence is reasonable foreseeability of death. The court said this in a recent judgment 2016 B.C. Supreme Court 336:

(c) Reasonable Foreseeability of Death or Permanent Injury

62 This element considers whether it was objectively foreseeable that the failure to provide the necessities of life would endanger N’s life or cause or likely cause his health to be permanently injured.

The next section deals with surgery with the same essential element of reasonable expectation.

Finally, Your Honour, I wanted to praise some senators who did some questioning here. I will do it at third reading.

In conclusion, honourable senators, there was one person I neglected to mention who attended our meetings. It was Senator Sinclair. A couple of weeks ago, the Ontario Court of Appeal said at paragraph 319, conclusion of judgment, this is the Ontario Court of Appeal, 319, paragraph, the point was put eloquently in a statement made by Justice Murray Sinclair:

Rather than denying or diminishing the harm done, we must agree that this damage requires serious, immediate and ongoing repair. We must endeavour instead to become a society that champions human rights, trust and tolerance, not to be avoiding a dark history, but rather by confronting it.

It is an honour to have Justice Sinclair here with us in the Senate.

Hon. Senators: Hear, hear.

Hon. Richard Neufeld: Thank you, honourable senators. I am not the critic, but I would like to thank the critic, Senator White, for giving me this time so I can meet some of the obligations that I have here shortly after I speak.

I rise today to speak to Bill C-14 which deals with medical assistance in dying. I appreciate having the opportunity to address this important piece of legislation at second reading. I greatly benefited from yesterday’s committee of the whole, during which the Ministers of Justice and Health appeared before us to answer questions from senators in regard to the bill.

At the outset, I want to say that I am in favour of the concept of medical assistance in dying. However, I would have a difficult time supporting Bill C-14 in the form we have in front of us today.

I acknowledge and fully appreciate the fact that this is a very sensitive issue for all Canadians. The Supreme Court’s 2015 *Carter* decision clearly stated that the current criminal laws in our

countries prohibiting physician assistance in dying were found to limit the rights of life, liberty and security of the person. In other words, they contravened section 7 of the Canadian Charter of Rights and Freedoms.

Beyond the Supreme Court's decision, we are at a place in our country where physician-assisted dying is not only inevitable, but is broadly accepted by Canadian society. For one, I am of the view that each individual should have the authority to dictate, under certain circumstances and within precise safeguards, when and if they want to end their life. Call it what you will, but I also believe that a person should be able to give advance directive or have a living will clearly indicating their position or preference for medical assistance in dying, whether diagnosed or not with a life-threatening medical condition. I heard Minister Philpott have some reservation on this topic, but I think this is something worth considering.

Colleagues, allow me to be blunt: I am personally concerned about my quality of life at the end of my life, which is why I support medical assistance in dying. But above that, and perhaps unselfishly, I am more concerned about the quality of life for those loved ones close to me. I am thinking of my wife, children and my grandchildren. I would not want to burden them. I know full well how expensive, time-consuming and emotionally draining acting as a care-giver for someone can be. Medical assistance in dying would alleviate the stress on others and, to a certain degree, the financial cost for the family and the state.

I am of the baby boomer age. I'm that bulge in the system that's taking most of the money out of the health care system. I think it is incumbent on me to make these decisions. I should not leave these decisions up to my children to have to make.

As Minister Philpott said yesterday in response to a question on palliative care:

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.

I agree wholeheartedly with her statement and I would never suggest that medical assistance in dying is a better option than palliative care.

However, even though access to palliative care is a fundamental right in this country, we all know that it is underfunded, expensive and its access is too often limited to where you live. Many Canadians in rural, remote and northern communities don't have a family doctor or access to appropriate medical care. These places, like my home in Fort St. John in northeastern British Columbia, face many challenges when trying to attract doctors. How can we then expect all Canadians to have access to appropriate palliative care at the end of their lives when they don't even have a family doctor?

Needless to say, I very much appreciated the opportunity to sit in the Committee of the Whole yesterday and listen to both ministers defend and explain this bill. I found the exercise very valuable. Clearly there is no consensus and there is a wide variety of opinions on the matter.

[Senator Neufeld]

• (1550)

Evidently, I was not the only one impressed with yesterday's four-hour debate. As you know, many journalists followed us and acknowledged the great work of the Senate. Allow me to put on record a few comments from Twitter.

Michael Den Tandt from the *National Post* tweeted:

BTW, Senate back-and-forth today has been more substantive than any conversation I've heard in the HoC] maybe ever.

CBC news tweeted:

Medically assisted dying bill offers reminder that Senate has a purpose.

The one article in the Canadian press, the opening line quite telling:

The Trudeau government's controversial assisted dying bill is already getting a rough ride in the Senate.

Colleagues, I think that sentence alone speaks volumes. First, it acknowledges the important work we do in this chamber. Second, it underscores what I think is an unfortunate reality, which is that Bill C-14 is somewhat flawed.

Honourable senators, I now want to turn my attention to the section of the proposed legislation with which I am most concerned about. First off, I want to say I am not a legal or a constitutional expert. I think Senator Baker named enough legal minds around here, and my experience has been, if you get two legal minds in the same room, you have 10 different opinions.

But I must say that, unlike the Trudeau government and despite the assurances of the ministers yesterday, I am not convinced that the bill would hold up in court. Many senators addressed this issue, too. As the Alberta Court of Appeal decision confirms, the Supreme Court in *Carter 2015* did not expressly limit the right to dying individuals or those with medical conditions that are terminal, life-threatening or that reduce one's life expectancy. I'm afraid the current wording may not be Charter compliant.

I would rather focus my remarks on the four criteria candidates need to meet in order for their illness to be determined a grievous and irremediable medical condition. I remind all senators that these four criteria defining the patient's medical condition are above and beyond the five eligibility criteria one needs to meet to qualify for medical assistance in dying. In other words, candidates need to meet five eligibility criteria, one of which, the definition of grievous and irremediable condition, has four other requirements.

As stated in Bill C-14, a person has a grievous and irremediable medical condition only if they meet all of the following criteria: they have a serious and incurable illness, disease or disability; they are in an advanced state of irreversible decline in capability; that illness, disease or disability, or that state of decline, causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they

consider acceptable; and their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

I have serious concerns with the fourth criteria. I think it is too restrictive, and to be honest, I'm not convinced that the late Kay Carter, the person at the centre of the Supreme Court's decision on doctor-assisted suicide, would have actually qualified for medical assistance in dying under this bill.

Her children are on record saying their mother would not have qualified because she "did not have a terminal illness and she wasn't dying." But she was, indeed, experiencing unimaginable suffering that could have lasted for many more years. Because her death was not in the foreseeable future, I can only assume that she would not qualify for medical assistance in dying under this legislation.

Yet both ministers told us yesterday that Kay Carter would have been eligible for medical assistance in dying under this bill. Minister Wilson-Raybould, Canada's Attorney General, said she would be "by virtue of her age and frailty." And Minister Philpott added that it would be fair to say that Kay Carter was at the end of her life and her natural death was reasonably foreseeable.

Based on this testimony, I can only assume that a patient's age and frailty can now help determine his or her eligibility for medical assistance in dying. I can't help but wonder if doctors and nurses and practitioners have been informed of these new qualifying measures. If age is now a factor, how do you determine the age when someone's natural death has become reasonably foreseeable? In my view, it is somewhat arbitrary and certainly very difficult to actually define the term "foreseeable."

Furthermore, I want to say a few words on the third criteria used to define grievous and irremediable medical condition. I have a hard time accepting how a medical practitioner or nurse practitioner can assess a patient's illness and conclude that it constitutes enduring and intolerable suffering. Is that not a subjective assessment that only the patient can measure?

Honourable senators, I want to conclude my remarks this afternoon by addressing something Minister Philpott said yesterday in this chamber. She said:

Every day in this country, doctors make life-and-death decisions with their patients. Every day we trust them with our lives . . .

I couldn't agree with her more. I have been on this planet long enough to fully appreciate the outstanding and dedicated work of doctors, nurses and health care professionals. However, I am not convinced we should put our trust in this current piece of legislation. I am not entirely comfortable with the language used in Bill C-14 and its limitation in terms of access to medical assistance in dying.

Colleagues, while I support the concept of medical assistance in dying, I reiterate what I said earlier — Bill C-14 is flawed and I would have a hard time supporting it. I am confident debate on

second reading will both be informative and enlightening, and I look forward to reviewing the work and subsequent report of the Legal and Constitutional Committee where I expect this bill would be referred.

Hon Vernon White: Honourable senators, I rise today to speak on Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying). This is without doubt one of the most important issues I have dealt with in the Senate and probably one of the most important issues Parliament has had to deal with during my time — a true and real matter of life and death. Unlike my friend the Honourable Senator Baker I will keep my comments short so that others may speak, and I know there are many people who wish to speak today.

The Supreme Court of Canada addressed the question of physician-assisted dying in 1993 in *Rodriguez*, as Senator Baker spoke to. February 5, 2015, the Supreme Court of Canada rendered a very important decision in *Carter v. Canada* striking down sections of the criminal code which prohibited assistance in the death of someone who wants to die.

The court found that these laws were unconstitutional because they prohibit physician-assisted dying for competent adult persons who consent to the termination of life and have a grievous and irremediable medical condition that causes enduring suffering.

The court ordered that the Criminal Code provisions remain in force until February 6, 2016, to give Parliament time to respond to the decision. In January 2016, the federal government asked and received an extension, not the six months it requested but rather a four-month extension to June 6, next week.

In December 2015, motions were passed in the House of Commons and the Senate to establish a Special Joint Parliamentary Committee to review the report of the External Panel on Options for Legislative Response to *Carter v. Canada* and other relevant consultations.

The committee issued its final report in February, which was adopted by the majority of committee members and contained multiple recommendations. Throughout the report and its recommendations, that special joint committee emphasized the need for the federal government to work collaboratively with provinces to ensure consistency among jurisdictions.

As you know, the committee was made up of 5 senators and 10 MPs, and I would like to particularly acknowledge Honourable Senators Ogilvie, Cowan, Joyal, Seidman and Nancy Ruth who served on the special joint committee. Each of you should be noted for the difficulties, dedication, passion and compassion you have all showed throughout those hearings.

When Bill C-14 was introduced in the House of Commons in April, the Standing Senate Committee on Legal and Constitutional Affairs did a pre-study on the bill, holding six meetings of 20 hours and 66 witnesses, receiving many other written submissions. The committee produced a report of several recommendations. While I, along with my colleagues on the committee, was not able to agree with all of the recommendations

in the report, all senators worked respectfully and in good faith to do what they believed was best for Canada and respectful of the law arising from the *Carter* decision.

• (1600)

I had a unique opportunity to give special attention to the issue of physician-assisted dying by attending each of the committee meetings. I have to say that some of the witnesses had a powerful impact on me. I'll be honest and say that my opinion on this bill shifted many times along the way, as I am sure it may still shift over the next few days. The issue raises legal, moral and ethical questions in my mind. It is difficult. Death and dying are not always things that we are comfortable talking about in our personal lives or in society. We all have stories of our families and those people close to us, which touch us and challenge us in this regard.

Personally, I am reminded of my own father and mother. My mom had lung cancer for a number of years and had surgery to remove parts of her cancerous lung, hoping it would stop; it didn't. Instead, I watched her battle this disease as it moved to other places in her body, ending in her brain. I watched as my mom became someone else, her body, her face, her voice. I watched as she no longer recognized people or situations, as the pain was, I am sure, horrific for her.

My dad, who died of black lung from his 38 years working in Cape Breton coal mines, died a much different death. You see, my dad wanted to fight to the very end, to live every second of life, until he could no longer take a breath, many times, regardless of how tough it was, whereas my mom had figured out that she wanted her life to end when it was no longer tolerable. I am afraid that under this legislation that would have meant she would no longer have been competent to make such a decision without an advance directive.

That's the problem with legislation like this. It is personal for all of us, and often we are challenged by that personal piece. I know I am.

What I expect and what I believe many Canadians expect is legislation that allows people like my mom, Norma, and my dad, Hector, to have their wishes in life and in death. What I looked for in this legislation was that respect for people's wishes, and I do not see that respect.

I believe legislation that allows people like my mother to ask for and receive a respectful death would have required at least an advance directive.

I ask all of you to consider many things when looking at this legislation, including the Supreme Court decision and multiple provincial decisions, and I'm sure lawyers will talk about each of those over the next few days. I think the need for conscientious objection where medical personnel are not in agreement is important, and the need for Canadians to be involved in their decision making about their lives and their deaths

When I started this, I said this is the most difficult thing I have considered since arriving in this place. I also want to say that I am glad I have this opportunity, because people like my mom would have wanted me to.

[Senator White]

I will be supporting amendments that would meet the spirit of the Supreme Court of Canada decision and the spirit of what I believe Canadians, including my mother, would want.

Thank you.

Hon. James S. Cowan (Leader of the Senate Liberals): Bill C-14 is a deeply challenging bill for all of us, whatever our personal views on the subject. I know that each of us feels the weight of the responsibility we carry as parliamentarians as we consider this bill on medically assisted death. It speaks about what is among the most profound and challenging issues that all human beings face in life from the day we are born, namely our death. And the context is another subject that many would prefer not to contemplate, namely oneself or a loved one suffering terribly — intolerably — from illness.

But while there has been much discussion of what the Minister of Justice correctly described as “a transformational shift” for the country reflected in Bill C-14, in fact, this has been neither sudden nor unexpected. We are not confronting these issues either alone or in a vacuum. To the contrary, this bill has been proposed by the government as the government's response to the decision of the Supreme Court of Canada in *Carter*.

In *Carter*, the Supreme Court of Canada held that in certain circumstances, an individual has a constitutional right to physician-assisted death under section 7 of the Charter. Section 7 guarantees the “life, liberty and security of the person.” Specifically, the Supreme Court held that sections 241(b) and 14 of the Criminal Code are void:

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

The court said:

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.

Colleagues, there are several points to note in that statement by the court. First, the court was very clear that in their view, it is not necessary for Parliament or the provincial legislatures to enact legislation. I will speak more about that later, but it certainly suggests quite strongly that the so-called deadline of June 6 is not as earth-shattering as some have argued. The second point I want to focus on is critical, namely, that any legislation that is passed must be, in the unanimous decision of the Supreme Court of Canada, “consistent with the constitutional parameters set out in these reasons,” that is, the *Carter* judgment.

Whether or not to allow physician-assisted death in Canada has been debated for a long time. Parliamentarians through the years have proposed different bills suggesting different approaches to the issue, and there was always extensive, thoughtful and impassioned debate, both in favour and against those proposals.

But that is not our situation today. We are not here debating whether to permit physician-assisted death. That issue has been decided by the Supreme Court of Canada.

Instead, we are here to consider legislation brought forward by the government to respond to the *Carter* decision. And while there are many issues that we can and I am sure will properly debate, it seems to me that we must first satisfy ourselves that the legislation is, in the words of the court, “consistent with the constitutional parameters” set out in *Carter*.

The Minister of Justice told us yesterday that Bill C-14 “responds” to the *Carter* decision. Despite my repeated questions, she refused to say even that the bill needs to be consistent with the constitutional parameters set out in that decision. With respect, that simply is not good enough.

We have often discussed that one of the critical roles of the Senate as a chamber of sober second thought is to scrutinize legislation received from the other place to ensure that it meets the test of constitutionality. The fact that Bill C-14 marks a “transformational shift,” in the words of the minister, for Canadians, if anything makes it even more critical that we satisfy ourselves that it is Charter-compliant, and that means at a minimum that it is “consistent with the constitutional parameters” set out in *Carter*.

Colleagues, I participated as a member of the Special Joint Committee on Physician-Assisted Dying, and we examined the *Carter* decision very closely. I then sat on our own Legal and Constitutional Affairs Committee during the pre-study that has been referred to. I have met and talked with dozens of legal and constitutional experts. In the end, I have concluded that Bill C-14 in its present form does not meet this critical constitutional test. In my view, the legislation is not consistent with the constitutional parameters set out in *Carter*.

As you can imagine, this is not a conclusion that I have reached lightly. Frankly, I never imagined that I would rise in this chamber on the first occasion to address a major bill of the Liberal government of Prime Minister Justin Trudeau and find that it didn’t respect the courts or the Charter. But our job is to uphold the Constitution under all governments. The rights of Canadians under the Charter are what is important, not politics.

I am not alone in reaching this conclusion about Bill C-14. The Canadian Bar Association was clear in its submission that the bill is not consistent with the criteria established in *Carter*, and other legal and constitutional authorities testified that the legislation is contrary to the *Carter* decision and is, therefore, unconstitutional.

Let me explain why so many legal experts have reached this conclusion about Bill C-14.

First, some background, and I think it’s critical to have this background.

• (1610)

As the Supreme Court noted in the *Carter* decision, there has been a lengthy public debate in this country about physician-assisted death. Mention has been made of the *Rodriguez* decision 23 years ago. Between 1991 — the date of the *Rodriguez* decision

— and 2010, six private members’ bills to decriminalize assisted suicide were debated in the other place. Here in the Senate, a Special Senate Committee on Euthanasia and Assisted Suicide was established in 1994, chaired by Senator Joan Neiman.

There were many other studies and reports over the decades since the *Rodriguez* case. And of course, the Quebec National Assembly’s Select Committee on Dying with Dignity issued a report in 2012 recommending legislation to recognize medical aid in dying. This led to Quebec’s Bill 52, which was passed by an overwhelming majority of the National Assembly in 2014.

That same year, Steven Fletcher introduced a private member’s bill in the other place to legalize physician-assisted death, and our colleague Senator Nancy Ruth introduced the same bill here in this chamber.

Since the Supreme Court issued its ruling in *Carter*, there have been more studies looking at ways to implement the ruling. The Harper government established an External Panel on Options for a Legislative Response to *Carter v. Canada*, which reported on January 18, 2016.

On November 30, 2015, 11 provinces and territories, which had come together to establish the Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying, issued their own report.

This chamber joined with the other place on December 11, 2015, to establish the Special Joint Committee on Physician-Assisted Dying. It was chaired by our colleague Senator Ogilvie and by Rob Oliphant, the member of the other place for Don Valley West. I had the privilege of serving on that Committee, together with Senators Nancy Ruth, Joyal and Seidman.

This joint committee was an example of Parliament operating at its best. Members from both chambers worked closely, across all party lines, grappling with these very serious and consequential issues. As I have said before, I think some eyes were opened to the value of the Senate, both in terms of the contributions made by our colleagues on that committee and the non-partisan way we approached our task.

The hearings were intense — we heard over 60 witnesses — but I believe witnesses were given a fair opportunity to present their views. The quality of the representations and of the many written submissions that the committee received was superb. We sat long hours, as we will on this bill now.

The committee tabled its final report on February 26 of this year. I believe that this report, which was supported by members of all parties and from both houses of Parliament, presented a balanced approach, with a balanced set of recommendations.

The committee’s approach was succinctly expressed in the title we chose: *Medical Assistance in Dying: A Patient-Centred Approach*.

It is so easy, colleagues, on a complex issue such as this to get caught up in the many competing interests and concerns. Those are unquestionably valid and important, but I believe strongly that we should not forget that this is really about the individual who is suffering intolerably.

I am disappointed that the government did not follow the special joint committee's recommendations. I am especially concerned that this critical patient-centred approach was evidently abandoned, sacrificed to the government's apparent desire to assuage the concerns of others. It is my hope that here in this chamber, we will be able to restore the focus to the person who is truly at the centre of this issue, namely the patient.

So there have been many studies and reports, but our critical starting point must be the *Carter* decision itself. Because unless the government is prepared to invoke the "notwithstanding" clause of the Charter — and there is no suggestion of that happening — then Bill C-14 must at a minimum comply with the Supreme Court's ruling in *Carter*.

Although the case is referred to as the *Carter* case, as Senator Baker has pointed out to us, there were actually five plaintiffs. As our Legal and Constitutional Affairs Committee heard, this was very deliberate, to ensure that the case would not be about one person or set of facts. One of the plaintiffs, as Senator Baker has said, was Gloria Taylor, who was suffering from ALS. As she explained:

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

Ms. Taylor, as we know, died in 2012 from an infection, while the case was still ongoing.

She was joined in the lawsuit by Lee Carter and Hollis Johnson, whose mother Kay Carter had suffered from spinal stenosis, a non-terminal illness that left her in chronic pain and immobile, lying, in her words, as an "ironing board," flat in a bed. She took the decision to terminate her own life by means of physician-assisted suicide. She wanted to do so in Canada, but because it would have been a criminal offence, in January 2010 she travelled to Switzerland where she was helped to terminate her life.

Her children Lee Carter and Hollis Johnson told the court that their mother ought to have been able to obtain a physician-assisted suicide in Vancouver, surrounded by family and friends. They also told the court they wished to have the option of legally obtained physician-assisted death in Canada for themselves and others they love.

The fourth plaintiff was Dr. William Shoichet, a family physician in Victoria, B.C. Dr. Shoichet has provided medical care to a number of patients suffering from what he described as grievous and irremediable illnesses, such as cancer and various neuro-degenerative diseases. He testified that he considers end-of-life care to be an important part of his compassionate, moral, ethical and professional duty as a physician treating grievously and irremediably ill patients. That care, for him, includes the ability to participate in physician-assisted dying, on request, in appropriate circumstances and with necessary safeguards, for grievously and irremediably ill patients.

The fifth and final plaintiff was the British Columbia Civil Liberties Association, or BCCLA. They sought standing — by the way, something that was contested, unsuccessfully, by the federal

and B.C. governments — on the ground that they have been extensively involved in advocacy and education regarding end-of-life choices, including physician-assisted dying and, they argued, the issue of whether there is a constitutional right to physician-assisted dying is relevant to all Canadians.

I have gone into this level of detail in order to show you, colleagues, that the *Carter* case was actually a very deliberate broad-based claim, with evidence adduced before the court from individuals suffering from a variety of grievous and irremediable illnesses.

The Supreme Court of Canada mentioned evidence from witnesses describing degenerative illnesses like motor neuron diseases or Huntington's disease. The court said this:

Yet running through the evidence of all the witnesses is a constant theme — that they suffer from the knowledge that they lack the ability to bring a peaceful end to their lives at a time and in a manner of their own choosing.

The opening paragraph of the Supreme Court's decision stated the issue succinctly:

It is a crime in Canada to assist another person in ending her own life. As a result, people who are grievously and irremediably ill cannot seek a physician's assistance in dying and may be condemned to a life of severe and intolerable suffering. A person facing this prospect has two options: she can take her own life prematurely, often by violent or dangerous means, or she can suffer until she dies from natural causes. The choice is cruel.

The case was heard first in the Supreme Court of British Columbia before Madam Justice Lynn Smith. Justice Smith issued an extraordinary judgment: 398 pages long. She found that the prohibition against physician-assisted death violated the plaintiffs' section 7 rights under the Charter.

The Government of Canada appealed this decision to the British Columbia Court of Appeal. A majority on that court allowed the appeal, overturning Justice Smith's ruling, on the grounds that she was bound to follow the Supreme Court of Canada's ruling in *Rodriguez*.

That decision was then appealed to the Supreme Court of Canada. The Supreme Court of Canada unanimously allowed the appeal. It did, however, as we have heard, suspend the declaration of invalidity of the two Criminal Code provisions for a year, to give Parliament and the provincial legislatures, if they so chose, an opportunity to enact legislation.

• (1620)

None of the provincial legislatures have proposed any such legislation. At the federal level, the previous government established the external panel that I mentioned a few moments ago, but no legislation had been proposed by the time the election was called in August of 2015. The new government indicated that it wanted to introduce legislation, and requested an extension of one year but in fact was granted a four-month extension, which brings us to this magic date of June 6. Much has been made of that date and the importance of it.

Colleagues, I agree that legislation to establish a national standard governing medical assistance in dying across the country would be best. I am firmly of the opinion that our critical goal is to get the legislation right, rather than rush to meet some artificial deadline. If we rush and pass a bill that is then challenged and found to be unconstitutional, what will we have achieved? That is the true risk of a legal void, and one, in my view, that is much more problematic than the situation if we miss the so-called deadline of June 6.

We know in fact from our pre-study that there will be no void if legislation is not passed by June 6. This is not a case where there is no law in effect. There will be law that will apply — the law as described by the Supreme Court of Canada in *Carter*. This framework has already been applied in some 29 cases that have been brought since the extension was granted.

In terms of safeguards and guidelines for the medical profession, those are already in place. Every single provincial medical regulator has already issued detailed, comprehensive guidelines for doctors to follow on the process of medical assistance in dying.

And that makes sense. As I have pointed out, there is no requirement in *Carter* that any legislation be introduced. The provinces have not moved to enact any legislation, and for a long time it seemed doubtful that any would be proposed at the federal level, either. The previous Conservative government gave no indication that it was planning to introduce any legislation on the subject. So not surprisingly, the medical regulators across the country prepared for the eventuality that *Carter* would apply with no legislation at the federal level in place, exactly what would be the situation if Bill C-14 is not passed by June 6.

Dr. Douglas Grant, the President of the Federation of Medical Regulatory Authorities of Canada, testified before our committee on the pre-study. I asked him what would happen if no legislation was in place by June 6. He was very clear. This is what he said:

There will not be a vacuum. This won't be the Wild West. There is sufficient guidance in the *Carter* decision, and the regulators who are legislated to have the responsibility of regulating the delivery of the practice of medicine will regulate.

On May 25, I emailed to all senators a note that had been prepared by the BC Civil Liberties Association describing their regime that will be in place if Bill C-14 is not passed by June 6. Guidelines are already in effect in every single province, as well as in the Yukon. The Northwest Territories will have completed its guidelines by June 6, and Nunavut is preparing guidelines now.

All of the guidelines require two doctors to confirm the patient's eligibility and voluntariness — actually a more demanding requirement than is set out in Bill C-14. Most require a waiting period. All require extensive documentation. All protect the conscientious objection rights of physicians and provide safeguards for the vulnerable.

Senator Jaffer has compiled and circulated to us a very useful comparative analysis of these regulatory protocols.

So Canadians can be assured that regardless of what happens in the days ahead with Bill C-14, there is and there will be a carefully constructed framework in place, and it is based firmly on the *Carter* decision itself.

However, I was both surprised and disappointed to learn during our pre-study that the Federation of Medical Regulatory Authorities of Canada, which I mentioned is the national organization representing the 13 provincial and territorial medical regulatory authorities across Canada, was never consulted by the government during the preparation of Bill C-14. Indeed, we were told that none of the provincial or territorial medical colleges were consulted by the government.

Given the central role that will be fulfilled by these bodies, I would have thought that their views would have been eagerly sought as this legislation was being prepared. Had it been sought and listened to, I believe that Bill C-14 would look very different than it does today.

So, colleagues, that's the background to this historic but, in my view, badly flawed bill that we received earlier this week. Let me now explain why I believe Bill C-14, as passed by the House of Commons, is so problematic.

It has been quoted several times but I think it's important to look at what the Supreme Court of Canada actually said. It said that provisions —

... of the Criminal Code are void insofar as they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. "Irremediable", it should be added —

— and these are in the words of Supreme Court of Canada —

— does not require the patient to undertake treatments that are not acceptable to the individual.

So the constitutional parameters that I've spoken about of eligibility for medical assistance in dying under *Carter* are that the person be a competent adult who clearly consents, who has a grievous and irremediable condition that causes enduring suffering, and you're not required to undertake treatment which is not acceptable to you.

The problem, colleagues, is that the eligibility criteria set out in Bill C-14 are considerably narrower than the criteria set out in *Carter*. The critical provision is the new section 241.2, which in subsection (1) uses the *Carter* language of a "grievous and irremediable condition," and then in subsection (2) provides a very problematic definition of that phrase.

Subsection (2) reads as follow:

A person has a grievous and irremediable medical condition only if they meet all of the following criteria:

(a) they have a serious and incurable illness, disease or disability;

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

(c) that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and

(d) their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

Colleagues, this subsection adds criteria that were not in *Carter*, and by doing that, it says that people who meet the *Carter* definition but don't meet these additional criteria won't be eligible for medical assistance in dying. In other words, this subsection would deny those people their Charter right to medical assistance in dying — and that is unconstitutional.

For example, paragraph (a) requires that the illness, disease or disability be “incurable.” I was surprised yesterday to hear the Minister of Justice tell this chamber that “irremediable” and “incurable” have the same meaning. Colleagues, I don't agree. “Incurable” is a different word, and it seems to have a significantly different meaning than “irremediable.”

The Supreme Court of Canada was explicit that “irremediable” does not require the patient to undertake treatments that are not acceptable to the individual. “Incurable” is a very different, potentially opposite test. A number of witnesses expressed grave concern about the inclusion of this new term.

Maureen Klenk is a nurse practitioner who testified on behalf of the Canadian Association of Advanced Practice Nurses. This is what she said:

If there is a cure somewhere in the world, is the condition considered to be curable? Is there a cure in final stages of development? These questions are important since there could be a cure available; however, it might not be accessible at the location and at the time the patient is experiencing the illness. Or, it might be available but not be covered under existing provincial drug plans. Furthermore, the patient must have the right to choose to refuse treatment even if it is available.

She was not alone in raising the issue.

Dr. Joel Kirsh, President of the College of Physicians and Surgeons of Ontario, raised the same point when he testified, saying:

The requirement that conditions be incurable suggests that patients must explore and undertake all treatment options or cures before they can request medical aid in dying. This would force patients to pursue treatments that they do not find acceptable.

• (1630)

Colleagues, this goes very directly against the Supreme Court's decision in *Carter*. The court was clear that people should not be required to undertake treatments that are not acceptable to them — a subjective test. Indeed, the court specifically spoke of the evidence of people who described “the agony of treatment.”

If the term “incurable” was used in the bill because, in the words of the Minister of Justice, it “is synonymous with ‘irremediable,’” why not avoid any problems and just use “irremediable”? That was the word used by the Supreme Court of Canada. As the Alberta Court of Appeal said in speaking of the care with which the Supreme Court of Canada chose its words in *Carter*, “If the court had wanted it to be thus, they would have said so clearly and unequivocally.”

“Irremediable” was the word carefully chosen by the unanimous decision of the Supreme Court of Canada, and it seems to me to be a good one.

The second criterion in paragraph (b), that the individual must be “in an advanced state of irreversible decline in capability,” is also absent from the Supreme Court of Canada's ruling. Interestingly, it was originally included in the trial judge's decision. This, of course, makes it all the more notable that it was dropped by the Supreme Court of Canada.

The third paragraph, paragraph (c), is interesting. It requires: “that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable.”

This is curious because the drafters have taken the words of the Supreme Court of Canada and put them in a very different context. The court specified that individuals could not be compelled to undertake treatments that are not acceptable to them to deal with their medical condition. As I have already described, Bill C-14 implicitly rejects that, requiring that the medical condition be “incurable,” with no reference to whether or not the patient is prepared to accept the treatments that might be necessary for the cure. Well, this third paragraph is where the drafters inserted the court's subjective test, but instead of relating it to treatments for the medical condition, they applied it to the suffering, and the acceptability or not of the methods to relieve that suffering. This is another example of the way the bill twists the holding in the *Carter* decision.

Finally, we come to the most significant change between the eligibility requirements in *Carter* and Bill C-14 — and the requirement that most clearly takes the bill outside of the parameters of *Carter*. That is paragraph (d), which requires that the person's “natural death has become reasonably foreseeable.”

The Senate Legal and Constitutional Affairs Committee heard revealing testimony from the government during the pre-study that casts light on why this language is in the bill. Simon Kennedy, the Deputy Minister of Health, told our committee:

This is not really a piece of legislation designed so that people who are in terrible pain can make a decision to end their lives. This is a bill about people who are actually in

that circumstance but on a path toward death, so that they can have a peaceful exit. That was a deliberate policy choice that the government made.

All governments make deliberate policy choices, but those choices, unless they are prepared to resort to the “notwithstanding” clause, must be made in accordance with the Charter as interpreted by our courts, and particularly by the unanimous decision of the Supreme Court of Canada. In the *Carter* case, the Supreme Court of Canada began its reasons for judgment with the following statement:

It is a crime in Canada to assist another person in ending her own life. As a result, people who are grievously and irremediably ill cannot seek a physician’s assistance in dying and may be condemned to a life of severe and intolerable suffering. A person facing this prospect has two options: she can take her own life prematurely, often by violent or dangerous means, or she can suffer until she dies from natural causes. The choice is cruel.

This decision is exactly about enabling people who are in terrible pain to make a decision about ending their lives. It is not a decision solely concerning people on the verge of death. I appreciate that the government — and indeed many of us — may not be happy with the decision of the Supreme Court of Canada, but respect for the Charter and respect for the Supreme Court of Canada — indeed, respect for the rule of law — demands that our legislation uphold the Charter right as established by *Carter*.

The proposed requirement that the person’s “natural death has become reasonably foreseeable” was not mentioned anywhere in the Supreme Court of Canada’s decision. This was no oversight. The Justice lawyers appearing for the federal government argued that physician-assisted death must be limited to those who are terminally ill. This was rejected by the court. We heard this from Joseph Arvay, the lead counsel for the plaintiffs in the case, who appeared before our committee on the pre-study. And this is very clear from the transcript of the hearing on the extension, when Justice Karakatsanis was questioning Robert Frater, the lawyer for the federal government. She asked:

Does your position on the Quebec legislation mean that you accept that it complies with *Carter*? I’m thinking particularly about somebody has to be à la fin de vie whereas in *Carter* we rejected terminally ill.

Mr. Arvay found it very strange — he would probably use a stronger word — that the government, having lost before the Supreme Court of Canada, then turned around and tried to do in its legislation exactly what the court said it could not do under the Charter.

The government’s argument in support of this criterion in Bill C-14 has been that the Supreme Court decision was intended to be limited to the facts of the case. This is the argument presented in the legislative background that the Minister of Justice released to defend her position that Bill C-14 is consistent with *Carter*. When she testified, the Minister of Justice told our Legal and Constitutional Affairs Committee:

The bill was deliberately drafted to respond to the factual circumstances that were the focus of the *Carter* case, where the court only heard evidence about people with late-stage

incurable illnesses who were in physical decline and whose natural deaths were approaching. The Supreme Court said that a complete prohibition on medical assistance in dying in the Criminal Code was a violation of Charter rights for persons in those circumstances.

I have great respect for the Minister of Justice, but I think she has been misled. The court did not only hear “evidence about people with late-stage incurable illnesses who were in physical decline and whose natural deaths were approaching.” As I described earlier in these remarks, the Supreme Court referred in the decision to evidence that was heard about a broad range of grievous and irremediable illnesses, including degenerative illnesses like motor neuron diseases or Huntington’s disease.

Colleagues, through my work on genetic discrimination, I have learned a fair amount about Huntington’s disease. Huntington’s is neither fatal nor a late-stage disease that only afflicts people whose natural death is approaching. That is one of the many terrible aspects of Huntington’s. And of course there are many neurodegenerative diseases that would not fit the minister’s description.

If there remained any doubt about whether the Supreme Court’s decision in *Carter* can properly and constitutionally be restricted to those for whom death is reasonably foreseeable, that was put to rest by a recent — May 17 — decision by the Alberta Court of Appeal. This was an application under the *Carter* extension decision for medical assistance in dying by a woman called E.F. This woman suffered from a medical condition called “severe conversion disorder,” which is a psychiatric condition.

The federal government argued that she did not come within the constitutional parameters of the class of persons described by the Supreme Court of Canada in *Carter*, for two reasons: first, the medical condition was not terminal; and second, the grievous and irremediable condition was psychiatric in nature, and this does not fall within the *Carter* criteria. The Alberta Court of Appeal did not agree. It said:

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

• (1640)

So we have a government, having made the same argument to the Supreme Court of Canada and being rejected, trying again before the Alberta Court of Appeal. Again, it was rejected. And now they are persisting with this argument, by inserting this requirement in Bill C-14. But this is not a situation where repeating something three times will make it constitutional. Requiring that someone’s natural death be reasonably foreseeable is a violation of the Charter.

By the way, the Government of Canada made the same arguments to the Alberta Court of Appeal that were made to us in our pre-study, including, as Senator Baker pointed out earlier,

presenting the same legislative background. These were explicitly rejected by the Alberta Court of Appeal.

There has since been another court decision, this time by the Ontario Superior Court of Justice, dated May 24, concerning a man with medical conditions that, the court said, although they “are not imminently terminal or life-threatening, they are horrific.” The court said:

There is no requirement in *Carter v. Canada (Attorney General)*, 2015 SCC 5, or *Carter v. Canada (Attorney General)*, 2016 SCC 4, that a medical condition be terminal or life-threatening.

The applicant in the Ontario case was 90 years old. It would have been easy for the court to cite that fact in its reasons, thereby linking the grant of the application to the requirement in Bill C-14. The court declined to do so, saying:

For present purposes, the analysis of facts particular to I.J. reveal that his medical conditions have already terminated any quality to his life and that he satisfies the criteria for a physician-assisted death.

Loss of quality of life, not age or reasonable foreseeability of death, was the issue.

And so, colleagues, you can see why I have concluded that the eligibility requirements set out in Bill C-14 are not consistent with the constitutional parameters set out in *Carter*. By restricting medical assistance in dying to a smaller class of persons than those defined by the Supreme Court of Canada, the government is denying individuals our Charter right, and that is unconstitutional.

I believe that the best way to address this very serious constitutional issue is to amend Bill C-14 and simply use the language of the Supreme Court of Canada in *Carter*. Then there won't be any question whether the bill's eligibility criteria are consistent with *Carter*; the *Carter* criteria will be the Bill C-14 criteria.

Colleagues, I focused on the immediate question of whether Bill C-14 as drafted complies with the *Carter* decision. Whether indeed, in the words of the Supreme Court, it is “legislation consistent with the constitutional parameters set out in these reasons;” that is, in the *Carter* decision. But, of course, our responsibility does not end there. As was said repeatedly during the hearings of the special joint committee, *Carter* is the floor — no legislation can constitutionally enact less protection than that afforded by *Carter* — but that is not the ceiling. I believe, and I said this to the Minister of Justice when she appeared on the pre-study, that our task as legislators is to show leadership and to pass a law that not only meets the minimum standard set out in *Carter* but also anticipates future Charter challenges.

The special joint committee co-chaired by Senator Ogilvie was tasked with making recommendations “on the framework of a federal response on physician-assisted dying that respects the Constitution, the Charter of Rights and Freedoms, and the

priorities of Canadians.” I believe that is the proper mandate of this bill. This raises a number of issues, including advance directives.

Now, advance directives were not an issue in the *Carter* case. However, we heard testimony from constitutional experts saying they believe that advance directives will be found to fall within the Charter. We were urged by witnesses to provide for advance directives now, in this legislation, and not wait for the inevitable court decision.

I am sure that you, like me, are receiving the hundreds of emails from Canadians pleading for advance directives to be included. I was contacted recently by Dr. Jesse Pewarchuk, a physician and clinical assistant professor of medicine at the University of British Columbia. He published an op-ed in the *Globe and Mail* on May 2; you may have read it. He said that the “biggest flaw” in Bill C-14 is its exclusion of individuals whose disease will, as he put it, “relentlessly and predictably” result in the individual losing the mental capacity to consent. He described the bill as “a paradox” for those with Alzheimer's. He wrote:

Under Bill C-14, they would be faced with a difficult dilemma: They would have to request, and receive, a medically assisted death while still competent to make such a decision. This would mean having to end their life prematurely, to avoid the crippling final stages of the disease. If they were to wait and request a medically assisted death later, they would likely be deemed to be incompetent. The challenge of dementia is that competency is typically lost before quality of life reaches a nadir where many would want to hasten death.

That, of course, is exactly the terrible choice that the trial court and the Supreme Court of Canada identified in the *Carter* decision, and found engaged the Charter's right to life protected under section 7. Colleagues, refusing to allow advance directive denies access to this constitutional right to those Canadians who happen to have a grievous and irremediable medical condition that will at some point in the future affect their competence.

The special joint committee recommended that permission to use advance directives should be allowed to any person after the person is diagnosed with a condition that is reasonably likely to cause loss of competence or after a diagnosis of a grievous and irremediable medical condition but before the suffering becomes intolerable. An advance request should not, however, be permissible prior to being diagnosed with such a condition.

I am pleased that our Standing Senate Committee on Legal and Constitutional Affairs, by majority vote, agreed with this recommendation and included it in the pre-study report. I hope that as a chamber we find a way to amend the bill and allow for advance directives.

Yesterday, the Minister of Health told us that the main reason why advance directives were not included in the bill was the challenge of drafting good, workable provisions with strong safeguards in a short time frame. With respect, that is just not a good enough reason for the many Canadians who are looking to us for help. How do we tell the thousands of Canadians who have written and emailed, sharing their deeply personal stories and

pleading with us to provide for advance directives, that we're sorry but we just didn't feel we had the time to do our job properly, so we didn't even try? We can't do that, colleagues. I look forward to discussing with colleagues proposals that will be acceptable to provide for advance directives.

Senator Mockler: Absolutely.

Senator Cowan: There are many other issues in the bill, and I hope —

The Hon. the Speaker: Senator Cowan, your time has expired. Are you seeking another five minutes?

Senator Cowan: Yes, if colleagues would agree to that.

The Hon. the Speaker: Leave, colleagues?

Hon. Senators: Agreed.

Senator Cowan: There are a number of issues in the bill, and I know others will take the opportunity in the debate to highlight their concerns.

Colleagues, we come from many backgrounds and bring diverse religious, philosophical and moral convictions to our work here. Every one of us has witnessed many — too many — loved ones suffer from terrible illnesses. Some may have wished for medical assistance to die; others took a different approach.

• (1650)

The issue here is not what we would choose, or even how we would wish to have that right defined. The issue is every Canadian's right under the Charter, as established and defined by the Supreme Court of Canada, to medical assisted death.

Our job, first and foremost, is to serve as the legislative guardians of that right, to ensure that if there is to be federal legislation as proposed by the government, that it upholds that constitutional right for Canadians.

Bill C-14, in my respectful view, does not meet that threshold. I do believe that it can be fixed, and I look forward to debating amendments at a later stage. We have a job to do before Bill C-14 can be passed into law. Let's not delay.

I do agree that Canadians would benefit from having a national standard set in legislation — but let's get it right, and not create future nightmares for fellow Canadians, suffering in terrible circumstances, by passing legislation that is not even in conformity with the Canadian Charter of Rights and Freedoms.

We can, colleagues, and we must do better. Canadians are watching and listening. We cannot let them down.

Hon. Senators: Hear, hear.

The Hon. the Speaker: Senator Bellemare, a question?

[*Translation*]

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Would Senator Cowan agree to take a question?

When we look at the results of the last survey that was conducted by the external panel of experts, we see that when it comes to the social acceptability of the right to medical assistance in dying, people tend to disagree with granting the right to medical assistance in dying to a person who has a life-altering, but non-fatal condition. They tend to be in favour of medical assistance in dying in the case of an illness or an incident where death is on the horizon.

Do you believe that we have the right, or the duty, as senators to pass legislation that goes beyond social acceptability in favour of constitutional considerations that may or may not be guaranteed, depending on what the judges decide?

[*English*]

Senator Cowan: I tried to make it clear in my remarks. The Supreme Court of Canada has given a clear definition of Canadians who are eligible to access physician-assisted dying. They are not forced. I have enumerated those several times. It's very clear.

They go on to say that Parliament, if it wishes, can legislate within and consistent with those constitutional parameters. My view would be that we cannot take away any rights that are guaranteed by that statement in the decision of the Supreme Court of Canada in *Carter*.

It talks about competent adults. If we wanted to extend it to mature minors or describe it in some other way that we would be entitled to go beyond that. But as I said, *Carter* is the floor. We cannot take away constitutional rights which are guaranteed by the Supreme Court of Canada and confirmed unanimously by the Supreme Court of Canada. That's the fatal flaw in this bill.

The minister has said our role is to respond to the facts of *Carter*. Our role, should we choose to take it on, is to respond in a way that respects and is consistent with the constitutional parameters established by the Supreme Court of Canada.

So we can add to those rights if we want to, but we can't take away from it.

Senator Bellemare: I understand your answer. I understand the argument that you made very well.

My question is what do we do about social acceptability? If, for instance, to respect *Carter*, we are to accept the law, that doesn't go along with what Canadians would like.

Senator Cowan: I am not an expert on polling and public opinion, but I have read many studies and reports of many studies and my sense of public opinion not only was proposed professionally, but in my social context, as I become involved in this issue. I think the public are way ahead of the politicians in this. The public are overwhelmingly in favour of making available physician-assisted

death to those categories of Canadians who are identified in *Carter*. There are issues with respect to mental illness or issues about mature minors, people not so sure about that, but for competent adults, anything I have read would suggest to me that the public is overwhelmingly in favour of support for the availability and access to that service for people who meet that category.

Senator Bellemare: You answered the question. Thank you.

Hon. Nancy Greene Raine: Thank you very much for an excellent speech, senator. I really appreciate the work you have done and your viewpoints.

I want to ask a question on advance directives. As you were talking about it — and you mentioned that it had to be by a competent person — it hit me. I was there when my sister was diagnosed with Alzheimer's, and that diagnosis hits you like a ton of bricks. You are immediately in denial and also very confused and very depressed. At the point of diagnosis, I would contend that you are no longer competent.

We are studying dementia in a Senate committee right now. One thing we are finding out is the absolute importance of early diagnosis, but most people don't go for a diagnostic test until they're fairly well along.

Obviously this has to be studied, but how will we launch into that study to allow people who may foresee the future to do it before they become incompetent?

The Hon. the Speaker: Senator Cowan's time has expired. Can we indulge him to answer at least this question? Is leave granted?

Hon. Senators: Agreed.

Senator Cowan: You raise a very good question. I'm sure that the diagnosis of dementia or cancer or something like that just gives you a knockout blow. You are in a vulnerable position at that moment and not in a position to make rational decisions. The answer would be, once you absorb that and have had a chance to assess your affairs and you have a full appreciation of where this is going to go, that that's the appropriate time to give an advance directive.

I can think of my own experience as a lawyer, dealing with making decisions like that. I would never allow a client to make a decision in the immediate aftermath of a devastating piece of news like that which you are describing.

I'm sure there will be an opportunity in the course of our debate to talk about advance directives and perhaps we can engage on that issue at that time.

You raised a very good point, senator.

Hon. Serge Joyal: Honourable senators, I think there is only one question to be asked in relation to Bill C-14: Are we ready, as a Parliament, to deprive Canadians of their rights to medical assistance in dying when they are competent adults, when they have a grievous and irremediable health condition, and when they are in intolerable suffering? Period. That's the question.

Are we ready to deprive Canadians, who are not terminally ill or close to death and who have the right to medical assistance in dying according to the Supreme Court, to deprive them from the benefit of their Charter right? That's the essential question we must face.

There is only one issue with that bill and it is that one.

• (1700)

In my opinion, the way the government has addressed it is unacceptable, and I'll tell you why. In Bill C-14, page 5, it amends the Criminal Code in first restating the conditions set by the Supreme Court to have access to medical assistance in dying. The bill says, at 241.2, you have to be a competent adult. Competence means capacity to decide for yourself. Second, you have to have a grievous and irremediable medical condition, and you have to give an informed consent in the context that you are suffering intolerably.

But the sneaky approach of the drafter of this bill is that they have defined "grievous and irremediable medical condition" in a way to deny access to the rights that the Supreme Court stated that Canadians enjoy.

They defined "grievous and irremediable" by adding all kinds of steps and twists that finally lead you to conclude that only those who are terminally ill or close to death have, in fact, access to medical assistance in dying. That's very serious, because in doing so they instruct a judge who would have to implement the Criminal Code to read each and every section because it's criminal law. It's not social policy whereby you have generous intention. This is the Criminal Code. A judge will be seized with this bill and will have to read each and every section of the definition of "grievous and irremediable" and will have to apply it to the case or the allegation of criminal conduct to be pronounced on.

This bill does not state clearly, like the Quebec legislation does, that those with access to medical assistance in dying are in their final weeks and days because they are terminally ill and the predictability of death is there. Rather, the bill leads you to believe that in fact you will have access to medical assistance in dying, but your natural death has to be reasonably foreseeable. And "reasonably foreseeable" is a Criminal Code concept. It is not a medical concept, honourable senators, and I will explain why.

"Reasonably foreseeable" is a Criminal Code concept based essentially on predictability. Predictability means something will happen, not proximity of time. Reasonably foreseeable is predictability, not proximity of time or death. The concept of reasonably foreseeable death adds the concept of proximity to that of predictability, and that's how the bill twists the Criminal Code, using the Criminal Code to exclude those who would normally have access to medical assistance in dying if they suffer from an intolerable, grievous and irremediable disease and are competent to request medical assistance in dying.

That's why we are being asked to sanction that kind of distorted route, to achieve the result of excluding those recognized in the Supreme Court decision as having access to medical assistance in dying.

And all the rest is convolution, honourable senators. The example is the conduct of the lawyers representing the Attorney General of Canada in the Alberta Court of Appeal. Three judges pronounced on the admissibility of medical assistance in dying for a patient who is not suffering but his foreseeable death was predictable.

The government was stuck with the decision of the British Columbia court that had recognized the right of a citizen who is not terminally ill to have access to medical assistance in dying. The government was caught with that decision at the very moment that Bill C-14 was tabled in the other place. And what did the lawyers of the government plead?

I will refer to the factum of the lawyers of the federal government last month in relation to medical assistance in dying. They tried to plead that: “The definition of grievous and irremediable must be understood in relation to the facts of *Carter*. Throughout the judgment, the court focused on the factual circumstances of Gloria Taylor who the court characterized as the impetus of this case. Gloria Taylor was terminally ill with ALS, or Lou Gehrig’s disease. She knew it but did not want to die slowly piece by piece. In 2010 she had been told she would die within a year, though she lived beyond that estimate. The court’s understanding of the reach of the term contemplates the situation at the end of life.”

In other words, the government lawyers pleaded in the Court of Appeal of Alberta that you have to be terminally ill to have access to medical assistance in dying. The three judges said no, that’s not the reading of the *Carter* decision criteria. That decision, honourable senators, is May 17, two weeks ago.

What happened less than a week ago? There was another decision, this time of the Ontario court on May 24. This is Judge Perell of the Ontario court:

In *A.B. v. Canada (Attorney General)*, *supra* —

— A and B is the name of the patient requesting the assistance of dying —

— while I said that it would be sufficient that a person’s grievous medical condition was life-threatening or terminal —

— listen to this —

— I did not say that a terminal illness was a necessary precondition for a constitutional exemption. The gravamen of a grievous and irremediable medical condition is not whether the illness, disease, or disability is terminal but the grievousness is the threat the medical condition poses to a person’s life and its interference with the quality of that person’s life.

Can it be any clearer than that? Those are the latest decisions, just over a week ago, with the unanimous Court of Appeal and the Supreme Court of Ontario.

In my humble opinion, honourable senators, this bill is a twist to try to circumvent the right that has been recognized by the Supreme Court in relation to physician-assisted death. And again

read the definition of “grievous and irremediable medical condition.” It’s full of all kinds of little concepts that a judge will have to apply in the Criminal Code. Especially when they say they have a serious and incurable illness, disease or disability. “Incurable.” You will have to prove to the judge that it is incurable. Yesterday we asked the question: What is incurable? Senator Cowan quoted the President of the College of Physicians and Surgeons of Ontario as to what incurable is. I quote Dr. Kirsh on May 10:

The requirement that conditions be incurable suggests that patients must explore and undertake all treatment options or cures before they can request medical aid in dying. This would force patients to pursue treatments that they do not find acceptable.

• (1710)

So what does it mean? It means that they are trying to circumvent one of the criteria of *Carter* in paragraph 127, that a person is not compelled to incur treatment. “Incurable” comes in by the back door and negates that condition of paragraph 127. That’s what I don’t like in that bill. I don’t like it because it does not recognize the argument that the minister has given us to justify that the bill would be open for persons or patients that are close to their final days.

And what did the minister say? The minister said that we want to protect the vulnerable to ensure that we are not supportive of suicide, and Canadians are not yet there. Well, Canadians were not yet there on gay marriage; they were not yet there on abortion. I remember the debate we had here almost 11 years from this date. When you recognize the rights of minorities, it’s always difficult for the majority.

It’s not because a poll tells me that Canadians are 61 per cent in favour for the terminally ill but only at 42 per cent for those who suffer intolerably of a grievous and irremediable condition that the reading of the Supreme Court that they have access to medical assistance in dying should be denied in a bill, especially with the concept of reasonably foreseeable death. As I said to you, this concept in law doesn’t fly.

And it’s not me who is saying this; it’s the Canadian bar. It’s the lawyers whose profession has been busy interpreting what we call the law of health.

I want to quote the testimony of Mr. Jean-Pierre Ménard when he testified before our Legal Committee. He was one of the main counsel for the Quebec government when they drafted the legislation. In my opinion, he summarized very well what the Canadian bar and the bar of Quebec stated. He said the following on the concept of foreseeable death:

However, the reasonably foreseeable death criterion is vague and infringes Canadians’ constitutional rights, depending on how it is interpreted. It is not operational and does not correspond to the law.

Earlier in the committee he stated:

Proposed subsection 241.2(1) reiterates the *Carter* criteria, but proposed subsection 241.2(2) diminishes and dilutes those criteria.

This states it better than what I'm trying, honourable senators, to convince you of, that this paragraph should be removed from the bill. It should be removed from the bill to make the bill Charter compliant, to make the bill respectful of the rights of a patient who is competent, has a grievous and irremediable health condition and is in intolerable suffering, that that person has a right to medical assistance in dying. That is, in my opinion, honourable senators, the only challenge and real challenge in relation to the bill.

I don't mean that protecting freedom of conscience is not important. It is as important as protecting sexual orientation or protecting race or protecting religion. It is as important as that. We have to be mindful of that, especially in this chamber.

But in reading this bill, to be asked as a legislator to sanction a parliamentary law that will strike access to medical assistance in dying to a group of Canadians who are a minority, as a matter of fact — you are totally right, Senator Moore. Of the 29 decisions that have been given by the Canadian courts in the last four months, only four dealt with patients that are not in a terminally ill condition.

It is important, honourable senators, that when we study this legislation in detail, we try to understand the challenge that we face. And the challenge that we face is to understand the impact of this decision.

Through the chairmanship of Senator Ogilvie and MP Oliphant, we wrestled for two months last winter, in the days of snowstorms, to understand the implications of the *Carter* decision. We drafted a report and that report, in my opinion, is as valuable today as it was three months ago. If the government has decided to set aside the recommendations and restrict the rights, it at least should have honoured the jurisprudence of Canada that when you exclude a group of citizens from the rights that they have access to according to the Charter, the government has to establish a system of minimal impairment. In other words, if you conclude that the category of patients who are not terminally ill but are more vulnerable, the approach is not to exclude them and wipe them out. The approach of the court is that you ask yourselves what additional safeguards can be put in place to ensure we protect those people. The government has decided to totally exclude them from the bill by a stroke of the pen in including all those conditions, the sneaky condition of the second paragraph, which is what we didn't get from the minister yesterday. And I deplore it.

If the minister told us, "We didn't have time to establish a regime that would meet those objectives of protecting the vulnerable, and we think they are more at risk when they are not at the end of their life," I would have said that Canadian laws are full of examples where we have devised an additional system of protection. But that's not what the government decided. The government decided to go by the back door and exclude them on the pretext of section 1 of the Charter.

And the courts are very demanding when under section 7 you exclude somebody from their right to life, liberty and security. If you claim that in a free and democratic society you can exclude people from access to their right to life, liberty and security of the person, the test and the bar is very high.

[Senator Joyal]

I read the background documents, and these are the general objectives: protecting the vulnerable, preventing suicide and Canadians are not yet there. Well, those are all political objectives that have really no reasoning directly linked to the persons who would need those additional protections. That's why I think this bill fails.

Honourable senators, you are aware of how many times during the last nine years I stood up in this chamber and criticized the former government's bills in relation to minimum penalties, in relation to Justice Nadon's appointment, in relation to a surcharge for remand. Senator Baker and I were always rising to pinpoint the failure of those bills in relation to the Charter. Most of the time, unfortunately, we were proven right.

• (1720)

Therefore, to expect that I'm going to support a bill today whose conclusion, as I read it, is to deprive a group of Canadians of their rights, I cannot vote for that, honourable senators, and I will plead with you that we amend and remove that section of the bill. I think that's the only honourable decision that we can take as a group.

Thank you, honourable senators.

Hon. Senators: Hear, hear!

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): Would Senator Joyal agree to take a question?

Senator Joyal: Yes.

Senator Carignan: You said that persons who are not terminally ill could be considered more vulnerable, according to the minister's testimony, and that it is unacceptable to completely shut out this group, and that we could consider better safeguards than the ones that apply to terminally ill persons. Do you have an idea of what type of additional safeguards would protect vulnerable persons who are not terminally ill?

Senator Joyal: Thank you, Senator Carignan, for your question. It is a question for the weekend, chapter 3, which follows what I call the infamous chapter 2, because there are safeguards. If you look at the text of the bill, at the bottom of page 5, you see safeguards. Most of these safeguards reflect the recommendations that our colleague Senator Ogilvie and MP Rob Oliphant included in the committee report.

In rereading these protection measures, we could consider them in the context of extra protection that could be provided to persons considered vulnerable in the event of an illness that causes suffering the individual can no longer tolerate. There are a number of protections we can think of off the top of our heads. The question of time is important. The state of the person's health must also be considered.

Prolonging suffering indefinitely makes us guilty of cruelty, and the Supreme Court addressed the idea of keeping persons in

conditions that are unbearable, given the immeasurable suffering they might have to tolerate.

The time factor needs to be weighed against the person's condition, and then there is the approval that these people might need to obtain in order to access medical assistance in dying. What other kinds of additional approval can we think of without denying their rights?

I have seen some bills pass that I won't bother naming. I voted against the bill on safe injection sites, which included 42 conditions that had to be met. That is an indirect way of denying people their rights. We must always be able to weigh the objective, which is the right to medical assistance in dying, against the guarantee of protection that we want to provide, but not to the point of denying people access to care. That is the balance we must strike. We have a few days ahead of us, and the Standing Senate Committee on Legal and Constitutional Affairs will be holding hearings next week.

[English]

It will be under Senator Runciman, who is the very reliable and trusted chair of the committee. He has strength, and you know he uses the gavel in the wisest and most objective way, and we are grateful to him for that.

[Translation]

These are questions that we can put to the witnesses who appear before the committee, and we will then be able to reflect in this chamber on how to propose amendments that respect the government's objective of protecting this group of extremely vulnerable individuals, without denying them access to medical assistance in dying with the stroke of a pen.

Senator Carignan: Still on the topic of creating a distinction, at the end of the *Carter* decision there is a sentence that reads something to the effect that "there is no need to rule on section 15 of the Canadian Charter of Rights and Freedoms, because we already found that the prohibition violates section 7." The bill creates a distinction between the group of people who are at the end of life and the group of people who are not, although the Supreme Court identified one common group of people who should have access to medical assistance in dying. Do you think that this distinction based on physical disability or the stage of the person's illness can also constitute a violation of section 15 of the Canadian Charter of Rights and Freedoms?

Senator Joyal: Section 15 is about a group of people being excluded. The problem with the bill is that it excludes an entire group of people who are not at the end-of-life stage but whom the court recognized as having access to medical assistance in dying. The court did not rule out including the definition of safeguards in the definition of the four criteria. The proof is that we have safeguards the court will validate.

Personally, I do not see a legal problem here. A confirmation of the diagnosis could be required as a safeguard. That kind of safeguard would not prevent people from accessing medical assistance in dying. The circumstances of consent in such cases

would simply have to be different from consent given when people are at the end-of-life stage, as the Quebec law states, which is something we all understand.

[English]

There isn't anyone in this chamber who doesn't understand what "terminally ill" means. We have all had experience in our own family and surroundings of what it means to be terminally ill. At my age, I have seen some from my previous generation passing away in different conditions, and I think it's the same experience for any one of us. I think it is possible to think of and imagine some safeguards that would not be to the point of excluding them, and the problem is with the exclusion. That's the way I read the bill. They exclude them, and as I said, without minimum impairment, which is always the criteria that the court tried to check when it realized that a group of citizens is excluded: What was the minimum impairment exercised? In the case that you have mentioned, we would have to balance that to be sure that in balancing what we would propose would be in the context of minimum impairment.

• (1730)

You are a lawyer. You understand how those concepts are intertwined, when we have to devise a bill that is fair for the people who have a fully recognized right by the court.

[Translation]

Hon. Pierrette Ringuette: Senator Joyal, as usual, I appreciated hearing your thoughts and comments. I would like to know what you think about the advance directives for someone with dementia or Alzheimer's.

Senator Joyal: Thank you for your question, Senator Ringuette. As you know, in *Carter*, the honourable justices of the Supreme Court ruled on the case that was before them. However, they had the wisdom to include in the last line of paragraph 127, and I quote:

[English]

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

[Translation]

Again it reads, and I quote:

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

In other words, the Supreme Court justices said, we have the case of Ms. Taylor and that of Ms. Carter. One was at the end of her life and the other was not. They set out a list of criteria that apply overall, but they did not close the door. They are like you and I in this House. They see all sorts of extremely difficult health situations where the person is suffering terribly. What if dying is the person's decision about his or her life? That is the crux of the question.

Section 7 says that everyone has the right to life, health and security of the person. That means that people have the right to control their life. They have the right to make decisions for themselves. Committing suicide is not a crime. Helping a person to commit suicide is. However, if your suicide attempt fails, you will not find yourself at the courthouse the next morning. You will not have criminal charges filed against you.

In its ruling on physician-assisted dying, the Supreme Court recognized that control over one's life is a fundamental right. Senator Raine brought up the situation of someone diagnosed with Alzheimer's, which I think is the most critical point. All of a sudden this person loses the ability to do anything and, as my mother would say, it is as though they got hit over the head with a pipe and nothing makes sense. Your whole life crumbles. You know that you will die and how you will die. We've all seen people with Alzheimer's who, obviously, no longer recognize their spouse or their children. They're no longer able to feed themselves or take care of their personal hygiene, and they end up having to be locked up in cells so they do not escape and accidentally kill themselves.

We know very well that if we were in that situation and we had to make decisions about our end of life . . . Before I no longer have any awareness, I need to make sure I have a prognosis from one, two or maybe three doctors to determine when I will depart, when I'll no longer be there. But I'll no longer be the person I wanted to be for my whole life. I'll no longer be the person who loves the people around me. I'll no longer be the person who is able to take advantage of all the joy and pleasure that life has to offer. I'll no longer be the person who can communicate with others. I'll be in a prison of my own mind.

Do I want to continue living in such a state? I think that's the same kind of question that was asked in the *Carter* decision. How does being a prisoner of one's own body to the point of enduring intolerable suffering compare to being a prisoner of one's own mind? How does it compare to someone who is no longer coping and is no longer the same person? The body is there, but the spirit is gone.

Do I want to continue living when the spirit that defined who I was is no longer there? That is the question we must ask. If we think about it and determine that the person should be able to have access to medical assistance in dying, what conditions should be in place to ensure that the person has willingly given his or her informed and realistic consent with regard to the consequences of the decision?

You are basically asking the same question as Senator Raine, but in a different way. The implications are the same. I think that we can certainly think about the conditions and specific protection measures, as Senator Cowan said. We need to work to ensure that the right to be oneself all of one's life is respected. Being yourself all your life means that your body and mind are in an acceptable state. If we no longer find life tolerable because of physical problems, then we will no longer be in a proper frame of mind to be ourselves and who we want to be in the future.

That is the basic question that we need to ask ourselves. I believe that we, as senators, are in a better position than anyone to think about that question. At the age that we are now, on average, we have had a lot of life experience and have dealt with many situations, and that will help us to consider the findings in

relation to the protections and rights to which every Canadian is entitled. I believe that is the biggest challenge.

[*English*]

Hon. Daniel Lang: Colleagues, I would like to direct this question to Senator Joyal, if I could.

Senator Joyal: With pleasure.

Senator Lang: I would like to refer to the constitutional responsibility between the provinces and the Government of Canada. The fact is that the provinces and the territories are responsible for our day-to-day health responsibilities, and in Canada do it very well, overall.

I have been going through the assisted-death guidelines that have been put in place for all the jurisdictions, except, as I understand from Senator Cowan, Nunavut is in the process of putting guidelines in place and the Northwest Territories will have guidelines in place. All jurisdictions will have the assisted-death guidelines in place.

What I don't quite understand is when I read the guidelines that have been put in place and that would come into play in respect to physician-assisted death and how one would apply for that particular health service if it's required, the guidelines here seem to be a lot more lenient than what the federal government is proposing if we pass the current legislation that is before the chamber.

If the bill before the Senate is not amended, or if an amendment before the Senate is agreed to and goes to the other place and is not agreed to, are Canadians better off having the *Carter* decision and the responsibility lying with the provinces to make the guidelines and adjust the guidelines accordingly?

Senator Joyal: Thank you, senator, for your question. While you were formulating your question, I was reading the Yukon guidelines. I have them with me, and I will read them to you. I don't know if you might have read them.

• (1740)

Senator Lang: I have them right here.

Senator Joyal: I read them because they're very telling.

In Yukon, two doctors must agree that the patient meets the criteria set out by the Supreme Court.

Senator Lang: Yes.

Senator Joyal: So they refer directly to the Supreme Court. The Yukon Medical Council notes that it is uncertain if MAID could be legally available to minors. We recognize that.

Senator Lang: That's right.

Senator Joyal: For the time being it stood, as one would say.

Second, a patient must maintain decision-making capacity throughout the process, up to the time of dying. That's exactly what seems to be sensible to maintain competence and still be willing at the last minute.

[Senator Joyal]

Third, there is no advance request.

Fourth, written requests for MAID are required, signed by the patient and two witnesses, one of whom is not related or entitled to any benefit from the patient's estate or involved in the provision of treatment. It is quite clear that is to protect the objectivity.

Fifth, if a physician believes the patient suffers from a psychiatric or psychological disorder or depression that could impair his or her capacity to make an informed choice, the patient must be referred for assessment.

That is a safeguard. It is a very prudent safeguard. A professional has to assess whether the psychological condition has deteriorated.

Sixth, a waiting period of four days is recommended.

I come back to the comment that Senator Ogilvie made to the Minister of Health yesterday: It is not compulsory; it is recommended. It is up to the physicians to judge.

Finally, the physician may refuse to provide MAID but must arrange "timely access to another physician or resource."

To say that if we don't have a bill on Monday there is no framework for the exercise of medical assistance in dying in Yukon, I would say to you, in my humble opinion, the system is there. It refers in the first sentence to the *Carter* decision, which has been interpreted 29 times in the last four months up to today. So there is jurisprudence. We know what it means to be a competent adult. We know what "grievous" and "irremediable" mean.

On the other hand — I want to be clear — to conclude that there is no merit to having legislation, I'm not ready to say it is not preferable to have legislation. I say it is preferable to have legislation that is right, according to the criteria of the Supreme Court.

If we need to take time to achieve that objective, next Tuesday, June 7, in Yukon, in my opinion, the situation has been dealt with responsibly by the Yukon authorities.

I see Senator Raine. I could read to you the conditions in B.C. I could read to you about Saskatchewan and all the provinces. There are distinctions, as the Minister of Health said yesterday, properly.

However, as I said, it is not a vacuum, and especially because the *Carter* criteria are well understood and have been well interpreted in the last five months on 29 different judicial decisions, even by, as I said, the highest court in Alberta, the Court of Appeal in Alberta, unanimously.

In my opinion, to look for a bill that is in sync with *Carter*, it is preferable to make sure that the interpretation of the Criminal Code is streamlined. We are dealing here with a matter of criminality. To assist somebody with suicide is a crime, as I said earlier on. If you allow that in certain circumstances, it is certainly preferable to have something that is streamlined across Canada.

But for the patients, for those who suffer under the conditions described by the Supreme Court, they are protected. Tomorrow they will be protected. There's no doubt about that. The provincial and territorial authorities have been responsible enough to enact those bylaws that govern the conditions of those who request medical assistance in dying for the time being.

The Hon. the Speaker: Honourable senators, Senator Joyal's time has expired, but I see three senators rising to ask questions.

Senator Joyal: May I have five more minutes?

The Hon. the Speaker: May Senator Joyal have five more minutes, colleagues?

Hon. Senators: Agreed.

Hon. Nicole Eaton: Senator, if the bill were amended to the same criteria as the Supreme Court in *Carter*, would you be in favour of a further safeguard? Would you ever support having the person who is asking for MAID be given a palliative care assessment?

Senator Joyal: The question you raise, senator, is very important. Palliative care in Canada, we have been told — Senator Ogilvie is back, and could confirm that. We heard from witnesses at the special joint committee and were told that palliative care in Canada is accessible at the level of between 13 and 16 per cent, more or less.

In other words, unfortunately, at the present time, it is not a service that is available from coast to coast to coast or sea to sea to sea. I see my friend, Senator Lang. In relation to Yukon, I don't know about the availability of palliative care in Yukon, in small rural communities.

I am from Montreal. I know it exists in Montreal. My mother had palliative care the last two days of her life. She didn't want to be in hospital or palliative care. She wanted to die at home, for all kinds of family and sentimental reasons. In the end, we did not want our father to see her dying, so we arranged to have her die under palliative care through a sedative of morphine.

Palliative care, as much as it is the optimal condition for somebody at the end of life, at this stage it is not available throughout Canada. It might be available in the downtown centres of Toronto, Montreal and Vancouver, but when you are in a remote community, where it is difficult even to have a family doctor — that's why nurse practitioners are included in the bill — to say, "Can you check if the person will accept palliative care," I would say yes, provided it is available.

Unfortunately, with the present condition of those provincial services, it is something that could be included in the medical regulations that each province would find available. It would mean an enormous investment overnight to make sure that that condition is real.

That's the problem. As much as it is essential to offer a person palliative care at the end of his or her life, it has to be made available; otherwise it is purely theoretical. If we want to make it a condition in the present situation of health services in Canada, the best approach would be to include that in the various conditions

that provinces have already regulated under their own responsibility, since it is a responsibility of the provinces to implement that service.

Hon. Frances Lankin: Thank you, Senator Joyal. Will you accept another question?

Senator Joyal: With pleasure, senator.

Senator Lankin: Thank you very much. I'm following up on Senator Lang's question to you about if there's no bill in place on June 6. As you speak to the guidelines that are in place across all the jurisdictions, or will be very soon, you give assurance that the sky won't fall on June 7. While I agree with all of the arguments you are making about passing the right law, not just any law, and while I also agree it is better to have the right law than have no law, I want to ask you to comment on the minister's assertions that physicians will be at risk of criminal prosecution and there will be a chill on the activity of their willingness to support patients coming forward.

That is something we need to think about in the balance of all this, and I wonder if you can comment on it.

• (1750)

The Hon. the Speaker: Honourable senators, Senator Joyal's time has expired. Do you wish to give leave so Senator Joyal can answer this last question?

Hon. Senators: Agreed.

Senator Joyal: Thank you, senator, for your question. I think you raised a real point. In fact, it was stated at the Legal and Constitutional Affairs Committee when they were hearing from the Canadian Bar Association and the representatives of the federation of medical professionals. I wonder if you were in attendance at that time.

There is no question that it is preferable to have legislation because it brings certainty. As I said in an earlier answer, we are dealing with a matter of the Criminal Code. When a judge has to interpret the Criminal Code, there is no fuzziness about the concept. The starting principle is that the legislator speaks to say something.

If the legislator put "incurable," the judge will have to interpret what it means in relation to the case in front of it. It cannot say "incurable" is like your "irremediable." You might use those words synonymously, but in the Criminal Code it is not that at all. It is a piling of concepts that the judge has to test in accordance with the case in front of him.

There is no doubt the fact that provincial regulation all over Canada, the Northwest Territories and soon Nunavut, brings a certain level of uncertainty, especially since *Carter* will receive full implementation by June 6. For some professionals, that could have a chilling effect. That is, well, let's wait another week or another two weeks before Parliament completes its study or is finished and we finally have a bill.

[Senator Joyal]

Ideally, we have to aim at certainty; that is, a bill that is in sync with *Carter*. Meanwhile, there is no question that as long as there was access to court, it was a way for a doctor to be protected because the court would pronounce on a constitutional exemption. As long as there is no more court exemption to be sought by a doctor, then of course it is for everyone to say, "Are the conditions of the case so clear that I run no risk?" There will be that kind of reflection from a professional on the basis of the 29 decisions that have been given by Canadian courts in the last five months.

The Hon. the Speaker: Honourable senators, as you are aware, at six o'clock I'm obliged to leave the chair unless it is your wish we not see the clock. Rather than interrupt the next speaker, I would like to deal with that issue now.

Is it your wish that we not see the clock, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: So ordered. On debate, Senator Sinclair.

Hon. Murray Sinclair: Honourable senators, I couldn't help but have a feeling of déjà vu here as I was listening to the debate this afternoon — not because I'm standing for the second time today, but because I left a job in which I had to sit and listen to lawyers argue over constitutionality all day. All we have been doing all afternoon is arguing constitutionality. Therefore, I think I will make some comments about that.

I wanted to add my voice to the other senators who are speaking about this particular bill on medical assistance on dying. I have a number of comments I want to make about the provisions of the bill, and I also want to talk about the constitutionality question.

I want to begin by noting for the record that, as you all know, I have been a senator here now for exactly two months, having been summoned to this chamber on April 2 of this year. I am told — and I can certainly see from not only the level of the debate and nature of the debate but also from the bill itself and from the public comments that we have all observed — that this bill is one that is going to define this country for some time to come. It certainly represents an opportunity for Parliament, including this chamber, to make a bold statement about the character of this country and about who we are, about our sense of compassion, about our courage as human beings, about our kindness to each other and about our respect for life and for each other.

Yesterday, as I sat in this chamber listening to the questions that were asked of the ministers involved — along with the several comments that many of you sly, veteran senators tagged on to your questions — I felt a significant degree of pride in this place and in all of you.

In this place, I heard hard questions being asked and answered. I heard references to mothers, fathers and the impact that this proposed law might or might not have for them and for others in like circumstances. I observed your intelligence and heard and felt your passion about this bill, and I certainly felt your humanity.

While I heard the occasional partisan jab, such comments were usually spoken as gentle jabs toward each other and not as a means to score empty points. Perhaps, as was mentioned, the presence of cameras broadcasting the proceedings yesterday brought about an added air of civility and positive behaviour and all of that which has been mentioned on Twitter and Facebook.

That may, in fact, speak to the need to reconsider allowing them into this chamber. But it certainly did show that this chamber can be a strong, passionate, dignified place of wise and careful deliberation. I therefore wanted to extend to you my personal congratulations for showing this country what this place really stands for and to thank you for making me feel proud to stand among you.

That brings me to a consideration of how I believe we ought to proceed and how I am going to proceed in my assessment of this bill and other legislation that comes before us.

I begin with this thought: Based upon my experience and the way that I have been raised, I am going to believe and treat this place, the Senate of Canada, as though it is the place of "Canada's Council of Elders." Among my people, elders are treated with great respect, for it is recognized that their experience and life achievements have given them the right to be seen as wise people, and the responsibility to behave as such.

Elders are the ones consulted about the communities or the individual's most significant problems, and their advice is sought to help those who have the ultimate responsibility to make the final decisions about their lives.

Elders do not become or take up the cause of one side or the other in a dispute, but work to help others overcome their differences.

Elders are the ones to whom young leaders come with their proposed plan or a problem and are asked what do you think of this. They listen, discuss and advise. Ultimately, they recognize that the ultimate decision rests on those whose actions must be taken or problem must be solved to accept the elder's advice or not, for it is they who must live with the consequences of their decision.

As I said, I see many similarities with this place. We must not forget that we are not elected. We are not accountable to the citizens of this country for our actions in the same way as those who are elected. Like judges, we are appointed. Like judges, we are entrusted with plenary powers which, if we exercise too often, too easily, or inappropriately, we run the risk of bringing disrepute to this place, and we do not want that.

We hold office until the age of 75, which means that we are expected to bring the wisdom of our life experiences to bear on those issues that come before us.

When legislation is forwarded to us for consideration, we have an obligation to proceed carefully, in full recognition that it is here before us because 337 men and women elected by the people of this country to govern them have given it every consideration

and that the majority of them, who have been selected to administer the government of this country, have proposed and passed the bill in order to meet their governmental objectives.

In other words, the people elected to govern have exercised their right to govern in this way. We must not interfere easily with that right.

• (1800)

None of us should believe that we are here as opponents or proponents of the government in power. We are here to consider, to discuss, to bring our collective wisdom to bear and to decide what to advise those who govern about what we think. We are entrusted to ensure that regional interests are properly considered, that the citizenship and legal rights of minorities are protected, that there is an overall fairness to each law and that the proposed law is clear, concise and constitutional. We do not have to agree with the law. If it is properly passed and meets the test of Senate consideration, we must allow it to proceed, in my view.

With the greatest of respect to those who think otherwise, we were not appointed to govern. We were appointed primarily to review and to advise, but with an inherent power to prevent government abuses.

I was a judge in this country for 28 years and I can assure you that there were times I applied a law which I did not personally agree with because that was required of the office I held. That is also true here.

During our time here, we have an obligation to show Canadians that they expect this place to abide by those two important principles. We will allow and we will assist the government to govern and we will protect the rights of those whose minority positions are threatened by majority rule. We must abide by the proverb that when two foxes and a chicken are voting on what to have for dinner we will stand up for the chicken.

Bill C-14, as has been mentioned many times here and elsewhere, is unique legislation. It essentially allows a person to have another person help them to die. The prohibition against assisting someone to commit suicide is one of long-standing basis in Canadian and English law. Life is sacred to us and we, as a nation, believe that should be continued as such. People should not have it taken away from them, even at their own hand.

It has been illegal in this country to attempt to end your own life since our first Criminal Code. That amendment occurred not too long ago within the lifetime of all of us here. Committing suicide as an act in and of itself could not be rendered an offence since of course if you were successful in committing suicide you were dead and beyond the reach of the law, at least the law of humans.

But often committing suicide had legal ramifications for those left behind. It was part of the common law of England for example for members of a suicide to be legally punished. Their property could be forfeited, they could be ejected from their lands, they could be excommunicated, and burial of suicide victims or family members in a community or church-run cemetery could be denied.

We have come a long way from this, but it is to be noted that it is still common practice in our law in this country, and elsewhere, for us to allow insurance companies and pension companies to deny benefits to the families of suicide victims.

Suicide was not easily condoned in any nation, and we do not want a society to think that suicide is always an option. We certainly do not want others encouraging others to end their lives. Those prohibitions continue in our law.

As a matter of principle, we still believe that life ought to be sacred. Therefore, when we are asked to consider a bill which undermines that principle, we must proceed cautiously. Our obligation as senators is to ensure that this law protects the weak, the impressionable and the vulnerable from themselves if necessary but certainly from others.

We must ensure that as a matter of principle taking one's life is not undertaken easily. We must not open the door too wide or try to imagine every possible scenario where one might want to die and facilitate, in law, such potential wishes or scenarios. We must proceed cautiously and we should proceed incrementally.

We must also recognize that the limiting factor here is that the federal government is limited to dealing with the criminal law and public health aspects of this.

I would like to consider the issue that has been raised here throughout the day, and that has to do with the constitutionality issue. Some in this chamber have suggested that the bill fails and may be unconstitutional because it fails to uphold the principles set out in the *Carter* decision.

We should not be surprised that there are disagreements over issues of legality and interpretation. Lawyers are notorious for being able to dance on the head of a legal pin. But we must take those concerns seriously here for that is our obligation.

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

I have presided as a judge over many cases involving laws enacted after constitutional invalidation where the government enacted something less than what the Supreme Court of Canada has stated. *O'Connor* applications, referenced by Senator Baker here today, are the best example of that. Hundreds of such applications are heard by judges every year.

Judges of course are all familiar with the Supreme Court's holding in *Mills* again referenced by Senator Baker here today where the Supreme Court of Canada rejected an argument that

the legislation following an earlier invalidation must comply totally with its earlier decision. It does not. It must comply with the Charter, and in my opinion, in this case it does.

As Thomas McMorrow in an on-line article noted:

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

Those words have been referenced here many times.

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

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

They have done what appears to me to be an appropriate Charter analysis. In doing their work in enacting a bill, every government has a responsibility as does this Senate, to take a look at section 1 of the Charter and ask ourselves whether the law complies with it.

• (1810)

The Hon. the Speaker: Senator Sinclair, your time is up. Are you asking for an additional five minutes?

Senator Sinclair: I will take two.

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

Hon. Senators: Agreed.

Senator Sinclair: It says:

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

The Charter itself recognizes the right of governments to legislate for less than what the Charter contains in its provisions.

If there is a constitutional challenge to this bill then the government would likely, in my view, be able to sustain a strong argument that the requirement that the applicant had to be able to show that natural death is reasonably foreseeable would be sustainable.

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

Thank you.

Hon. David Tkachuk: Honourable senators, I am going to read a section from the background of the *Carter* decision:

In Canada, aiding or abetting a person to commit suicide is a criminal offence . . .

It then names the sections under the Criminal Code.

This means that a person cannot seek a physician-assisted death. Twenty-one years ago, this Court upheld this blanket prohibition on assisted suicide by a slim majority: *Rodriguez v. British Columbia* . . . Sopinka J., writing for five justices, held that the prohibition did not violate . . . the *Canadian Charter of Rights and Freedoms* . . .

Despite the Court's decision in *Rodriguez*, the debate over physician-assisted dying continued.

As Senator Cowan commented, it was brought up in the House of Commons a number of times.

Between 1991 and 2010, the House of Commons and its committees debated no less than six private member's bills seeking to decriminalize assisted suicide. None was passed. While opponents to legalization emphasized the inadequacy of safeguards and the potential to devalue human life, a vocal minority spoke in favour of reform . . .

The judges also talk about the how the legislative landscape has changed, but in 2010, they mention that eight jurisdictions permitted some form of assisted dying: the Netherlands, Belgium, Luxembourg, Switzerland, Oregon, Washington, Montana and Colombia. That's the company that we're in.

Honourable senators, I am an unwilling participant in an edict of the Supreme Court, one that was able to change its mind, but I am a prisoner to their decision as a legislator and will work to make the legislation protective of the citizens who do not wish to be part of this business.

In speaking to the Special Joint Committee's report on physician-assisted dying, Senator Ogilvie urged ". . . every single Canadian to think extremely deeply about all these issues."

He felt compelled to say this even though the Special Joint Committee he sat on conducted 37 hours of hearings on the issues, called before it 61 witness and reviewed 100 other submissions.

He said this even though he was certain that the committee, in his words, gave the issue "the fullest and most thorough consideration possible, with all of the evidence available to it from around the world and within our own country."

Yet Senator Ogilvie felt compelled to urge every single Canadian to think extremely deeply about the issue.

There is a sense in that admonition of his that even Senator Ogilvie is not convinced that after all the study his committee put into it that theirs is or should be the final word on the subject.

The fact that four Conservative members of the committee attached a dissenting report to the main report and two NDP members attached a supplementary report is testimony to this.

Recently, at the Liberal Party convention in Winnipeg, former Prime Minister Paul Martin said in regard to Bill C-14 that he was still thinking about the issue. "We need to get it right," he said.

Liberal Bob Rae, whose gag reflex was demonstrably on display at that convention, said he couldn't swallow Bill C-14 either.

Grassroots Liberals at that same convention tried to introduce an emergency resolution to the agenda in Winnipeg to discuss Bill C-14 and it failed. The Justice Minister, who should know better, told them that the bill has to be passed by June 6. Otherwise, in her opinion, there will be no safeguards and no exemptions.

So the Liberals are divided over Bill C-14. The opposition is divided over Bill C-14. No matter how anyone feels about this legislation — whether they are in favour of it or against it — I can't imagine there is anyone on either side of the divide who doesn't feel conflicted about the issue.

I speak as an ordinary citizen for the rest of this speech. I am not a lawyer or a physician. I am a legislator.

This is a difficult decision for all of us and, to me, this is the most important vote that we're going to face. I want to describe to you why I'm against this bill in principle but, at the same time, compelled to have to deal with it and try and protect the people that I think need protection in the end.

It does seem odd to me that in the Parliament of Canada we would be talking about how to dispose of people who request death rather than choose life. We need to be wary of a logic that may lead down the path to someone asking for it simply because they cannot face the pain or discomfort of life. Treat it like a medical procedure and pay the druggist, the hospital and the doctor through our health plan, making us all a party to this act through our tax dollars.

My own experience with this is just like many of yours. My father had advanced dementia, and that's how he died at the age of 90. So the genes are good.

I took him for a ride in the car once along the Saskatchewan River. The full foliage of fall was out and the colours were spectacular. My dad went on and on talking about how beautiful it was and then I realized that he was seeing it for the first time.

Those are the kind of people that we will be putting into this particular situation. Dementia and even Alzheimer's is not the end of life. It's not the end of life.

When someone does commit suicide, some of the first things those close to that person ask themselves is, “What more could I have done? How did I not see this coming? If only I would have known, I could have done more to save them,” not to help them on their way.

Suicide is something we normally do for ourselves: jump off a bridge, put a gun to our mouth or overdose on drugs. We do it for a variety of reasons: because we are depressed, because we lost our jobs, because we lost a love or just because we plain gave up on life.

That choice — a bad one as far as I’m concerned — the court has said we, the state, should now be involved in. We should pull the trigger. It will be less messy, socially acceptable and the government will pay for it.

I know there are robust safeguards, but can we be sure that at some point someone or a whole bunch of people aren’t going to say that a little government-assisted suicide can save a lot of money on future health care?

It is our most basic instinct to preserve ourselves, to live, and to respect the rights of others to live. Even those convicted of the most horrific of crimes in Canada are no longer subject to capital punishment. The last execution in this country took place in 1962, and the death penalty was officially abolished in 1976.

• (1820)

This is not to equate the death penalty with medically assisted dying but to underscore how sacred life is to all of us and how complicated this issue of state-sanctioned assisted dying is.

We are now moving in the direction of the state sanctioning the death of our loved ones while we adamantly refuse to allow it to take the lives of even the most vicious and heartless of criminals. It is an odd juxtaposition, if nothing else.

The sanctity of life is a never-ending struggle. Throughout history there are those who have forgotten the struggles mankind has made to preserve this idea, an idea that is a forerunner to the very concept of human rights. Suicide has always been available to those who give up on life, but as civilized societies, we have always strived to discourage it, to never give up, to find cures, to conduct and fund medical research. Will there be less incentive for that now or in the near future? Will we move away from palliative care research and put the money elsewhere because now there is a newer and cheaper option?

Honourable senators, no one wants to watch their loved ones suffer, but our own discomfort must first lead us to search for better palliative care options for them and not for their death at the hands of the state.

I am heartened that in the preamble to the bill the government commits to working with the provinces, territories and civil society to facilitate access to palliative and end-of-life care. I’m concerned, however, that the language of the bill in clause 241.2 allows the patient to reject palliative care because he or she doesn’t find it acceptable. I think the legislation needs to be stronger in encouraging palliative care.

[Senator Tkachuk]

Another concern I have is that this bill introduces a discussion in the preamble of a person’s mental state as an excuse when the whole definition of mental illness is not being of sound mind. People escape criminal conviction in our courts because they are not of sound mind, because they were mentally ill or temporarily insane, yet we are suggesting that people who are mentally ill can soundly judge whether they should get the state’s help in ending their life?

I also believe that this legislation puts our medical professionals in a very tricky position. Just how tricky can be encapsulated by the fact that the same bill that provides them a road map for assisting someone in dying, for doing the humane thing, also outlines prison terms for the same physicians as a safeguard against abuse.

I’m not saying that it’s not necessary to include these punishments; I’m just saying that if I was a physician it would give me further pause about exactly what I’m getting into here, and it is another reason that we should be focusing on providing the best palliative care possible as a first resort.

I’m also concerned that the bill uses as criteria for inclusion patients whose death is reasonably foreseeable. That language is sloppy, loose and open to abuse. Attentive lawyers are probably salivating at the prospect of questioning at trial some hapless physician over how in a particular case he or she determined death was presumed to be reasonably foreseeable, or was not, as the case may be.

A greater emphasis on palliative care and reserving medically assisted dying to cases where death is imminent in six months or less is a more reasonable approach, and this bill should be amended to reflect that.

There should be stronger protection for those physicians, nurse practitioners, pharmacists and institutions like Catholic hospitals who for religious reasons or simply reasons of conscience want to opt out without the fear of penalty. The clarification at 241.2(9) goes some way toward this, but it doesn’t mention institutions, and it doesn’t go far enough, and individuals need to be assured not only that they are not compelled to participate but that they will not be subject to any form of penalty for not participating.

I as a citizen through my taxpayer dollar am now an unwilling party to this act, and the justices keep talking about it, first in Alberta, then in Ontario, giving conflicting advice to the poor legislators like us who are now being forced and rushed to make a decision to conform to an artificial deadline.

Sometimes I wonder about what the justices watch or what they read. They know a regular bill takes a year to get through Parliament, but for a bill of this magnitude, we should have had at least two years. It takes consultation with the public, consultation across the country; there should have been time for this. But no, they said one year and that’s that.

There is no escaping the judges. And, hey, nothing personal, that was a wonderful speech made by a first-time senator. I tell you, it was terrific, so it’s not personal, but there is no escaping them. They used to interpret the laws we made; now they are

telling us how to make the laws according to what they decide in the courtroom. They excuse this by saying they are only interpreting the Charter. I wonder if those who wrote the Charter would have contemplated the extent to which our courts interpreted it. What was a crime last year will this year be considered our duty.

Thank you.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: The honourable senator's time has expired, but I see Senator Ogilvie rising to ask a question. Would you ask for five more minutes, Senator Tkachuk?

Senator Tkachuk: Sure.

Hon. Kelvin Kenneth Ogilvie: Senator, in your reference to my stated desire that all Canadians reflect on this a great deal in the manner you have described, you implied a possible motivation for my stating that, which I interpreted to have the possibility that I was not in favour of such legislation.

I would like to be sure that is not the case and to assure you that my issue is to ensure Canadians insist on protection for the vulnerable persons who are suffering intolerably but with legislation that protects all vulnerable persons and other issues, so it was not that I was opposed to legislation in this area.

Senator Tkachuk: That was not my purpose. If that was your impression, that's the wrong impression. That's not what I said. What I said was I thought that you didn't think that your report was the final word on this matter. That's all I said.

Senator Ogilvie: Oh, well, it wasn't.

Hon. Elizabeth (Beth) Marshall: Honourable senators, I rise today to speak to Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts, or as we know it, medical assistance in dying.

Medical assistance in dying is new to Canada. While a few countries and states do provide medical assistance in dying, we in Canada are now addressing the issue because the Supreme Court of Canada has forced Parliament to legislate medical assistance in dying after its unanimous decision in *Carter v. Canada*. The Supreme Court declared sections 14 and 241(b) of the Criminal Code void and suspended its declaration of validity for 12 months, after which it granted another extension of four months. As a result, Bill C-14, medical assistance in dying, is now before us in the Senate, honourable colleagues, for serious consideration and sober second thought. There has been much debate on the legislation, and amendment proposals have been put forth both in the House of Commons and in the Senate, ranging from moral conscience issues to legal concerns.

However, today I would like to speak on section 4 of the bill. The Senate Legal and Constitutional Affairs Committee recently tabled its third report on the matter and made a series of

important recommendations for Bill C-14. I'm particularly supportive of the following recommendation put forth by the committee, Recommendation No. 8, which states:

... that the Minister of Health *shall*, instead of *may*, make regulations regarding the provision, collection, use, disposal and exemption of information relating to requests for, and the provision of, medical assistance in dying.

I would like to mention that Recommendation No. 8 was adopted unanimously by the committee.

• (1830)

I want to talk a little bit about the details of clause 4. It speaks about the regulations which would require information to be provided and collected in order to monitor medical assistance in dying, presumably to ensure there's no abuse and to ensure compliance with the legislation. I am thinking particularly about sections such as the section on safeguards.

Clause 4 goes on to refer to the information to be provided by medical practitioners, nurse practitioners, pharmacists, coroners and medical examiners, who all have a role in medical assistance for dying.

It also refers to the form, manner and time of the information to be requested as well as its use, analysis, interpretation, protection, publication, disclosure and disposal.

For such an important responsibility, there is currently a "may" not a "shall," so there are no regulations right now.

We are considering enacting this regulation without regulations which would help ensure that medical assistance in dying is properly carried out. This section of the act, I would like to mention, won't even come into force at the same time as the rest of the act. To me this demonstrates a lack of concern for the vulnerable, which was so evident in some of our earlier deliberations.

Honourable senators, why aren't regulations mandatory as per Bill C-14? There are a number of sections referencing the regulations, important sections on how medical assistance in dying will be monitored, yet the regulations are discretionary.

That section of the act won't even come into force at the same time as the other section of the act, so I think it is imperative that we consider the consequences of this bill and not rush it.

I want to go into some of the individual proposed sections within clause 4. The first one, proposed subsection 241.31(1), states:

... a medical practitioner or nurse practitioner who receives a written request for medical assistance in dying must, in accordance with the regulations, provide the information required by those regulations to the recipient designated in those regulations or, if no recipient has been designated, to the Minister of Health.

If there are no regulations to begin with, then there's no information required to be provided regarding the written request for medical assistance in dying. It just doesn't make sense.

Before I came to the chamber today, I went on the Internet to see how many abortions were performed in Canada last year. Now I'm wondering, when I look at clause 4 and it is not prescriptive with regard to the provision of information, are we going to know how many people accessed medical assistance in dying once this legislation comes into force? If clause 4 doesn't come into force, who is going to collect the information? Are we going to rely on the different jurisdictions? How will we ensure consistency?

Clause 4 also provides an exemption under the regulations that permits a medical practitioner or a nurse practitioner not to provide the information required under the regulations. So if there are no regulations at all, my question is exactly when are medical practitioners exempted from providing the information on request for medical assistance in dying? And why aren't they required to provide that information?

Then there's another section that says pharmacists who dispense a substance for medical assistance in dying must provide certain information as identified in the regulations to an individual also designated in the regulations.

Again, there are no regulations. So the information required from the pharmacist is not defined and neither is the individual to whom the information should be reported. If the information is not defined and the individual who should receive the information is not defined, then how can the government ensure that medical assistance in dying is carried out in accordance with the act?

As you read down through the different proposed subsections, you see a reference to regulations. But when you get further down and to the proposed section on death certificates, all of a sudden there's no mention of regulations. What it says is that the minister "may establish guidelines." That term just sort of fell out of the air and it is just in that section. It says the minister "may establish guidelines on the information to be included on death certificates where medical assistance in dying has been provided . . ." This proposed section states that the information to be provided on the death certificate "may" include clearly identifying medical assistance in dying, as a manner of death, as well as the illness, the disease or disability that prompted the medical assistance in dying request.

That's concerning to me because, first of all, I don't agree with the term "guidelines." I think it should be in regulations. I think it should be mandatory. It shouldn't be "may"; it should be "shall." It also should be mandatory to clearly indicate on the death certificate that medical assistance in dying was the cause of death, and then the underlying illness, disease or disability should also be declared.

When you read that proposed section, when you see "may" and you know that the regulations aren't in force and you know that subsection isn't going to come into force with the rest of the act, you are wondering, where is it all at? Who is going to collect the information? What information is going to be provided? Will we know at the end of the day?

We have tens of thousands of physicians in Canada. When the legislation goes through, physicians will be able to provide medical assistance in dying, and what information is going to be provided? How are we going to monitor? I have no idea after reading the legislation.

When we get down toward the end of clause 4, it states that everyone who knowingly contravenes the regulations, which don't exist, is guilty of an offence or indictable offence. However, like I said, there's no regulation, so it is impossible to identify anyone who contravenes the regulations.

If there are no regulations, there's no guarantee that the provinces will regulate in a consistent way. I did raise that with the minister yesterday, and she did say that there were three provinces that had guidelines. It seems she was satisfied with three provinces, but what about the rest of the provinces and the territories? I know Senator Joyal did mention the Yukon, but I think we should be striving for consistency.

I'm of the opinion that there need to be federal regulations in order to maintain consistency in reporting and recordkeeping among the provinces to ensure protection of the vulnerable.

Many groups, individuals and organizations are concerned with the moral aspect of C-14 and are concerned about protection of vulnerable populations requesting medical assistance in dying. We can't possibly determine who these vulnerable populations are and further protect them if there are no regulations in place for the provision, collection, use, disposal and exemption of information relating to these requests.

So in summary, here are the issues: Clauses 4 and 5 of the bill will not come into force when the rest of the bill comes into force at Royal Assent. The bill is fragmented.

It appears to me that in a rush to get the bill done, priority was given to a certain part of the bill but no priority was given to this part of the bill.

Yesterday, as I said, the minister gave no indication of when these proposed sections would come into force, only to say that she was working with officials on the matter.

So there has to be a defined process whereby information is obtained on each medically assisted death case so that data can be collected. I would anticipate that this data would include the name of the individual, the physician, the nurse practitioner, the pharmacist, along with key players and information.

The problem I have is that this information hasn't been specified in either the bill or the regulations, nor is there any direction on what should happen to this data.

There's a big void in my opinion. We don't know what information should be collected, who is going to collect it, what are they going to do with the information once they collect it, what security is going to be over this very personal information, how the information will be disposed of, if it is disposed of, and what information will be included on the death certificates.

Honourable senators, I ask that you seriously consider the lack of regulations in Bill C-14 and the fact that clause 4 will not come into force at the same time as the rest of the bill, and the potential consequences this may bring as a result.

The Supreme Court of Canada has asked us to legislate medical assistance in dying, so we have an obligation to the court. More importantly, we have an obligation to our citizens to ensure appropriate measures are put in place for the protection of all Canadians.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise to speak on the second reading of Bill C-14. It is the hardest bill that I have ever worked on. I have stayed up many nights thinking about it and thinking about those who would be affected by this legislation. My entire life I have fought for the rights of the most vulnerable in our society. As a senator, I have fought to protect our constitution. Bill C-14 brings together these aspects.

• (1840)

This issue is deeply personal to many Canadians because we have all lived it in some way. We all know someone who has suffered intolerably. Maybe it is a co-worker or an acquaintance, or maybe a distant relative or loved one. We all hold the story of someone close to us.

Honourable senators, I would like to share with you the story of Elayne Shapray of Vancouver, British Columbia. She was in an advanced state of decline from secondary progressive multiple sclerosis. Multiple sclerosis is not terminal, but it causes intolerable suffering to many. It is a disease that affects more than 100,000 Canadians. Elayne's condition caused her suffering for several years and left her completely incapacitated. Elayne was a long-time advocate of medical assistance in dying and offered her gripping affidavit after the B.C. Court of Appeal overturned the B.C. Supreme Court ruling in favour of Gloria Taylor and the BC Civil Liberties Association. In the words of Elayne's husband, Howard: "Elayne had a peaceful and serene passing, surrounded by friends and family" on May 2.

Elayne was able to apply for an exemption from the Supreme Court's declaration of invalidity and was afforded dignity in death. Under the restrictive criteria of Bill C-14, however, Elayne likely would not have been eligible for medical assistance in dying. Instead, she would have been forced to turn to self-starvation, something that is beyond cruel, to be eligible.

Honourable senators, I share Elayne's story with you to highlight the importance of this issue and the care and deliberate consideration that it deserves. As senators, we are the absolute protectors of the rights outlined in our Constitution. As senators, we must uphold our responsibility in this matter.

Today, I would like to talk about how medical assistance in dying and the Supreme Court's decision in *Carter* are related to the Charter. I would also like to outline how Bill C-14 restricts access to medical assistance in dying based on the parameters established in *Carter* and highlights the need to pass the right law.

Medical assistance in dying addresses the most fundamental of our constitutional rights as Canadians. Section 7 of the Charter says that each and every Canadian has the right to life, liberty and

security of person. It says that we as Canadians are guaranteed the right not to be deprived of these basic rights except in accordance with the principles of fundamental justice.

The Supreme Court's responsibility in *Carter* was to respect section 7 of the Charter with respect to sections 14 and 241(b) of the Criminal Code. Section 14 of the Criminal Code says:

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

Section 241(b) says:

Every one who . . . aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence. . . .

Honourable senators, *Carter* is not the first time that the Supreme Court has faced a challenge on the issue of medical assistance in dying. Before Kay Carter and Gloria Taylor, there was Sue Rodriguez. In 1993, Ms. Rodriguez, who suffered from ALS, lost her challenge at the Supreme Court in a 5-4 decision. Between 1993 and 2015, public attitudes changed and society evolved. Other jurisdictions began to legislate on medical assistance in dying and positive advocacy by the BC Civil Liberties Association and people like Gloria Taylor, Kay Carter and Elayne Shapray showed the public that medical assistance in dying could be dying with dignity. The public and health care personnel began seeing that medical assistance in dying could be an act of compassion. If we listen to Canadians on this issue, we can begin to understand that medical assistance in dying is intended to be compassionate.

The principles of fundamental justice that the Supreme Court once used to deny medical assistance in dying have evolved. As a result, so did the Supreme Court. On February 6, 2015, it set out the parameters for which medical assistance in dying should be allowed in Canada.

Bill C-14 is a legislative response to the delayed declaration of invalidity by the Supreme Court in its unanimous decision in *Carter v. Canada*. Bill C-14 falls short of the standards that the Supreme Court has set and that the public has set on this issue.

The Supreme Court was definitive in *Carter*. The Supreme Court was unanimous in *Carter*.

In its declaration of invalidity, the court says that sections 241(b) and 14 of the Criminal Code were no longer valid if they prohibited medical assistance in dying.

The court introduced parameters that said medical assistance in dying should be allowed

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

The Supreme Court went on to add, critically, that “irremediable” . . . does not require the patient to undertake treatments that are not acceptable to the individual.”

This is the language that the highest court in our country used in its landmark and unanimous decision. This, however, is not what was tabled.

Bill C-14 introduces some parameters and eligibility criteria that are restrictive. Yes, it says an individual must suffer from a grievous and irremediable condition, but it also says that an individual must have a “. . . serious and incurable illness, disease, or disability.” It goes on to say that the individual must be in “. . . an advanced state of irreversible decline in capability.” Third, the criterion says that the “. . . illness, disease, or disability or the state of decline that causes an individual enduring physical or psychological suffering must be intolerable to the individual.” Lastly, Bill C-14 says that an individual is only eligible if “. . . their natural death has become reasonably foreseeable.”

In *Carter*, there was no mention of incurable. In *Carter*, there was no euphemism for terminal illness such as “natural death has become reasonably foreseeable.” Yet, honourable senators, these words were included in Bill C-14. This language creates eligibility criteria that are restrictive and they do not meet the threshold set by the Supreme Court in *Carter*.

I will go on to explain why I believe that the restrictive eligibility criteria found in Bill C-14 should be replaced with the parameters established by the Supreme Court in *Carter*.

Bill C-14 involves both legal aspects and medical aspects. On the one side, there is the legal question. On the other side are the doctors, nurse practitioners and regulators who have to interpret Bill C-14 once it becomes law.

They are ones who must administer medical assistance in dying. Medical personnel from Montreal and Vancouver to Yukon and Thunder Bay need to be able to interpret what “grievous and irremediable” means and act accordingly. Incorrectly interpreting Bill C-14 is not an option. Yet, the medical reality will be filled with misinterpretation if we do not replace the restrictive criteria of Bill C-14 with the language we found in *Carter*.

Requiring that an individual suffers from an incurable illness, disease or disability is restrictive. We heard that, from the medical standpoint, the requirement that conditions be incurable suggests that patients must seek out and undergo all forms of treatment in order to cure the disease, even if these are unacceptable to the individual.

The Supreme Court of Canada clearly said that “irremediable” does not require the patient to undertake treatments that are not acceptable to the individual. Clearly, there is a disconnect between the Supreme Court’s decision and Bill C-14. Requiring that an individual’s natural death has become reasonably foreseeable is restrictive.

The Minister of Justice at our pre-study told us that requiring a person’s death to be reasonably foreseeable provides health care practitioners with flexibility to take into account all the person’s medical circumstances.

Honourable senators, the minister’s response at the pre-study stuck with me throughout the whole process of our pre-study. Yes, it is the lawyers who wrote this bill, but it is the medical personnel across Canada who will interpret this bill.

• (1850)

I asked Douglas Grant, President of the Federation of Medical Regulatory Authorities of Canada, how his organization will interpret “reasonable foreseeability.” He was fairly straightforward. He told me he doesn’t know. He then 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.

This, honourable senators, is how many people in the health care sector feel about Bill C-14. The language of “reasonably foreseeable” does not appear in the medical lexicon. Health care personnel were looking for clarity. They were looking for guidelines on how to move forward. What they got instead was inconsistency and confusion.

Honourable senators, our most important responsibility moving forward is to ensure that Bill C-14 is the right bill for Canadians. We must ensure that it protects the rights and freedoms of all Canadians. It is essential for parliamentarians to give it the appropriate amount of time, effort and rigorous study that it deserves.

If Bill C-14 does not pass by June 6, there will be no federal law governing medical assistance in dying. This does not mean that there will be a massive void in terms of safeguards, as the government has suggested. The colleges of surgeons and physicians in all the provinces and the Government of Yukon have established considerable regulations that outline eligibility criteria and procedural safeguards. Nunavut and the Northwest Territories are currently working on regulations, and they will also have them in place by June 16.

Honourable senators, I have provided all of with you a map of Canada that sets out, right across the country, what regimes exist in each province. Yes, a federal law is ideal, but we must stay true to our role. We must give Bill C-14 the sober second thought it deserves. Expediency absolutely should not take precedence over accuracy.

An inadequate Bill C-14 means that someone like Louise Laplante of Quebec is not helped with medical assistance in dying. Louise passed away on March 13. One of the most emotional times during our pre-study was when her daughter, Léa Simard, showed tremendous courage in telling us about her mother. Léa offered emotional and gripping testimony of how the restrictive nature of Quebec’s assisted dying bill, which requires a terminal illness, made her mother, Louise, ineligible. Louise was not offered death with dignity. Instead, she was forced to starve herself and suffer cruelly and intolerably. Under Bill C-14, people like Louise would not be treated any differently. They would not be able to find peace and serenity, and they would not be eligible.

Honourable senators, we should not sacrifice our duty for expediency. As I conclude, I ask you to look forward.

Honourable senators, all of you here know that I'm a practising Muslim. From a young child, I was taught that death arrives when your time is over in this world, and you are not to hasten death by doing something like committing suicide or taking tablets. It is when the Creator is ready for you to die that he will accept you. All my life, until this bill came in front of us, I believed that I will live here as long as my journey expects me to live. I can make that choice. Nobody is asking me to do anything differently, and I personally will go with my religious beliefs.

Honourable senators, in the last few weeks since we have had this bill before us, I have had to look inside and say, "I am a practising Muslim, but my country has given me this greatest privilege of being a legislator." As a legislator, I'm a leader. Sometimes people follow you; sometimes they have to be followed.

May I have five more minutes?

Hon. Senators: Agreed.

Senator Jaffer: Sometimes they follow you; sometimes we have to ask them to follow us. We certainly listen to people. To all the senators in this place, I say we are leaders. Whatever our personal beliefs — and I have opened up mine; for me, my personal belief is that I will stay on this earth as long as the Creator wants me. That's my personal belief. But as a legislator, I believe I have to listen to Canadians, I have to look at the Charter, and I have to rise beyond my personal beliefs.

It has taken absolutely everything I have — I think it has aged me 10 years — to understand that, as a legislator, I have to protect the most vulnerable and make sure they die with dignity.

Thank you.

Hon. Pamela Wallin: Honourable senators, I rise this evening to speak to Bill C-14, an act to amend the Criminal Code regarding medically assisted dying. This is not a partisan issue. It is not an issue with just two sides. It goes to our very core. I have been changed and informed by the experience of caring for my aged and ill parents, both of whom I lost within six days of one another. So this debate and this bill are profoundly personal.

Now, my family has always been brutally frank about matters of money, politics, even death and dying. When people married into our family, we issued a warning: You are now our business. We will have opinions on your every action and we will share them.

So more than 20 years ago, my sister and I had our first conversation with our parents, at my father's behest, about what to do if they were hit by a bus or suffered a heart attack or stroke. They were always brutally honest. Neither, they made it clear, wanted to carry on if they were not of sound mind or body.

Mom and Dad had taken my maternal grandmother into their home when her Alzheimer's became advanced. The results of their compassion cost them dearly — emotionally, psychologically and financially — and the gesture gave my grandmother very little peace.

After several years, my grandmother finally had to be placed in a home, where few understood the disease or how to deal with it, and where resources were scarce. My grandmother and I were very close, as I had lived with her during my high school years in order to allow her to stay in her home.

Later, as a young working woman making my way in the world of journalism, I was thousands of miles away and airfare was pretty pricy. So when I was home for Christmas I made the most of it, sitting at her bedside. In a lucid moment, she reached out, took my hand, and said she wanted to say goodbye because, in her own words, she "went places in her mind" that she feared she would not come back from. This is indeed the nightmare of dementia and Alzheimer's. I never saw my grandmother lucid again. Eventually the same fate befell my mother and is what the future holds for my sister and me.

Several years back, my dad was diagnosed with a bad heart and cancer. He was my mother's daily support, but he too was in his late eighties. As he was deaf, he did not hear her cooking at 3 a.m. and would only be roused by the smell of burning food or smoke.

My sister had family and health demands, and I was commuting from Ottawa, but inevitably the day arrived. It was heartbreaking to take my mother to what I viewed as an old folks' warehouse. The staff was great. My mom had taught many of them, and their mothers and grandmothers too, so when she was aware, there was some comfort. But also on the good days, she would say, "Why should your dad and I live apart? He is my husband; and at this age and stage, this is a crime." The sadness in her eyes and in her heart and on her face was palpable and heart-wrenching. "I don't want to live like this, and we told you girls that years ago."

My father, who by this time was suffering from three kinds of cancer, had to move out of the family home to a place that provided meals. His mind was a hundred per cent, but the move was devastating, and it meant a loss of freedom. It also meant putting down his two beloved dogs, and that too broke his heart.

• (1900)

His illness and my mother's "time travel" meant that the connection of 68 years of marriage was breaking down even further. They begged not to spend their final days, to end their lives like this, separated, living in pain, as mere shadows of who they once were.

Despite living wills and many frank conversations with doctors, there was nothing we as their daughters could really do. I had promised I wouldn't let happen to them what had happened to my grandmother. But actually my hands were tied.

A living will, something many of us contemplate or draft for inclusion with our final will and testament, is not an advance directive. It does not give authority for anyone to request assisted dying, no matter how much the suffering or how imminently terminal the illness.

Even simple things, like trying to get my father on IV morphine, were a problem. He had stopped eating because the esophageal cancer had taken his ability to swallow, but our system wanted him to swallow pills to minimize, if you can imagine, the prospect of addiction. He was weeks away from dying and still the rules

overrode common sense and his clear-headed wishes or, in the minister's words yesterday, "genuine and firm wishes" that he had.

When I sensed the time was near, I brought my mother in her wheelchair to the hospital to see Dad. Dad said his time had come and he wanted to say goodbye. Mom, suffering from Alzheimer's, had been essentially non-verbal for quite a while. So I just let them be.

The silence was the most powerful communication I'd ever heard, as they sat without words, remembering a lifetime of happiness and sometimes sorrow and now this ignominious end. When I finally went back to the room to collect mom and take her back to her care home she looked at me, then she looked at Dad and in a moment of complete awareness said: "Well, if this is goodbye then you better give me a kiss, sweetheart," and he did.

Dad died on New Year's Eve, having suffered for several years and in particular the last few months. Mom followed one day after his funeral — death by broken heart. She did what I could not — end her suffering long before she would be declared terminal.

I apologize to honourable members because I know this story is just one of so many of the hundreds we've heard, some here today, some in our email, and are being told across dinner tables across this country. But as a senator, as one who is being asked to review and pass judgment on Bill C-14, my views are shaped by what I have witnessed. I believe no other generation should be robbed of choice and dignity. It is the most horrid of crimes, and it offers the most violent of deaths.

The Supreme Court of Canada has ruled. In February of this year a joint house and Senate report was issued with recommendations for the Minister of Justice to assist her in preparing the legislation, and now we are tasked with reviewing the final product. This legislation is a step and a start, but it is not good enough.

There are several areas of the bill that cause me concern, but the most important omission, on behalf of my late parents, for myself and my sister, and for anyone else I care about, is the lack of the right to an advance directive. This means that those with conditions like dementia and Alzheimer's will be denied the right to make a choice. Once the capacity for consent is lost they can no longer choose medically assisted death. So I ask: Under what rubric does it make any sense at all to disallow a competent and clear-headed person from stating, in writing, in advance, their reasoned and desired decision that when a certain point of incapacity has been reached, they be allowed to die with dignity and free from pain? Why, as one of my colleagues so eloquently stated yesterday, do we discriminate between those who are suffering and those who are dying? Why is the end of life so much more important than the end of any quality of life?

Section 66 of the Supreme Court ruling in *Carter v. Canada* states:

An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy.

Let our legislation reflect that.

Honourable colleagues, let us show respect for all who wish to end their lives at a time and in a manner they know to be right for themselves and their loved ones.

Thank you.

Hon. Judith Seidman: Honourable senators, I rise to speak to Bill C-14, an Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) — MAID. What I am about to speak, I speak with all the knowledge I took from expert witness testimony and the serious soul-searching I went through as a member of the Special Joint Parliamentary Committee on Physician-Assisted Dying this past January and February 2016, in addition to the testimony of the Ministers of Justice and Health, who appeared yesterday for Committee of the Whole here in this place.

Bill C-14 provides a federally regulated approach to MAID with procedural safeguards to protect the vulnerable, as well as a national monitoring system through data collection. The bill has been criticized by some as too restrictive and by others as too permissive. I see Bill C-14 as minimalist, and can accept this with the knowledge that most countries that have created such legislation have done so through an iterative process, gradually, adding to it and/or altering it with experience over a period of years. However, the language used in the bill, around the definition of eligibility, raises serious concerns.

The Supreme Court *Carter* ruling provides for MAID where there is:

... 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.

"Reasonably foreseeable death," as an eligibility criterion in Bill C-14, is not the language of the Supreme Court ruling. And "reasonably foreseeable death" leads to diverging interpretations of eligibility. Generally, it has been interpreted to mean that eligibility requires an individual to be in a terminal stage of their illness.

In their submissions to all parliamentary committees, the Canadian and the Quebec bar associations have criticized the "reasonably foreseeable" clause as being too restrictive. Most would agree with Joseph Arvay, the lawyer who argued the *Carter* case before the Supreme Court, when he states that "this bill, in so far as it has a reasonably foreseeable clause, is contrary to the *Carter* decision and is unconstitutional." He indicts Bill C-14 for being too restrictive — it would not even have permitted Kay Carter herself access to MAID.

The reasonably foreseeable clause has also been highly criticized as "meaningless to physicians." The Federation of Medical Regulatory Authorities of Canada, which represent all 13 provincial and territorial colleges, explains that "reasonably foreseeable" death is what they call "legal language that is far too vague" to enable doctors to confidently determine who is

eligible for MAID. While physicians struggle to interpret aspects of the Supreme Court's ruling, the regulators say that the court's eligibility criteria are more manageable.

Yet, one has to believe that the government and the Supreme Court have both made deliberate choices in their language — language that has a profound impact on how one understands the intent of the bill and even the true legal meaning of the proposed determined action.

• (1910)

In fact, the Alberta Court of Queen's Bench ruling of May 17 — just a couple of weeks ago — is a perfect illustration of the complications encountered in the reasonably foreseeable clause. The ruling granted MAID to an individual who was not terminally ill and suffered from a primary psychiatric condition. In its conclusion, the court stated:

It is not appropriate . . . to revisit these issues, which were considered at length and decided by the Supreme Court in *Carter 2015*

. . . *Carter 2015* does not require that the applicant be terminally ill to qualify The decision itself is clear. No words in it suggest otherwise. If the Court had wanted it to be thus, they would have said so clearly and unequivocally. They did not.

Just Monday this week, on May 30, it was revealed that the Ontario Superior Court echoed the Alberta ruling when it said that “. . . the Supreme Court's minimum standard for the right to an assisted death is ‘reasonably foreseeable,’ as stated in the Liberal bill.” Furthermore, Ontario Superior Court Justice Paul Perell said, “There is no requirement . . . that a medical condition be terminal or life-threatening.”

Honourable senators, our special joint parliamentary committee made 21 recommendations; three were specific to the issues of advance requests, mature minors and individuals suffering from psychiatric conditions.

While Bill C-14 does not permit access where mental illness is the sole underlying condition, it does allow for eventual additions and alterations to the bill to address this. However, there are some who say that Bill C-14 is open to a court challenge on this very omission, and that such a challenge would condemn a person at their most vulnerable time to cruel and unusual punishment in revisiting the Supreme Court ruling once again.

Indeed, two other important recommendations made by the special joint parliamentary committee are not addressed in Bill C-14: access to mature minors and the use of advance requests. In the preamble of the bill, these have been designated for further study.

It is important to recognize that Bill C-14 is a legislative framework with a compulsory monitoring regime in order to compile data to analyze and evaluate how MAID is working in practice. It also ensures a full parliamentary review of its provisions in order to change and/or add to the existing framework.

Honourable senators, many have recently expressed that it is preferable to have no federal bill than to have a flawed one. Indeed, Mr. Arvay recently said that the government's proposed legislation was “awful” and that he “would rather see this bill die” than become law.

The special joint parliamentary committee heard testimony from a constitutional expert, Professor Peter Hogg, who explained that it is a prerequisite to have federal legislation in order to ensure consistent access to MAID, especially in provinces where no such legislation exists.

It is important to note that at this eleventh hour, the regulators, provincial colleges of physicians and surgeons, have announced guidelines that define eligibility. These guidelines uniformly meet the essence of the language of the Supreme Court *Carter* ruling.

It is my belief that federal legislation is imperative to secure the very basic framework for a safe, coherent, universal, accessible system of MAID in every province and territory in Canada.

Federal legislation, and indeed Bill C-14, will reassure not only physicians but those other allied health professionals, nurse practitioners and pharmacists, that their participation will be free from prosecution. Bill C-14 also ensures their rights to conscientious objection as prescribed by the Supreme Court ruling.

Federal legislation will also fulfill two other necessary requirements that are, in my view, critical for oversight: the creation of a national information system to monitor MAID and a built-in review at the start of its fifth year, which will provide evidence-based data to update the law.

We have the opportunity, as a chamber of sober second thought, to amend Bill C-14 in order to live up to the challenge the Supreme Court tasked us with as parliamentarians.

In my judgment, recognizing from experiences in other countries that legislation on medical assistance in dying will be an iterative process over time, understanding the necessity for Canadians to have equal access with appropriate safeguards, we must amend the bill to be true to the eligibility language of the Supreme Court *Carter* ruling, no more, no less.

This would require the removal of section 241.2(2)(d): “their natural death has become reasonably foreseeable”

I look forward to our continued debate at second reading and further committee work. I know we will struggle with what is truly the most difficult piece of legislation we will likely ever deal with in our time as parliamentarians, but we must try and get it right for Canadians. Thank you.

Hon. Claudette Tardif: Honourable colleagues, I appreciate having the opportunity to share my thoughts with you regarding Bill C-14.

As many of you have stated, medical assistance in dying is a difficult and sensitive issue — perhaps the most complex matter that I've had to deal with in my time in the Senate — as it comprises elements of morality, ethics, law, science and so much more. Perhaps more so than other matters of conscience, this one can be deeply emotional and personal, particularly as we have all lost a loved one.

I lost my father two years ago, and he made the request to die. I was unfortunately not able to grant him that request at that time. Obviously, our own personal experiences, as we have stated, are the lens through which we interpret the information that we have before us. But, as my honourable colleague Senator Neufeld said earlier today it is deeply personal as well as we contemplate, each of us, being potentially faced with a grievous and irremediable condition at one point or another in our lifetime.

If medical assistance in dying is to become an option in such circumstances, I believe that it is our utmost responsibility as legislators to give it plenty of thought and ensure that it is done properly, notably by considering all possible facets before passing this bill, even if it means deliberating beyond the so-called June 6 deadline.

First and foremost, we must keep in mind that medical assistance in dying is about alleviating intolerable and interminable pain. It is about empathy and compassion. It is not so much about death as it is about quality of life. It is as much a discussion about modern medicine, its successes and its limits, as it should be about caring for society's most vulnerable people and those nearing the end of their natural lives.

It should also be a conversation about staying in control of our lives as much as knowing when to let go. What's more, as many are rightly pointing out, this is a discussion about reason, conscience rights, safeguards, consistency and accountability. But Bill C-14 also has to be about last year's Supreme Court decision and about our constitutional framework. That is, in fact, why we are having this discussion in the first place.

• (1920)

As such, it is with the greatest of considerations that I have been approaching this matter by asking myself three key questions: Does Bill C-14 achieve the overarching goals I have just mentioned? Does it adequately reflect the *Carter v. Canada* decision? And is it constitutional?

[Translation]

The way I see it, there have been two conflicting views since the Special Joint Committee on Physician-Assisted Dying tabled its report in February. There are those who want a lot of robust, strict protection standards to manage and limit access to this practice, especially in order to prevent abuse; and there are others who recommend that as many people as possible who are suffering from grievous and irremediable medical conditions be entitled to this option, within a clear and properly implemented framework, of course, in order to prevent abuse.

Both of these views deserve our full consideration. I realize that many components of these two perspectives are not necessarily mutually exclusive. That being said, it clearly seems that the government chose to take the most restrictive route possible. Bill C-14, as it now stands and as it was sent to the Senate this week, seems to want to significantly limit the number of individuals who will have access to medical assistance in dying.

I am among those who think that Bill C-14 is too restrictive, particularly when it comes to certain eligibility criteria that I find too stringent, discriminatory, and unfair.

[Senator Tardif]

[English]

First, I would like to talk about the requirement that an individual seeking medical assistance in dying must have a grievous and irremediable medical condition. The problem here, in my opinion, relates to the government's definition of what constitutes a grievous and irremediable condition.

Most problematic are the requirements that individuals seeking medically assisted dying "be in an advanced state of irreversible decline or capacity" and "that their natural death has become reasonably foreseeable."

Where, must I ask, is the notion or concept of reasonable foreseeability alluded to in the *Carter* decision?

The Supreme Court has deliberately refused to limit the right to people with terminal illnesses, something the Court of Appeal of my own province, Alberta, has recently confirmed. An Ontario court has since echoed this decision, that the Supreme Court's minimum standard for the right to an assisted death is the loss of quality of life, not whether natural death is "reasonably foreseeable."

A fact further confirmed by Ontario Superior Court Justice Paul Perell, who stated that the basis for assisted death "is the threat the medical condition poses to a person's life and its interference with the quality of that person's life" and that "there is no requirement . . . that a medical condition be terminal or life-threatening."

Honourable colleagues, Bill C-14 is more restrictive than the parameters established by the *Carter* decision. Despite the assurances made yesterday by the Minister of Justice, many experts have questioned whether the *Carter* plaintiff, Kay Carter, would have been eligible for medically assisted dying under this legislation.

Furthermore, the concept of "reasonable foreseeability," as pointed out by various constitutional experts, including some of our esteemed colleagues here in this chamber, is contrary to section 7 of the Charter of Rights and Freedoms, which states that "Everyone has the right to life, liberty and security of the person . . ." This is the position taken by the Canadian Bar Association, the B.C. Civil Liberties Association and many legal experts.

Finally, and perhaps more importantly, I really question how fair and cruel it is to let a person faced with a grievous and irremediable condition suffer interminably because his or her death is not deemed "reasonably foreseeable." Like all of my honourable colleagues, I have received countless letters, messages and phone calls from individuals and families directly affected by loved ones' grievous and irremediable condition. In fact, I would like to share a few excerpts from one such letter from an Alberta resident. I quote:

Sound of mind but physically frail, my mother in her last few weeks of life was distressed that her end-of-life experience was going so badly. Becoming immobile and totally dependent on others for her most basic needs, she was humiliated by her loss of independence and distressed that she was a burden to her family and the health system. . . .

Her pride, her dignity and her spirit were crushed to the point where she begged for help to end her life. This not being possible under current laws, she resorted to denying herself food and water — for days. . . .

Watching a loved one resort to this option made me realize that this is not a choice one should have to make. Although my mother was on the palliative care track, it did not fulfill her needs. She asked for and would have been very relieved to have had the option of a medically assisted death

As an Albertan, I hope I can count on you to support the Supreme Court ruling by pushing for legislation that would provide Canadians with a choice of medically assisted death. . . .

The system has to respect that individuals should have control over what happens to their bodies and their end-of-life experience. . . .

The concept of reasonable foreseeability included in this bill is discriminatory, not treating equally those who are terminally ill or near death and those who are suffering intolerably, but where death is not in the near future.

[*Translation*]

According to the British Columbia Civil Liberties Association, if Bill C-14 is not amended to eliminate the requirements that a medical condition must be incurable and a patient's death must be reasonably foreseeable, Canadians who do not have access to medical assistance in dying could suffer terribly. Similarly, the requirement that an individual must be in an advanced state of irreversible decline in capability in order to have access to medical assistance in dying could condemn some people, particularly patients with grievous and irremediable degenerative diseases such as multiple sclerosis or ALS, to many years of intolerable suffering, because their suffering may become intolerable long before their illness has progressed to an advanced stage.

These exclusions are particularly shocking because these people have the right to receive medical assistance in dying by virtue of the Supreme Court of Canada decision.

Let us now talk about the criterion that states that a person must give informed consent to receive medical assistance in dying, and the age of consent.

• (1930)

I am well aware that the government wants to provide maximum protection for the most vulnerable members of our society. However, how can we do that without taking away Canadians' right to make an advance request for medical assistance in dying, so that they can maintain control over their lives and their liberty until the very end?

I believe that we also need to keep in mind that not everyone who is suffering from mental health problems is unfit to make informed decisions. It could be discriminatory to close the door to these people by erecting insurmountable barriers.

We also certainly need to establish guidelines regarding the age of consent. However, setting that age at 18 because our society considers that to be the age of majority is perhaps not the best approach, since it systematically ignores so-called "mature minors."

I believe that these things, which were not included in Bill C-14, need to be re-examined as quickly as possible, particularly the concept of advance requests.

Finally, I believe that we must develop strict policies and rules once Bill C-14 is eventually passed and review palliative care services to ensure that proper palliative care is accessible to all Canadians.

We also need to ensure that medical professionals get the proper training to implement the legislation and policies related to medical assistance in dying.

The Hon. the Speaker: I'm sorry, Senator Tardif, but your time is up. Are you asking for five more minutes?

Is it your pleasure, honourable senators, to grant Senator Tardif five more minutes?

Hon. Senators: Agreed.

Senator Tardif: Finally, we need to ensure that front-line medical personnel have the legal protection they need and that we respect their conscience rights.

[*English*]

Honourable colleagues, in conclusion, I sincerely believe that a compassionate and successful medical assistance in dying bill is one that is both compatible with our individual rights and our broader common moral obligations. In other words, I want a bill that will better reflect the *Carter v. Canada* decision and the Charter rights of those who seek the right to medically assisted dying though they may not be near death, while also providing proper safeguards but not unnecessary barriers.

This is not what I see in Bill C-14 as it currently stands. Honourable senators, I will not be able to support this bill unless amendments are made in such a way that the limitations that I have described and that others have stated are looked at and addressed in committee.

I look forward, honourable senators, to working with all of you in this chamber to discuss this bill further in the days ahead.

Hon. Betty Unger: Honourable senators, I rise today to speak to a bill which I never anticipated would be presented to this chamber. The Bill C-14 facing us now is deceptively called medical assistance in dying, yet it has nothing to do with medical assistance. Nothing could be further from the truth.

Medical assistance is what palliative care doctors provide to their patients in their closing days of life. These doctors make their patients as comfortable as possible. They affirm life by capably managing pain and other distressing symptoms, such as

depression, and they regard dying as a normal process. These medical professionals ensure that people die with dignity where their life is valued and respected.

Medical assistance in dying has nothing to do with killing people. Bill C-14 is not about medical assistance in dying. It is about making it legal for a doctor or other medical assistant to kill their patient, or alternatively, the doctor or medical assistant will be able to assist their patients to kill themselves.

As Cardinal Thomas Collins from Toronto recently said, the fact that we have to call it medical assistance in dying shows that there's something wrong. Why don't we call it what it is, killing?

Canadians are probably more familiar with the terms used in other jurisdictions: euthanasia and assisted suicide. Even those terms would be better than the misleading language used by the Trudeau government, which only serves to cloud the issue and prevents people from understanding what is really going on. Why are we trying to make it pretty and serene when the reality is quite heartless and ugly?

We are creating a category of legal homicide. If any of my fellow senators think this is an exaggeration, then they clearly do not understand the legislation. This law amends the section of the Criminal Code which comes under the title "homicide." Section 222(1) of the Criminal Code says a person commits homicide when directly or indirectly, by any means, he causes the death of a human being.

Bill C-14 amends the Criminal Code section defining what constitutes homicide. We are creating a category of legal homicide and no one can deny that fact. Honourable senators, personally, I am morally opposed to homicide, any homicide, even legal homicide.

I and many other Canadians have a real problem with killing people, even if they want to be killed, and to call that medical assistance in dying is not only misleading, I find it reprehensible.

In fact, in my readings and discussions with other Canadians, I have become aware that many people support this law because they think it is necessary to prevent people from having to suffer a painful, agonizing death. This simply is not true. The fact is we already have reliable medical methods of controlling pain. We have medical experts who focus their entire practice on pain management and are able to effectively eliminate or minimize pain for those who could otherwise suffer terribly.

As a last resort, physicians can use palliative sedation to relieve pain, severe pain. Through the administration of a palliative sedation, a state of decreased awareness or even unconsciousness is induced at the end of life. Palliative sedation relieves what could otherwise be intolerable suffering for terminally ill patients and does so in a manner that is respectful of the patient, family, friends and the medical profession.

How many people do you know, honourable senators, who had to suffer through terrible pain during a medical operation? How many people do you know who were placed on an operating table and had the anguishing experience of the pain that resulted during that operation?

[Senator Unger]

My guess is none. Why? Because we sedate people so they don't have to experience pain. This is a common everyday practice called anaesthesia, generally performed by anaesthesiologists, every day in hospitals around the globe; yet for reasons unknown, some people want us to believe that sedation is not available to people who are suffering from an incurable illness or disability.

• (1940)

This is just one example of misinformation that has been spread about the need for euthanasia. I believe that people have been duped, through a false compassion, to believe that euthanasia is merciful and compassionate. Nothing could be further from the truth.

Your Honour, I wish we had more time to discuss this issue with Canadians because, frankly, I believe that the more Canadians learn about this, the less they'll like it. Recent polls do suggest a drop in support for euthanasia, but I won't cite the polls at this time. If Canadians were given more time to become better informed on the issue, I believe that we could continue to see support drop even further.

What we really should be doing is invoking the "notwithstanding" clause in the Charter of Rights and Freedoms to give Canadians and parliamentarians more time to deal with this properly. Legislation such as this should never be so rushed.

If the government is as concerned as they say they are about getting the bill passed before the court-imposed deadline of June 6, that option is available to them in the Charter of Rights and Freedoms.

However, I'm fully aware that the political courage and conviction of our current leader to take this initiative simply does not exist. Instead, the opinions of nine unelected people are allowed to compel the other 36 million to go in a direction they may not want to go.

And never mind that the Supreme Court made the exact opposite decision a little over two decades ago. They overturned their earlier judgment with the *Carter* decision, which was brought forward by three people.

Don't misunderstand me. The Charter belongs to the people, and the people should be properly informed and properly consulted before such radical shifts in public policy are implemented. This takes time, and by refusing to invoke the "notwithstanding" clause, we have taken that opportunity from Canadians and robbed them of a fundamental democratic right.

Since it is apparent that we will not properly consult with Canadians, it is imperative that we at least ensure that Bill C-14 contains effective safeguards.

Now I know that some of my colleagues are very ambitious to throw the doors open as wide as possible. I disagree. The Supreme Court did not create a blanket right to physician-assisted suicide as has already been explained here many times earlier. Rather, they said that the current law infringes on the rights to life, liberty and security of the person in very specific situations where very detailed criteria are met.

Our responsibility is to limit the harm of this terrible bill. It is significant that the Supreme Court did not strike down subsection 241(b), aiding or abetting suicide, and section 14, consenting to death. Rather, it declared the sections of the Criminal Code which prohibit assisting suicide to be invalid only when specific criteria are met.

It is clear that the court intended to limit access to physician-assisted dying in order to “balance competing values of great importance.”

The Supreme Court cautioned parliamentarians, noting that vulnerable people must be protected through a “carefully-designed system imposing stringent limits that are scrupulously monitored and enforced.” They also state that “nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying.”

All of these factors must be taken into consideration to ensure that the amended law neither violates the Charter of Rights nor endangers vulnerable persons.

Honourable senators, the recommendations of the joint House of Commons and Senate committee’s report spectacularly failed to do this. Canadians themselves read, understood and repudiated the report’s recommendations in numerous polls. This time, we as parliamentarians must do better, but we have a lot of work to do.

This proposed legislation dodges difficult questions and defers them to the future. At first it looks like the legislation pulls back from the radical suggestions made by the Special Joint Committee on Physician-Assisted Dying, but when you take a closer look, you see that the government has circled back and is leaving the doors wide open.

I would suggest that we start with two things: number one, palliative care. Palliative care intends neither to hasten nor to postpone death. It integrates the physical, psychological and spiritual aspects of patient care. It offers a support system to help patients live as actively as possible until natural death, and it is applicable in the early course of illness in conjunction with other therapies intended to prolong life, such as chemotherapy or radiation.

According to the Canadian Hospice Palliative Care Association, only 16 to 30 per cent of Canadians who die currently have access to or receive hospice, palliative care and end-of-life care services depending on where they live in Canada. Even fewer receive grief and bereavement services.

We must, in clear conscience, ensure that palliative care is offered and available to patients before granting medical assistance in dying. It would be unconscionable to provide access to medical assistance in dying if we have not first provided medical assistance for living.

There is broad support for palliative care. We need to translate this into a legislated requirement rather than leaving it as simply a nice idea.

If we truly believe palliative care is important and that true choice requires options, then the legislation must reflect this by legislating that anyone requesting euthanasia or assisted suicide

first must be informed of and offered any medically necessary treatment, including palliative care.

People do have the right to refuse, but we have the obligation to guarantee that it is offered. You cannot deny there is something terribly wrong if a government does more to guarantee that the living can die than to ensure that the dying can live.

Number two, conscience rights. The legislation does not go far enough to ensure that the conscience rights of individuals in institutions are protected. Although the bill provides some soft reassurance, there is nothing in the bill that affects the guarantee of freedom of conscience and religion.

It fails on two counts. Firstly, it does not protect individuals who could be placed under an obligation or sanction by their employer or professional association. More rigorous language was used to protect conscience rights in the Civil Marriage Act and should be utilized here as well.

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

Senator Unger: Five more minutes.

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

Hon. Senators: Agreed.

Senator Unger: Secondly, it does not protect institutions from being compelled to perform physician-assisted dying within their facilities.

There are many faith-based and secular hospitals, as well as palliative care facilities, which do not want to participate in these procedures, and I had visits from a few. No other jurisdiction in the world that has legalized euthanasia or assisted killing forces doctors, health care workers or health care facilities to act against their conscience on this issue. Why would Canada want to be the first?

• (1950)

Conscience rights must be protected in the legislation the same way that they were in the Civil Marriage Act. It would be a tragedy to implement the protection of one Charter right while trampling on other Charter rights. We need to get it right. Both issues, palliative care and conscience rights, deserve much more debate and discussion than I or any of us can speak about today.

In closing, I believe I have made it clear that I am morally opposed to allowing physicians, nurses or any other medical assistants kill or provide assistance in self-homicide under any circumstances. In countries that have passed such laws, the slippery slope, as we’re hearing, is very real. If we will not invoke the “notwithstanding” clause, then we are compelled to ensure that this legislation includes stringent safeguards and strong protections of conscience rights. On behalf of 36 million Canadians, we have a great responsibility and we cannot let them down.

Thank you.

Hon. Dennis Glen Patterson: Honourable senators, I rise today to participate in this important discourse on Bill C-14, An Act to amend the Criminal Code with respect to medically assisted dying. My views may not reflect those of the majority of my colleagues, but I feel compelled to give a voice to the opinions of my constituents and other Canadians.

I want to say as well that, as I think about the issues in this bill, I am mindful of the crisis we are facing amongst Inuit of the highest suicide rates in Canada. Our territory and its government and other regions where Inuit live in Canada are currently agonizing over how to stop this terrible loss of life, mostly amongst our youth, some very young.

There has been a lot of concern expressed in this debate about how we craft thoughtful safeguards to protect our vulnerable citizens, the mentally ill, and mature minors.

The Minister of Health told us yesterday we need more time to work on these safeguards. They have been punted to a future time. We are told improving palliative care will be studied and worked upon in the future, but not addressed alongside allowing assisted death.

Both ministers we heard from yesterday described this bill as only a first step, and I would respectfully say a rushed first step.

I agree with Senator Joyal, for whom I have great respect, when he said perhaps the minister should have admitted we didn't have time.

I want to commend the joint parliamentary committee for working diligently over the holiday season and in January of this year to study this bill, but the committee did not have time to widely consult Canadians.

We are also rushed because the previous government, recognizing that this issue was a fundamental question affecting all Canadians and that an election was scheduled for the fall, deferred responding to the *Carter* issue until after the election. I don't think that was an unreasonable approach on such a fundamental issue from a government at the end of its mandate.

Then the new government needed time to establish itself, assign ministers and asked for more time. They made what I think is a reasonable request to the court for six months' more time and got only four months.

Who is supreme? The courts or Parliament? I'm very concerned that, as Senator Tkachuk said so well, the court did not take into account what is a reasonable time to thoughtfully develop and consider legislation, especially on such a complex and nuanced issue.

The government then rushed to develop, without significant public consultation, draft legislation that sets aside many issues for the future. One way to take the time to develop a new legislative regime, following on full consultation with Canadians and with affected provinces and territories, is for Parliament to assert its supremacy over the courts, as the Constitution allows.

Parliament is supreme under our Constitution. I heard our Minister of Justice say yesterday in this chamber, "I have the utmost respect for the Supreme Court of Canada . . ." Well, I say we need to also show our utmost respect for the Parliament of Canada, and our debate in this chamber on the principle of this bill is giving this important issue the respect and gravity it deserves.

As I began to consider this bill, I couldn't help but reflect back on the first ministers' conference of November 1981, following the patriation of the Constitution. In response to a proposed clause in the Charter of Rights, now known as section 33, the "notwithstanding" clause, G.W.J. Mercier, then Attorney General of Manitoba stated:

. . . the rights of Canadians will be protected, not only by the constitution but more importantly by a continuation of the basic political right our people have always enjoyed - the right to use the authority of Parliament and the elected Legislatures to identify, define, protect, enhance and extend the rights and freedoms Canadians enjoy.

Shortly after the first ministers' conference, then Prime Minister Pierre Elliott Trudeau admitted in an interview regarding section 33 that it "is a way that the legislatures, federal and provincial, have of ensuring that the last word is held by the elected representatives of the people rather than by the courts."

I share the opinion of other luminaries from Canadian history, such as Roy McMurtry, Thomas Axworthy and Jean Chrétien, who have expressed over the years that the "notwithstanding" clause is a mechanism that cannot be employed liberally, but must be used to ensure that it is the legislature, not the courts, that have the final say on matters of public policy.

I'm therefore perplexed as to why the government apparently did not even consider invoking section 33 in this instance.

Now, I know the "notwithstanding" clause has not been used often — only once, I believe, since the Constitution was patriated — but that is not to say that it cannot be used, especially for such a fundamental question on which there are so many diverse views. It could have been invoked to allow us the time we obviously need to consider this issue responsibly.

The questions involved here are not readily answered — difficult, abstract issues that are difficult to discuss and resolve in debate. We are told by the government that many of them, including the important issue of improving palliative care, need to be worked on further. The health minister said yesterday that she is "deeply committed" to better access to high-quality palliative care. So I find it troubling that the government would rush through the creation and passing of a law that leaves many important issues unresolved due to an arbitrary timeline imposed by the courts, that I firmly believe we should not be held to, especially considering this law is truly a question of life or death for many.

Issues like that of the conscientious objector must be fully addressed. We heard from the ministers that this legislation did not compel doctors to administer the lethal dose. Minister break; Wilson-Raybould has stated that solutions to this issue have already been created at the provincial and territorial level. But upon researching these issues, I find that in some provinces, the

solution was to require doctors to refer patients seeking assisted death to medical practitioners who are willing.

This would still make many people complicit in the death of a patient. Harry Underwood, counsel for the Canadian Medical Association, noted that “For doctors, whether a practice conforms to the law does not exhaust the question of whether they can support it.” To many, this bill directly contravenes the doctor’s mandate to “do no harm.”

Colleagues, the ethical weight of assisting someone with what many Canadians see as suicide falls on our doctors. It is they who will have to administer the final dose. Why are we then not addressing the concerns our doctors are voicing?

- (2000)

However, the viewpoint that I would like to give voice to in this debate is that of the moral objector. Father Daniel Perrault is the parish priest from Our Lady of Assumption Catholic Church in Iqaluit, Nunavut. He sent me some compelling thoughts I would like to share with you today. I quote:

Is euthanasia an ethical choice? The question could be asked in a different way. Is it a right to be able to choose the moment of one’s death when one is gravely ill and no longer wishes to suffer?

We must look for the answer in the values that our societies commonly accept, the values for whose promotion and acceptance generations have made great sacrifices. The value at issue in this case is the sanctity of human life, starting with human life. This goes far beyond any religion belief. From the origins of humanity, the value of human life has become increasingly significant and a priority for all civilians. It is a value that was born in primitive societies as a sure means of protection, for individuals and groups, against anything that might destroy us. It quickly became necessary to protect life so that a group or a nascent society could be viable. Progressively, this value attached to human life became universal and sacred, because, beyond the protection it affords us, it opens our horizons to the contemplation of something that transcends us, life itself . . . all life.

The life that transcends us is loaned to us; it does not belong to us. I can make it greater in myself and in others by caring for it, by being attentive to its needs. By doing so, I cultivate growth and harmony around me. This is choosing life. I can also destroy it in myself and others by living only for myself, by not caring for it or being attentive to its needs. By so doing, I destroy the harmony in and around me. Then I am choosing death.

Sickness and suffering are also a part of life. A less pleasant part, of course, but they cannot exist without life, any more than old age can. They are stages in our life, and death is its natural end. We are often tempted to ignore them until the day when they affect us directly. At that point, we have a choice of sorts: to run away, or to accept them as significant stages in our existence.

When we are in good health, sickness, suffering and old age in others afford us a wealth of opportunities to offer the best of ourselves, without fear, without discomfort, unconditionally. This is love, the gift of ourselves. It is compassion. Caregivers, loved ones and families carry in them that extraordinary human potential for love by providing the sick with comfort, peace and tenderness.

The patients, without knowing it, are also giving the best of themselves, by providing others with the opportunity to be at their best. When reality is accepted, it has the power to bring people together, to unite them in a solidarity that shows the greatness of humankind at the very time when we are showing our greatest weakness.

Although there is a lot of talk today about dying with dignity, we forget that it is perfectly possible, with all our modern medical resources, to live to the end with dignity. It is a shame that our post-modern civilization drives us to seek so much efficiency that it makes us to forget to live. When times are more difficult, we are tempted to take shortcuts in order to forget sickness, weakness, suffering and old age. By efficiency, we mean as quickly and as cheaply as possible.

Those are the thoughts of Father Daniel, dear colleagues.

Honourable senators, I ask how can we in good conscience pass a rushed and incomplete bill without addressing the concerns of all Canadians?

I believe that it is our duty and the mandate of this chamber to ensure that any legislation with such significant implications be as well considered and thoughtful as possible, instead of allowing ourselves to be beholden to an arbitrary deadline.

I have faith that the Senate and its capable committee will do that job well. Thank you, honourable senators.

Hon. André Pratte: Thank you. Well, this is my maiden speech.

Hon. Senators: Hear, hear.

Senator Pratte: I begin with a confession. I don’t like to give speeches. Because I’m a journalist, I love to ask questions and listen to the replies and I love to discuss, but I’m a writer. I love to write, I love to read, but for some strange reason I cannot read what I write. So I will speak from notes. Fortunately, I’m from a family of lawyers from generation to generation. Unfortunately, I’m the black sheep of the family. I’m not a lawyer.

I was asked yesterday by journalists, former colleagues, when I entered the chamber, whether this was a case of the Senate, the so-called “new independent Senate,” flexing its muscles. And I said no, I think this is the Senate doing its duty.

Hon. Senators: Hear, hear.

Senator Pratte: I think we had a great example yesterday, and again today we have a great example of the Senate doing its duty. To echo the words of Senator Sinclair, I certainly feel very proud of being a part of this chamber. I think just listening to the

different opinions expressed today in nearly total silence, except for the words spoken, is quite remarkable, and it is unfortunate today that the cameras are not here again, because it is quite a remarkable example of democracy in this chamber.

It is the duty of the Senate to protect the fundamental rights of the minorities, and it is also the duty of the Senate, as I understand it, to make sure that the laws that are voted on are correctly written, well written. Unfortunately, as I see it, the bill that is in front of us raises concerns on both those counts.

[*Translation*]

As a journalist, I recognize that drafting any bill is an extremely complex undertaking for a government. It is easy for a journalist to criticize the government, and we are always doing so. As a former journalist, and even more so now as a legislator, I understand that it is difficult to govern, especially when you have to draft a bill on a topic as complex as this one.

I think that we need to recognize that the government had a difficult job to do in trying to comply with the decision of the Supreme Court and the Canadian Charter of Rights and Freedoms, while listening to the different opinions of legal experts and representatives of medical associations. Doctors and other health care professionals, governments and Canadians from different regions, cultures, religions and creeds do not all agree. We therefore have to admit that the government made a significant effort to try to draft a bill that meets all of those expectations.

This bill does many things right. It constitutes significant progress compared to what we had up until now. Even if this bill is passed as it is, Canada will have made considerable progress in two years. This bill contains safeguards that I believe are felt to be excellent. An information collection system will be implemented that will make it possible to carefully monitor the implementation of these measures. A review of the act will be conducted after five years, which will let us see what has happened and make any necessary changes. Independent reviews will be conducted and more progress will be made if possible with regard to medical assistance in dying for mature minors, for example. These reviews, if they are done quickly enough, may allow us to offer this service — if we can call it that — to other clients who need it.

• (2010)

[*English*]

So there are in this bill elements that are worthy. Unfortunately, in my view, Bill C-14 limits medical assistance in dying to persons suffering from terminal illness. I think it was clearer after yesterday's Question Period than it ever was before. Before yesterday, the government seemed to be saying that it was not limiting medically assisted dying to patients suffering from a terminal illness, that in fact it was offering it to a wider group of people.

In answering questions yesterday, the ministers were pretty clear that this, in fact, is what they were doing and that it was a

[Senator Pratte]

conscious policy choice that the government was making. In answer to one question, the Minister of Justice said:

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.

So it is clear; the government has decided to limit medically assisted dying to terminal patients because it fears the risks of offering it to a wider group of people.

Now, I'm in favour of being cautious, because obviously we're dealing here with life and death and we have to be cautious. For instance, I'm in favour of not going ahead with mature minors, although there were witnesses who appeared before the committee who were in favour of going ahead, and comments made during the Senate committee did suggest that we go ahead. However, I'm personally in favour of waiting a couple of years and studying the issue further. I think it is cautious to do so.

However, in the case of adults who are suffering and who are competent to decide, those whose only prospect, for years and years, is intolerable suffering because they suffer from a grievous medical condition, I don't see any reason why they would not be offered medical assistance in dying.

If there are additional risks, as the minister seems to fear, I think the solution is in additional safeguards and not in depriving a whole group of people of what is, as the Supreme Court has asserted, a fundamental right.

[*Translation*]

There is an immediate problem in the wording. This was said by the brilliant lawyers here, but I want to put on my journalist's hat and that of a regular citizen. When we read the following passage:

[*English*]

(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.

[*Translation*]

—it is really not clear.

[*English*]

I'm sorry to say, this is a very complicated way of saying things, especially since the minister has now clearly said in front of us yesterday that what they wanted to say was, in fact, that they're aiming to limit the right to this procedure to people who are suffering from a terminal illness. Why not say it clearly and not breed confusion? What has been said by many medical practitioners is that they don't understand what this means. We can talk at length about what it means for lawyers, but I'm more concerned about what it means for patients and for medical practitioners who will have to deal with this in the field. If they don't understand what it means, this is really serious.

I have been told that the Senate's role is to ensure that what we vote on is clear. Well, in my mind, this is not clear. So, again, I would invite the government, if their goal is to limit the benefits of the act to terminally ill patients, even though I don't agree with that, to at least make it clear.

I won't talk about the constitutional aspect because I'm the black sheep of the family, but I'm thinking of the human point of view. As I told the minister yesterday, just from the human aspect of things, I simply cannot understand how you can explain to a Canadian, "You're suffering from intolerable pain as much as another Canadian, but that other Canadian is suffering from a terminal illness and has maybe six months or a year or three weeks to live, and that Canadian has a right to medically assisted dying. Your only problem, my friend, is you have 10 or 15 years to live, and therefore you do not have this same fundamental right, asserted by the Supreme Court of Canada to be a fundamental right; you can't have access to it because you have too long to live."

To me, that's illogical and unacceptable. If there are additional risks because people might be more vulnerable for some reason or another, then act on those risks.

In fact, the minister said exactly that yesterday in answer to a question again. She said:

We need to take substantive steps in terms of discussion and dialogue if we are to have a broad regime We need to consider what types of safeguards would have to be in place.

Exactly. That's what should have been done in Bill C-14, and it's certainly not too late to do so.

Bill C-14 represents a historic step forward in the control of the lives of sick and suffering Canadians, and I would like to support it because it's an important step forward. But it's a matter of defending fundamental rights, of peaceful death for Canadians who are condemned to a life of prolonged and intolerable suffering. So I will vote in favour of amendments that will improve the bill in that direction, of helping those Canadians to have access to that fundamental right. Then, depending on the end product of those efforts in favour of defending that fundamental right, and taking into account what Senator Sinclair has said — that we are appointed, not elected, and that we have a duty to protect minorities and vulnerable Canadians' fundamental rights — I will decide how I will vote on the Bill C-14 that is before us.

The Hon. the Speaker: Question, Senator Fraser.

[Translation]

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Would the senator agree to take a question?

Senator Pratte: Of course.

Senator Fraser: First, congratulations. You did not need any notes. It was clear and very interesting.

I wanted to ask a question on this confusing aspect. I think that this word is far too kind. When you were not just a journalist, but an editor, you had to approve texts that were submitted to you. If a text submitted to you said that a death should be foreseeable but then stated that there was no need for prognosis, would you have accepted that?

Senator Pratte: No.

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

Senator Pratte: Yes, to answer the question.

[English]

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

Some Hon. Senators: Yes.

• (2020)

[Translation]

Senator Pratte: I first read this bill as a journalist, and this clause jumped right out at me because it is unclear. As a journalist, I would have asked the journalist in question to rewrite.

Senator Fraser: Me, too.

Senator Pratte: You, too. I must admit that, as a patient, if a doctor came to me and said, "I can tell you that you're going to die, but I don't know when, and I could maybe tell you, but I don't dare," I wouldn't be very happy, even though I know it's hard for a doctor. I think this is very poorly written.

[English]

Hon. Nancy Ruth: Honourable senators, I've been waiting for a long time to welcome amendments to the Criminal Code that make it possible to have a choice in life, which for me includes a choice about death.

I'm proud that Bill S-225 on this same subject, which I and Larry Campbell introduced in this chamber on December 2, 2014, contributed to the momentum for changing current end-of-life practices in Canada.

Bill S-225 was prior to the Supreme Court's decision in *Carter*, and prior to the *Report of the Special Joint Committee on Physician-Assisted Dying*, on which committee I was privileged to serve.

I stand today to welcome that the Government of Canada is acknowledging, in Bill C-14, that Canadians want and must have choice in dying.

The Honourable Madam Justice Lynn Smith, in the trial decision in *Carter v. Canada*, called medically-assisted death "this ultimately personal and fundamental choice." Bill C-14, however,

falls short of this standard. Its overarching failure is that it does not trust us — trust Canadians — to make the best choices for ourselves.

Bill C-14 falls short for me. This big sister does not need these big brother limitations in the room when I make this decision with those who will advise and support me when I determine my time has come.

Justice Smith also said, “The dignity of choice should be afforded to all Canadians equally. . . .”

Bill C-14 also falls short for my sisters, too. Although this government has committed itself to gender-based analysis, it has not provided a transparent GBA for this bill. In the future, I urge again that every bill be accompanied by a full and transparent GBA, as every government since 1995 has said it would do and overwhelmingly failed to do in any meaningful or useful way.

The facts are that women are more likely to be the caregivers to others, to their parents, to their in-laws, their husbands, sometimes their children and friends. Women are paid and unpaid. We live longer. We often outlive our own caregiver, family and friends, and we spend our last days in institutional settings, more or less alone, and more or less dependent upon the effect of systemic disadvantage.

Bill C-14 falls well short of the recommendations in the report of the joint committee, particularly with respect to the extended definition of “grievous and irremediable medical condition,” and with respect to the omission of advance requests.

I believe that the Bill C-14 definition of “grievous and irremediable medical condition” contains traps for Canadians that neither benefit those who might be more vulnerable, nor Canadians as a whole.

The definition has four mandatory elements; that is, a person must meet all four elements to be eligible. Only one of the mandatory elements, the third one on the list, is subjective, that is, based on the patient’s opinion. I quote:

(c) that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable;

The other mandatory elements are that the illness, disease or disability must be “serious and incurable”; there must be “an advanced state of irreversible decline in capability”; and that “their natural death has become reasonably foreseeable, taking into account all of their medical circumstances.”

These three mandatory elements put the power in the hands of the medical system the patient is in. They do not give respect — meaning power — to patients. They give power to institutional decision-makers, and protect them.

The failure to provide for advance directives is also a failure to protect the patient, fueling anxiety about loss of independence and helplessness.

[Senator Nancy Ruth]

Current law allows Canadians to withdraw from life-sustaining treatment, either by advance directive or in real-time, when they choose. Bill C-14, by failing to allow for advance directives, simply means that Canadians will be forced to linger.

What I see in Bill C-14 is limits on the right to die — limits that favour those who oppose the right to die. What I see is barriers and the unnecessary suffering they create.

Honourable senators, it has taken Canada well over 20 years to come this far. I look forward to consideration of the amendments to Bill C-14 that address these significant barriers to the right to die. We are not short of time, and this is not the time to fall short.

Hon. Denise Batters: Honourable senators, I rise today to speak to the second reading of Bill C-14, the Trudeau government’s assisted suicide legislation. As many of you know, I have raised serious concerns around this issue in the past, particularly as it intersects with mental illness. As a suicide loss survivor, this is a matter which is of great personal importance to me. And as a senator, I am compelled to do whatever I can to ensure that this legislation contains the necessary safeguards expected by Canadians.

The Senate Legal and Constitutional Affairs Committee, of which I am a member, recently completed a comprehensive pre-study on this assisted suicide bill. Our study heard from 66 witnesses in more than 20 hours of meetings as we wrestled with the complexities of assisted suicide legislation. We proposed a robust set of recommended amendments at the conclusion of our pre-study on Bill C-14. These would require, among other safeguards, that “terminal illness” be included in order to receive access to assisted suicide. However, I must admit a certain disappointment that the Liberal government has essentially rejected those suggestions, and the House of Commons has given us Bill C-14 without any of those amendments.

It is most important in this debate for us to remember that the issue of assisted suicide is first and foremost about people’s lives and, more specifically, about allowing them to be put to death. We must never lose sight of that as we debate this law in this chamber. Bill C-14 is not about the withdrawal of services such as life support. Rather, it requires the state to intervene to terminate a person’s life. That is a staggering responsibility. As parliamentarians, we are obligated to not only debate this matter with our heads, theoretically and philosophically, but also with our hearts as we ensure safeguards are in place to protect the most vulnerable Canadians.

Polls have indicated that the vast majority of Canadians favour assisted suicide but only when strict safeguards are in place. Others are morally opposed to any form of assisted dying.

Regardless of where one stands on the question, the Supreme Court of Canada has established in the *Carter* ruling that decriminalizing assisted dying will now be part of our Canadian reality. As senators, it is therefore up to us to make the process as safe as possible through the implementation of strict safeguards.

Let us start, then, by looking at the eligibility criteria for physician-assisted suicide as set out by the Supreme Court in its

Carter ruling. At paragraph 127, the court declared that physician-assisted suicide should be available to any:

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

The court went on to say:

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

- (2030)

The facts of the *Carter* case, of course, revolved around the situations of two women: Gloria Taylor and Kay Carter. Taylor lived with a fatal neurodegenerative disorder, while Carter suffered from spinal stenosis. Both women were competent adults and both suffered from physical rather than psychological issues.

At paragraph 111, the court dismissed arguments about euthanasia for minors or people with psychiatric disorders, stating that these circumstances “would not fall within the parameters suggested in these reasons.”

It is curious, then, that in Bill C-14 — legislation which Justice Minister Wilson-Raybould says is in response to the *Carter* decision — the Liberal government commits to further study the issues of mature minors, advance directives and psychiatric illness as a sole basis for suffering under this legislation. None of those scenarios were relevant to the *Carter* case and, I submit, should not be addressed in the legislation before us.

Over the past year, I have discussed the issue of assisted suicide with hundreds of Canadians. So many of those people are aghast to discover that the Trudeau government’s proposed bill does not require terminal illness but opens the door to particularly children and the mentally ill to access assisted suicide.

Honourable colleagues, the vast majority of Canadians don’t want those doors opened. Canadians who support assisted suicide want it to be available to those who are terminally ill, to help ease their passage through what is or may be a long, protracted and difficult death. They do not want this devastatingly final solution of assisted suicide to be made available to those patients with mental illness, whose symptoms may fluctuate and impair their ability to properly and fully consent to medical aid in dying. Canadians also overwhelmingly reject physician-assisted suicide being extended to children under 18.

Only nine jurisdictions in the entire world have some sort of assisted dying. Six of those require terminal illness as a prerequisite to obtaining physician-assisted dying. Some jurisdictions that have allowed for non-terminal patients to access physician-assisted suicide have now begun to question whether that move has been the right one.

Law professor Margaret Sommerville testified before our Legal Committee that if the regime of the Netherlands and Belgium were here, we could anticipate approximately 9,000 deaths each year in Canada. That is more than the entire population of small cities in my home province of Saskatchewan, honourable senators! Physician-assisted suicide should not become the “norm” in Canada; it should be a last resort.

The Supreme Court ruled in *Carter* that a blanket prohibition on physician-assisted suicide was not constitutional and that those whose assisted death that meets the *Carter* criteria should not be prosecuted under the Criminal Code. The court did not determine that the state must assist in deaths of this nature or that it had an obligation to make physician-assisted suicide widely accessible.

I do worry about the permissive direction of Bill C-14. What is the objective? Is it to permit widespread access to assisted suicide or to protect the vulnerable? Clearly, there’s an essential need to balance both. Professors Diane Pothier and Trudo Lemmens told us it was necessary to place a limit on the so-called “right to die” in order to protect the vulnerable. At our Legal Committee, Professor Pothier stated:

If there’s not such a limiting condition, it means the chances of getting it wrong increase substantially. If the risk of error and abuse is low, *Carter* says autonomy trumps. If the risk of error and abuse is high, the protection of the vulnerable should trump.

As federal legislators crafting a bill that amends the Criminal Code of Canada, honourable senators, I would submit our responsibility must primarily be to protect the vulnerable. I maintain, and the vast majority of Canadians agree with this, that requiring terminal illness in this bill would best meet that objective. The risks otherwise are simply too high.

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

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

He went on to say:

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

Professor Hamish Stewart testified that the current wording in Bill C-14 establishes “constitutionally permissible safeguards to ensure that people who are, as the court said, tempted to commit suicide at a moment of weakness are not tempted to do so.” In Professor Stewart’s view, the Supreme Court rejected a blanket ban on physician-assisted suicide as overly broad, but the

limitations in Bill C-14 could be found to be justified under section 1 of the Charter — if the government can satisfy the court that “it’s the best that can be done to separate the vulnerable from the non-vulnerable who want to access the assisted suicide regime.” Professor Stewart maintains that the provisions of Bill C-14 would survive a Charter challenge in this regard.

We can best protect the vulnerable from physician-assisted suicide in this legislation by establishing stringent safeguards around the process. While Bill C-14 makes an attempt at this, we need to go further in order to provide Canadians with adequate protection.

As I mentioned earlier, I have particular concerns regarding the lack of safeguards in this bill for individuals with mental health issues who seek access to physician-assisted suicide. First and foremost, individuals whose sole basis for requesting assisted death is psychological suffering should not be eligible for this regime. Period. While I appreciate there is some wording in the preamble of Bill C-14 along these lines, it is insufficient if it is not reiterated in the operative provisions of the legislation.

Law Professor Randal Graham testified before our Legal Committee as follows:

Bill C-14 is an amending act rather than stand-alone proposed legislation. If Bill C-14 is passed, it will not operate as a stand-alone law but will instead change the content of other laws, including the Criminal Code. Once the amendments created by an amending act are implemented, the amending act is considered spent, meaning that for practical purposes, the amending act has no further legal operation. . . . The preamble itself will not be incorporated into any continuing legislation and will exist only in the spent amending act.

It is crucial, therefore, to strengthen the prohibition against mental illness as a sole basis for accessing physician-assisted suicide by reiterating this intention in the operative provisions of the bill.

Why is that so important? Because there are many characteristics of mental illness that call into question one’s ability to give informed consent for the very final choice of physician-assisted dying. There are no “do-overs” in assisted suicide, honourable senators, and that is why we must ensure that vulnerable Canadians are adequately protected under this law.

Many psychiatrists and mental health professionals testified before our committee, and all except one agreed that mental illness requires special consideration and safeguards under a physician-assisted suicide regime.

Honourable senators, there is no standard within the mental health care field to determine what qualifies as “irremediable.” Mental illness is often treatable and it is not terminal. In many cases, the symptoms can fluctuate, with one’s perspective being clearer at certain times than others. Even what is termed as “treatment-resistant depression” would not necessarily qualify as irremediable. Shockingly, this term means that the symptoms of depression have not adequately abated after only two rounds of

treatment. Often it can take multiple treatments or medications in order to see improvement; hence, treatment for mental illness can require a great deal of patience and time.

Certain therapies rely on the establishment of trust between patient and caregiver — a relationship that may require significant time to build. Furthermore, assessment and treatment of mental illness is often more complex, requiring consideration of not only biomedical systems but psychosocial factors as well. Certainly, these social factors can influence the severity and potential for relapse of mental illness. The distorted thinking present in many mental illnesses raises the risk of suicidal tendencies. We also heard testimony that some medications used to treat psychiatric illnesses may increase that suicide risk as well — as sadly, a side effect can be suicidal thoughts! Mental illness is exceedingly complex, particularly with the life and death finality of physician-assisted suicide.

As I have already mentioned, I believe psychological suffering should be excluded as a sole basis for accessing physician-assisted suicide, and that should be placed in the operative provisions of the bill. Given the complexity of mental illness, I also think there should be additional safeguards in this legislation where a patient with intolerable physical suffering is also found to be suffering with a mental health conditional. Chief among these should be a requirement that a psychiatrist should assess a patient’s capacity for informed consent to physician-assisted suicide where mental illness is present.

The President of the Canadian Psychiatric Association told our committee he supported this safeguard for those with mental illness because “some of the cognitive changes [in mental illness] can be quite subtle and they can be missed unless you’re an expert in this area.” Where the stakes are so high in making an assessment mistake, we have a responsibility to ensure competency is properly evaluated in these situations. Unfortunately, significant gaps exist in Canada’s mental health care system. While it is not the criminal law’s responsibility to address those gaps, we need to be realistic about how those gaps could affect someone suffering with mental illness who is requesting assisted suicide. Namely, wait times to see a mental health professional in Canada can be as long as months or even years, depending on your geographic region. Bill C-14 established a 15-day waiting period for physician-assisted suicide. The Liberal majority House of Commons committee amended that period down to 10 days. This is wholly inadequate in cases where mental illness is present. The Mental Health Commission of Canada suggested a three-month waiting period for patients requesting physician-assisted suicide who have a mental illness. I agree with this expert body.

• (2040)

Some allege that requiring these additional safeguards for patients who have mental illness would be discriminatory. As someone who fought for those with mental illness for several years, I believe nothing could be further from the truth. Dr. K. Sonu Gaind, the President of the Canadian Psychiatric Association, had this to say on the matter:

. . . it is not discriminatory to consider the particular nuances of mental illness in MAID discussions. “Equity” does not mean everything is the same; it means treating

things fairly and impartially. Failure to consider the particular circumstances of mental illness, as it could impact MAID processes, would itself be stigmatizing or discriminatory, as it would fail to acknowledge the realities of mental illness on people and their lives.

Given the complexities of psychological illness, additional safeguards are required. The Supreme Court found that the blanket prohibition on physician-assisted suicide was over-broad, but agreed with the trial judge that a “stringently limited, carefully monitored system of exceptions” would achieve Parliament’s objective of protecting the vulnerable. A psychiatric assessment and a longer waiting period for patients with mental illness are two precautions we must include in this bill to avoid the risk of allowing vulnerable Canadians to be mistakenly put to death under this legislation.

Of course there are other vulnerable Canadians that must also be protected under an assisted-suicide regime. There is a push afoot to see that children, so-called “mature minors” under 18 years of age, should also have access to assisted suicide. Bill C-14 states that the government should further study extending physician-assisted suicide to minors. I do not agree with this, nor do most Canadians. Even a representative of the pro-euthanasia group Dying with Dignity stated in committee that he felt physician-assisted suicide should apply to minors only if they have a terminal illness or are at the end of life.

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

Hon. Senators: Yes.

Senator Batters: When considering this issue, we should reflect on the gravity of exactly what we would be condoning by allowing for further contemplation of extending physician-assisted suicide to mature minors. As my colleague Senator White pointed out, when he was a police officer, he was not even allowed to question a person under 18 without a parent present. A mature minor is not allowed to vote, and yet if Bill C-14 is not amended, we will instead be entertaining the idea of allowing that child to decide whether he or she should be killed by a medical practitioner.

We have all been 12, 14, 16 years old, honourable colleagues, and I’m sure we can remember how difficult it seemed to envision our circumstances ever being any different when we were that age. This is the reason why the “It Gets Better” antibullying campaign was targeted at teenagers, to encourage a longer perspective which is not always easily accessible at that age.

Children are among the most vulnerable of our citizens. We should not consider the extension of physician-assisted suicide to children, honourable senators, and I cannot support the provision in this bill that would refer the matter for further study. The *Carter* judgment clearly referred only to a competent adult being able to access assisted dying. It was clearly not the court’s intent to extend that access to children.

Similarly, I think the Trudeau government has taken liberties in Bill C-14 by expanding the category of medical professionals who have the ability to assess competency and approve patients for assisted suicide, and to administer and prescribe medication to bring about death. In Bill C-14, for the first time, nurse practitioners are given the same powers as doctors in this regard.

The justices of the Supreme Court did not intend that anyone other than physicians would be responsible for providing physician-assisted suicide. In fact the term “physician” appears in the *Carter* judgment over 100 times. The word “nurse,” not a single mention.

The Trudeau government said it broadened this category of medical practitioners to include nurse practitioners to increase access to assisted suicide in rural and remote areas. However, no such geographic limitation is indicated in the legislation. Patients may not only shop around for doctors until they find one or two under this legislation who will agree to put them to death, but now they can shop around to find two nurse practitioners without a sign-off from a physician whatsoever.

Let me state for the record that I’m not aiming to undermine the role or competence of nurse practitioners. I recognize the important work they do, especially in rural and remote communities; they may well be the medical provider that has the most intimate knowledge of a patient. However, we must acknowledge that although they are skilled and educated, a nurse practitioner is not a physician. Two of Canada’s most populous provinces, Ontario and B.C., do not permit nurse practitioners to prescribe narcotics. I question why the federal government would be comfortable expanding their scope of practice to allow nurse practitioners to assess competency and approve patients’ requests for assisted suicide in addition to administering it. There is no more serious assessment than one required to approve a patient’s death. I submit that an evaluation should only be conducted by a person with a physician’s licence and that level of education and expertise.

Our Legal Committee heard from the Canadian Nurses Association that, even in rural and remote communities, a nurse practitioner would have time to call in the assistance of a physician in the event a doctor’s opinion was required to approve an assisted suicide.

The expansion of the medical provider category to include nurse practitioners is emblematic of what I find wrong, in a larger sense, with Bill C-14. This bill opens doors that don’t need to be opened and for no particular, good reason. It expands medical providers of assisted suicide from doctors to nurse practitioners; it forecasts movement towards expanding assisted suicide to our most vulnerable citizens, those who suffer from mental illness and even children. In trying to appease everyone, this legislation pleases no one.

I implore you, honourable senators, to consider the gravity of the life and death decisions we face with this bill today. We may have only one chance to get this right, and our decisions in this chamber on this bill could have profound implications for generations.

Throughout the debate on this issue, the Liberal government has been very focused on helping people die. I think we should be more focused on helping people live. We must use our sober second thought to strengthen the safeguards on assisted suicide in this bill to protect our most vulnerable Canadians.

Thank you.

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

Senator Lankin: Thank you, Your Honour.

Honourable members, before I begin my comments on the specifics of the bill, I want to say how much I thought our debate was enriched by the participation of the two additional critic spots, for which we exempted the rules and granted permission in this house. I just wonder whether, had we included others, perhaps not of the two parties that were involved in that discussion, we might have heard at a greater length from Senator Murray Sinclair, for example, which I think would have been enlightening to our debate as well.

Some Hon. Senators: Hear, hear.

Senator Lankin: It would mean we wouldn't have excluded a whole class of senators. We are talking in this bill about exclusions. It might have meant a different take on Senator Sinclair's parable about the two foxes and the chickens. One, inviting the chickens to the table for that discussion is a useful thing to do, and two, imploring all of you in the future to stick up for the chickens or loose fish or whatever it is you want to call us. I hope as a matter of course that, particularly when we're looking at exempting from the rules that bind all the decisions to be led by the political caucuses, we might look to involve independent senators in that.

I appreciate the opportunity to be here. It is a true honour to be among you at this time and discussing this incredibly important legislation.

Many of our colleagues tonight have spoken to the issues and the problems from their point of view. I share that point of view regarding the language of where death is "reasonably foreseeable." I believe the solution the government has found, which is to create a blanket prohibition and to put in place a structure that excludes a whole class of people, is not in keeping with the tenets of what abiding by the Constitution or constitutional compliance are about.

I'm not a lawyer, and I'm not going to speak as if I were a lawyer. I just know that the intent is where you are taking away rights that have been set out, while you are engaging in the implementation of a complex, regulated system. I agree that is the legislator's job to do.

• (2050)

While you are engaged in doing that, you must minimally impair people's rights. The minister says the reason that she made the distinction in the bill is because she's concerned about vulnerable people and about the widening of access and what it might mean for those vulnerable people, and I share those concerns. The answer is to bring in better protections, not to exclude in a blanket way or have a wide ban or prohibition for a whole class of people.

I want to talk about the effect of the language that is left there. I will support amendments that come forward that either look to take the language out with respect to where death is reasonably foreseeable or which look to put greater protections in place for that group of people.

I want to talk about the language and what I fear is a potential inadvertent consequence of this language of when death is reasonably foreseeable. I try to understand what that means, and we have already heard from a number of people that there is confusion about that. We have heard that there is lack of clarity in the medical profession, but you must turn to the drafters of the legislation to understand what it is that they think this means, and courts will do that in the future. They will look to the statements of background papers, what's written, what's been said and spoken about.

After the Ontario Superior Court decision a week ago, in engaging and asking some questions that were put forward to Justice department officials, the response came back that they believe Bill C-14 is still compliant with *Carter* and that the individual involved in that Ontario Superior Court decision would have been found under Bill C-14 to be eligible for medically assisted dying, the reason being that he met the language in this legislation of "grievous and irremediable" or "advanced state of irreversible decline" or "serious and incurable illness," et cetera.

However, in interpreting the language "natural death has become reasonably foreseeable," DOJ officials said, "He was 90 years old." My gut flipped. I wrote back an email with some more questions and said, "Are we actually saying that age is the determiner here?" For me that's very dangerous public policy ground to be walking on.

The response came back, "Well, age along with all these other things is very much a part of this and is an important thing to consider." And I think, in fact, in one of the two emails, Justice officials also believe Kay Carter would have met the conditions of Bill C-14 because she was 89 years old.

If you take away the language of intolerable suffering and even incurable disease, or as within the *Carter* decision, the different language of irremediable, you are left now with this concept of natural death. Terminal illness we understand, but natural death being reasonably foreseeable seems only to have been answered by the Justice department as related to age.

You can say it is the whole basket of things, but if I as a 62-year-old had the same conditions as the 90-year-old in the Ontario Superior Court decision, with the same frailties and medical conditions, but I have many more years to my natural foreseeable death, I wouldn't qualify under this bill. That to me raises a spectre of ageism in a health care system where it is already rife, and this suggests to me potential for rampant growth of that.

The Minister of Justice repeated those words in an interview and was quoted, I believe, on Monday or Tuesday in *The Globe and Mail*, that Kay Carter would have met the conditions because she was 89 years old.

I lived through a period of time as a minister of health in which I saw, for example, experiments in Oregon where they took to the people the opportunity to vote on a list of medical procedures that would be covered under their state health care system. Being part of the boomer generation back then, that boomer generation had

the majority of votes. I can tell you that the issues taken off the list that weren't going to be covered were all primarily health care interventions that would benefit older people.

We live in a society where ageism is rife, and in this chamber we should be worried about that. We live in that society. Other societies have started to take this on. Years ago the national health system in the U.K. embarked upon a widespread activity to try and root out ageism and bring about systems that were more respectful of and met the needs of aging people.

I listened very carefully to the ministers, and I actually heard another definition of what the language of a reasonably foreseeable natural death could mean, and that was from the Minister of Health. She gave the example of a person with ALS and said it might be months or it might be a few years. I'm now confused. What are we talking about? Is it age and it is reasonably foreseeable if it's a disease that we know will continue to progress? Now I'm going to ask, if we have one disease, our death is reasonably foreseeable over a period of time, and that's not a defined period of time; but if we have another disease — and Senator Cowan was talking about Huntington's — we wouldn't meet the criteria.

So I now look to the equality section of the Charter and say, okay, age is a discriminating factor in whether this legislation is going to be applied. Someone can be successful under this legislation or not, and now the type of disability or disease is a discriminating factor. I'm very worried not by something that I believe they put in place on purpose, but the inadvertent effect of this.

I also want to speak to advance directives. We all have had our experiences. In fact, we're a generation represented here, by and large, with some exceptions, in this chamber by those who have cared for parents in their aging days, and many of us have had experience with parents with Alzheimer's or other dementias. I also had an experience over 20 years ago as a minister of health in bringing about consent to treatment and capacity assessment legislation and the framework for that in the province of Ontario, dealing with things like mature minors and what consent means. Well-established principles on consent to treatment and capacity assessment have been brought into place by panels.

I do not understand the issues of concern from the province that I am here representing and the 20-plus years of experience that have been built up. I won't speak for other jurisdictions, but I'm sure that others could speak to this as well. I believe the expertise that exists within those consent and capacity panels can deal with the concerns and the issues that people are raising about how to know what a person really wants or under what conditions. This work can be done and I have full confidence in it. I know that the vast majority of people who face or have faced dementias in their family and worry about — like my brother and I do — our futures, want to have some control.

And there is no more difficult a disease than dementia in terms of loss of complete control and autonomy, so I am very concerned and indicate I will be supporting amendments around that.

I don't, by the way, reject the premise that more work could be done and that we can bring about more protections. I think that's a very useful thing to do. That doesn't in my mind prohibit us

from moving forward with legislation now and using the provisions in place under the provincial health care systems.

To people who have spoken about the independent reviews that were talked about in the preamble, I want to ensure that they take a look at the bill that was delivered back to us. In the preamble, those reviews have been taken out and embedded in the legislation under clause 9.1. That still may not go far enough.

Some people have spoken to what they would like to see, but know that they are actually enshrined in the legislation, as is the time frame for them to begin within 180 days of the passage or the proclamation of this legislation. It is my view that there needs to be another independent review struck and added to this provision.

• (2100)

We've heard from the minister one of her concerns about broadening to a group of Canadians who are not terminally ill; her concerns with respect to the vulnerabilities and how this bill might allow for people who experience vulnerabilities to either be coerced or to inappropriately attempt to access this legislation. She spoke about loneliness, social isolation, poverty, grief and marginalization. I say to her I worry about those things, too. I'm sure we all do, and I think protections need to be put in place.

Those issues are issues in the category of what I would call social conditions and social determinants of health. There are people who suffer from disabilities, people who are vulnerable and marginalized for mental illness, a number of reasons. Their social determinants of health place a risk of greater suffering on them.

For example, if you don't have the income to access the kind of adequate home care that you require; if you don't know or have access to supports for disabilities, mental illness or palliative care; if you have grown to a place in your life of social isolation, you may not be able to access supports even if they are there.

It seems to me it's incumbent upon us to look at these conditions, where social conditions or social determinants of health are actually increasing a person's suffering and/or bringing them to a place in their life where they choose to access medically assisted dying perhaps before necessary supports can be provided to them to give them an option and an alternative.

With that, I am going to be moving an amendment myself. The wording is not finished at this point in time, and I welcome anyone's input. We will be talking about this. This amendment would be to add an additional independent review, and so far the legislation would be that the review would look at legislative and non-legislative measures to ensure full and informed consent for medically assisted death where there is a concern that social conditions and unmet social determinants of health may be contributing to a person's suffering and request for medical aid in dying.

Where that concern exists — with health care professionals, with witnesses, with others, depending on the person's condition — these issues would be explored and there would need to be, in the complex regulatory regime, an opportunity to refer people to the right kind of help and where it is needed.

I think this is an area of study that needs to be done. We need to understand it. This is something that has been called for by the disability community.

I see that my time is up so I will wrap up.

Some Hon. Senators: Five minutes.

Senator Lankin: Thank you. I won't take that long.

The other part of my amendment will be that these reviews, all of them, the ministers must report out no longer than 18 months following the commencement of the review.

It will take time, but I believe all of us feel a sense of urgency in getting answers to these questions, putting the right protections in place and ensuring that the majority of Canadians have the supports and protections that they require, but the access to the fundamental rights that they deserve.

Thank you very much.

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

Senator Lankin: Yes. Thank you.

Senator Batters: Senator Lankin, you made a comment in your speech that you thought that the preamble section had been deleted and instead replaced with section 9.1 which talks about the independent reviews.

I wanted to point out you might want to have another look at that. I have a copy of the bill as passed by the House of Commons, and the preamble continues to exist where it says that studies would take place where:

. . . a person may seek access to medical assistance in dying, namely situations giving rise to requests by mature minors, advance requests and requests where mental illness is the sole underlying medical condition.

Section 9.1 refers to those independent reviews being mandated to start no longer than 180 days after the date on which the act received Royal Assent.

I wonder if you have a different understanding or does that maybe clarify the situation for you?

Senator Lankin: Thank you very much. It doesn't clarify. I think both things we've said are true.

Those things remain in the preamble. I don't believe I said they weren't there anymore.

What I wanted to point out is that the independent reviews have now been enshrined in the legislation, because not only does it set out the starting date, it actually refers to initiating:

. . . 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.

To say that the actual reviews and the specific content of those independent reviews are now in the legislation itself gives us the opportunity to amend that in a way that I think is more substantive than only in the preamble, although the preamble and also the summary would have consequential amendments to it if this amendment succeeds.

Hon. Tobias C. Enverga, Jr.: Honourable senators, I rise today to speak to second reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts.

I want to thank the sponsor, Senator Baker, and others who have shared their views and concerns about this historic legislative proposal. I also want to take this opportunity to thank our colleagues who served on the special joint committee for the long hours they spent under great time constraint, and our colleagues on the Standing Committee on Legal and Constitutional Affairs for their study on the subject matter of the bill.

Honourable senators, I will declare my opposition to physician-assisted dying from the beginning. I am of the belief that a life ends with natural death and should not be shortened by another person, be it a medical doctor under legally sanctioned conditions, an executioner who acts in accordance with the law or a person who commits a murder. No life should be taken by another person.

That said, with the realization that many do not agree with me, I have to accept the Supreme Court of Canada's decision in *Carter v. Canada* and do my sworn duty as a member of this house to ensure that we pass legislation that will eliminate the risk of harming the most vulnerable in our society.

Honourable senators, a person suffering intolerable pain due to a serious illness is among these most vulnerable. Among this group, we find those who are even more vulnerable, those who are minors and who suffer mental and developmental disabilities and disorders. It is our duty to protect them all from a number of risks including others who may, for whatever reason, influence the patient's decision, or patients making an ill-informed decision based on lacking palliative care options to alleviate pain and to spend their final days in a dignified environment.

Honourable senators, let me tell you all a personal story to illustrate why I believe every patient deserves the utmost care, personal compassion and the best palliative care instead of the choice of death.

My mother-in-law, a frail old woman, was living with us when she got seriously ill because of a massive allergic reaction to a medication prescribed to her. She had what is called system breakdown. She was in ICU for a couple of months and attached to all kinds of machines to monitor her or to keep her alive. They included blood transfusion, dialysis machines, an artificial respirator and many more.

The first few weeks she was unconscious, but finally regained consciousness. She was visibly in pain and uncomfortable at best. The hospital staff even put a DNR, or do not resuscitate, on her

files, which my wife immediately protested, after which the DNR designation was promptly removed. Because of this, we hired people to watch her 24 hours a day in the hospital to help the nurses and so, at the same time, she would have someone to communicate with while she was bedridden and connected to all the machines.

On a regular basis during this time, my wife and I were visited by doctors and ethicists who all informed us that there was no hope, that she would not recover and that she had no quality of life.

In other words, the doctors implied and the ethicists clearly suggested to pull the plug and to let her die to relieve her of her suffering. What was so cruel about some of these conversations was that my mother-in-law was within hearing distance. The feeling we were left with was that the ethicists and the doctors were trying to persuade her to make a request to end her predicament. In spite of all these difficulties, my mother-in-law had never indicated that she wanted to die to end her suffering. We know why she chose to stay alive. It was not only because of her faith, but because people who visited her gave her comfort and a little conversation. A little touch from her grandchildren and friends took some of the pain and discomfort away.

• (2110)

With love, prayers and constant care, she was able to survive and recover. For the next two years, she was able to live and enjoy life to the fullest. She even travelled to the Philippines and back before she died from an unrelated ailment.

My point, honourable senators, friends and colleagues, is that a doctor does not really know if or when a patient is going to die from an ailment. Medical science has made advancements in the last 20 years and still continues to make advancements. What was not possible then may be possible now. There are advancements in pain-management with new medicines, even with sedation.

My belief is if we show our patients compassion and love, and offer the right treatment option or palliative care, chances are we will not see anyone asking for death.

Honourable senators, there is much to be said about this bill and all the committee work that has been done, but due to time limits, I am forced to bring forward only a few of the main concerns that I have and that many members of the public have voiced over the past year.

My first concern, colleagues, is the lack of palliative and end-of-life care available to Canadians, especially those who live in more remote areas, of which we have many in our great country. I want to quote one of our honourable members of the Special Joint Committee on Physician-Assisted Dying, a senator, in an exchange with His Eminence Thomas Cardinal Collins, Archbishop of Toronto, during his testimony before the committee on February 3. The senator said:

... you're preaching to the choir here, because all of us would believe there ought to be more readily accessible, better palliative care available to more Canadians, but again that's not our issue.

I strongly beg to differ. That is exactly what is before us. We senators are asked to allow for the state in Canada to take the lives of people, not being a threat, for the first time since we ended the practice of capital punishment in 1962. How can a person who suffers make a competent decision when such a person is not offered proper palliative care? Before we start allowing for competent adults to make the choice to end their lives, we have to provide them with an option. A choice without an option is not a choice, and it seems as if we are giving up on palliative and end-of-life care by passing this legislation.

This is the most terrible and horrific situation we have been put in during our nearly 150 years of existence as the upper house.

My second concern, honourable senators, is the lack of safeguards in this legislation. The Supreme Court was quite clear in its ruling. The court used the term "competent adults" to describe who should be allowed access to physician-assisted dying. I was terribly concerned about the joint committee's report once it was tabled here, because it opened the door for mature minors and those who suffer from an underlying mental condition. The bill before us now does not specify that persons with an underlying mental condition do not qualify for assisted dying. It is alluded to in the bill's preamble under the guise of development of non-legislative measures, but it is far from clear.

Departmental officials and the responsible ministers have repeatedly stated that where mental illness is the sole underlying medical condition, assisted dying will not be provided, but the bill does not state this. Two main arguments are used: first, that the eligibility criteria together make it highly unlikely that such a person would qualify; and second, that future expansion of access to assisted dying will undergo further study.

Honourable senators, this is not sufficient as a safeguard. Let me give you an example of an underlying mental condition that I think will allow for access. One potentially deadly mental illness is "eating disorder." This is an umbrella term that includes but is not limited to anorexia nervosa, bulimia nervosa and binge eating disorder, and it is suffered by an estimated 600,000 to 990,000 Canadians at any given time. The first two disorders kill an estimated 1,000 to 1,500 Canadians every year, with a mortality rate of 10 per cent to 15 per cent for those suffering from anorexia and 5 per cent for those with bulimia.

Honourable senators, although one can argue that it is a remediable condition, it is not necessarily so. The key here is that the condition, as stated in the proposed section 241.2(2)(c):

... causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable . . .

Since this legislation is patient-centred, as the title of the special joint committee's report so poetically put it, the acceptability of the treatment is in the eye of the beholder, so to speak. One can argue that once a person applies for assistance in dying, the resolve for and acceptability of treatment is diminished.

Honourable senators, I am a member of the Senate's Aboriginal Peoples Committee, where the often harsh reality of a large vulnerable part of our population is studied. Colleagues probably

recall the state of emergency declared on April 9 this year on the northern Ontario Attawapiskat First Nation reserve after an epidemic of suicide attempts — 100 in seven months. A month earlier, Pimicikamak Cree Nation in Manitoba also declared a state of emergency in response to a string of youth suicides. Again, we are assured that those who wish to commit suicide are not eligible to assisted death under this legislation, but it is not explicitly stated. Not being a medical doctor, or a mental health specialist, I would consider that a condition that makes a person want to and try to take his or her own life would potentially qualify for assisted death under this bill because repeated attempts would eventually lead to a person's reasonably foreseeable death.

The third concern I will speak to is the bill's lack of procedural safeguards. While considering this legislation, our first duty should be to ensure that not one single life is taken without proper procedures having been followed, or that someone is wrongfully assisted to die. If we look at the way similar legislation operates in Belgium and the Netherlands, we should take note of the issues that have emerged there after these countries allowed doctors to play a part in ending their patients' lives.

Honourable senators, in the Netherlands, with a population of about 17 million, nearly 5,000 people died with their physician's assistance in 2013. Their system has a reporting mechanism in place, where five regional review committees assess each case after the fact to assess the legality of the procedure that took place. In an article in the *British Medical Journal* from 2011, of 3,136 cases reported, nine were found not to have met the criteria, with a further 500 cases awaiting a decision. The percentage is low, but when we deal with ending a person's life, no percentage is acceptable.

In Belgium, a country on the dubious forefront of assisted death, the statistics are more alarming. The Belgian law requires physicians who perform euthanasia to report each case to the Federal Control and Evaluation Committee for review. The disturbing fact, found in a study published in 2010, shows that in the Flanders region of Belgium in 2007, only 52.8 percent of euthanasia cases were reported. That, honourable senators, translates into every second case not being reported.

• (2120)

How is it possible to ensure compliance with guidelines when one has such a severe lack of reporting? The study on Belgium references a similar study in the Netherlands for the same year, which shows that just over 80 per cent of cases were reported there. These numbers are staggering and this is a potential path that Canada, with our sanction, is heading down unless we do our constitutional duty and ensure that this historic legislation is profoundly scrutinized and duly amended to ensure that not one life will be mistakenly or irregularly taken.

Honourable senators, I have tried to highlight three major flaws in the bill before us today, but there are still other issues that I cannot delve into which others will surely speak about, like conscience protection to protect practitioners from the horrific and traumatic experience it must be to kill a patient rather than healing them, and others. I have done this to try to show how the reality of the language —

[Senator Enverga]

The Hon. the Speaker pro tempore: Senator Enverga, do you request five more minutes?

Senator Enverga: Yes, more time, please.

The Hon. the Speaker pro tempore: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Enverga: I have done this to try to show how the reality of the language in this legislation does not match what we are being told by the responsible ministers and officials in the Departments of Justice and Health.

As I stated in the beginning, I am against any kind of state-sanctioned killing of a person who does not pose an immediate threat. My fear is far more profound than what may come across in our limited time.

What I want all honourable members of this chamber to do is to realize the actual legislative flaws of the bill, that stated safeguards are not present in the current version, and that we as senators have a unique opportunity to make the necessary amendments to ensure maximum protection of our vulnerable, while still respecting and honouring the Supreme Court of Canada's ruling on *Carter v. Canada*.

Honourable senators, let us retain the honour of this chamber by not being an accessory to any murder that may be caused by a very weak law. Thank you very much.

Some Hon. Senators: Hear, hear!

[Translation]

Senator Carignan (Leader of the Opposition): Honourable senators, I rise today to take part in the debate at first reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying).

Like many of you, I have given a lot of thought to this bill and to the speeches and the vote that will happen in connection with this bill. I had some doubts, but as I tend to do when I need to make a decision, I tried to put myself in the position of a person who is paralyzed from head to toe or who is terminally ill and experiencing intolerable suffering. I asked myself whether, in that position, I would want to have the freedom to make my own decision. Would I be okay with being at the mercy of another person's decision, beliefs or religion? I realized that I would want to be treated with respect.

I reread Quebec's Act respecting end-of-life care, which was passed before the *Carter* decision.

Section 2 lists the principles that guide the provision of end-of-life care. Specifically, the first subsection reads as follows:

Respect for end-of-life patients and recognition of their rights and freedoms must inspire every act performed in their regard.

The second subsection goes on to say that:

End-of-life patients must be treated, at all times, with understanding, compassion, courtesy and fairness, and with respect for their dignity, autonomy, needs and safety.

I find these passages to be extremely powerful and inspiring.

Bill C-14 on medical assistance in dying, as its title says, pertains to matters of life and death, two words that are polar opposites, yet inevitably linked to perpetuity.

We rarely debate bills that are so intense and personal in nature. We have never dealt with such a decisive issue, one that forces us to weigh such fundamental Charter rights as the right to life, liberty and security of person.

Who will this bill actually affect? It will affect our families, our brothers and sisters, our loved ones, as well as ourselves, since anyone of us could one day find ourselves in a situation where our suffering is intolerable and we would like to be able to make a choice, to choose where, when and with whom.

Colleagues, we are working under a deadline imposed by the Supreme Court. Many organizations, including the Barreau du Québec, have pointed out what a short period of time this is to study such an important piece of legislation.

In its brief, the Barreau mentioned that it was forced to limit, and I quote:

. . . suggestions for amendments to certain specific sections of the bill.

It was our understanding that other amendments would have been suggested if there had been more time.

We must take the time needed, senators, to conduct a thorough study of this bill and do our work diligently. We must leave no stone unturned and make sure we produce the best possible legislation under the circumstances. This topic may not have been our choice, but we have accepted the responsibility, and with this responsibility comes a fiduciary duty, a duty to take care.

Allow me to begin by saying that, in theory, I agree with Bill C-14, a bill that is needed to bring stability and certainty to the legal parameters surrounding the application of the Criminal Code. However, after carefully examining this bill and the case law, including *Carter*, like many of my colleagues, I have some serious legal, constitutional and personal concerns that were brought to light during the pre-study in committee and at the meeting in Committee of the Whole.

I believe that we need to strike a measured and careful balance between the rights of vulnerable people and the rights of people who are suffering. At the same time, we need to ensure that people who are asking for medical assistance in dying are doing so within a very clear and structured protective mechanism that leaves no room for vagueness or uncertainty.

Basically, this bill was to dispel the doubts regarding medical assistance in dying in the application of the Criminal Code. As you know, criminal law requires the use of very specific language

because of its influence on individuals' rights and freedoms. Criminal law, by its coercive nature, requires language that is precise, robust, and linked to well-known and specific references.

• (2130)

It is in that context that legal experts warned us about using the expression "reasonably foreseeable death." This is terminology that has no reference, no anchor. The new legislation does not rely on any precedent to require that the natural death be reasonably foreseeable.

This restriction is unacceptable, say its opponents. According to Dying With Dignity Canada, this would add years of severe and unwanted suffering to Canadians like Kay Carter, who suffered intolerably because of a grievous and irremediable medical condition, but who was not terminally ill.

Doctors even warned us about vague terminology with no point of reference. Why draw this line? It is not just a line dividing a group of people who will have the right to medical assistance in dying from those who will not; it is also a line that defines who will enjoy their constitutional right and who will not. It is also the line that will define the boundary between the behaviour of a good, empathetic doctor who provides care and medical assistance in dying, and, on the other side of the line, the doctor who is likely to be criminally charged.

The clarity of this dividing line is fundamental in the bill. The president of the Federation of Medical Regulatory Authorities of Canada, 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.

Even Quebec's health minister, who was a strong supporter of Quebec's end-of-life care regime when he was president of the medical association, was severely critical of this bill. Minister Barrette said:

The most off-putting part is the part about reasonably foreseeable death. That is medically unrealistic. I myself am disinclined to support C-14 because of the reasonably foreseeable natural death provision. It makes no sense. It cannot be enforced.

Senator Joyal quite rightly quoted Minister Barrette's warnings.

As the Barreau du Québec said, the best scenario is when:

. . . doctors have an open relationship with their patients and can discuss all of the care options available to them.

To achieve that trust relationship with patients:

Doctors must be certain that they are not vulnerable or at risk of being charged when they talk about things with their patients.

Doctors cannot provide adequate information if the bill is not clear. The only way they can do so is if they can be absolutely certain that their actions are not criminal.

Bill C-14 fails to satisfy either side in this debate: those who want additional restrictions and those who want fewer. Regardless of anyone's legitimate position on this issue, we have to make sure the law is clear and unambiguous and that it contains clear guidelines for patients, doctors, lawyers and families.

When the Minister of Justice appeared before us in Committee of the Whole yesterday, we heard more questions than answers about the constitutional challenge that will result from this bill. Her answers raised red flags for me and for some of you, I'm sure. She insisted that this bill complies with the Charter and all constitutional obligations.

Nevertheless, clear and factual social data came out of the initial *Carter* trial. As a result of that data, *Carter* clearly stated, and I quote:

We conclude that the prohibition on physician-assisted dying is void insofar as it deprives a competent adult of such assistance where . . . the person affected clearly consents to the termination of life; and . . . the person 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.

I would like to interpret the Charter as Senator Sinclair did, but there is a Supreme Court ruling. When a Supreme Court ruling interprets the Charter, then I must rely on that ruling, particularly when it comes from the Supreme Court and is signed unanimously by "The Court."

To understand the scope of the right and protections provided by the Charter, the Supreme Court identified a group of people whose rights were not only violated . . . We cannot say that the mission has been accomplished if the right is guaranteed for only one subgroup of victims, as is the case in this bill. It limits the rights of a whole group of people identified in the Supreme Court decision to only certain types of people in that group.

Amendments were proposed to ensure that Bill C-14 complies with the Constitution. However, the government did not accept those amendments. Many courts in Canada did not accept the government's arguments. The decision of the Alberta Court of Appeal and more recent decisions by the Ontario Superior Court are in direct opposition to Bill C-14. The Alberta Court of Appeal rendered a decision on May 17 in *E.F.* The judge rejected Canada's argument that *Carter* applied only to patients who were terminally ill and found that *E.F.* met the criteria set out in *Carter*. Canada appealed the decision and lost.

The government did nothing to amend Bill C-14 after this important and ground-breaking decision. In that decision, the motions judge ruled, and I quote:

The Supreme Court in *Carter 2015* did not expressly limit the right to dying individuals or those with medical conditions that are terminal, life-threatening, or that reduce one's life expectancy.

Furthermore, the decision clearly stipulates that the terminology in *Carter* should not be considered, on the whole, and I quote:

The decision itself is clear. No words in it suggest otherwise. If the court had wanted it to be thus, they would have said so clearly and unequivocally. They did not.

The fact that the government refused to accept any amendments is very troubling, and not only in light of the cases in Alberta and Ontario. The government received a pre-study report from the Senate 15 days before it introduced the bill, and yet there were no amendments. It did not follow through on the recommendations from the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-14, nor did the government follow through on the report by the special joint parliamentary committee co-chaired by our colleague Senator Ogilvie.

Honourable senators, in this chamber we have a duty not only to ensure that the rights of minorities are respected and to represent the rights of vulnerable people and people who are suffering, but also to ensure that their constitutional rights are respected.

Limiting eligibility to people who have terminal illnesses will exclude a group of people who meet all the criteria set out, including people who are experiencing intolerable suffering as a result of degenerative diseases like multiple sclerosis, ALS, Parkinson's disease and Huntington's disease, for example.

• (2140)

We've all seen the stories in the media about the people in Quebec who decided to go on a hunger strike in order to be eligible for medical assistance in dying.

Many people, including me, are very concerned about these cases. People all across Canada are expressing concerns. Canadians want a balanced approach. We must be the beacon of hope for all those who are suffering terribly, while also ensuring that there are strict safeguards to protect the vulnerable.

Honourable senators, we must succeed. We must. Let's take the time to examine this bill very closely and to give it the attention that it warrants and that Canadians have the right to expect. That's why we are here, dear colleagues. The chamber of sober second thought plays a very important role in the process and in studies. The debates and speeches we have heard so far confirm our purpose. Without the Senate, this flawed bill would have come into force this week.

The government put an end to debate in the other place and rushed this bill through all the legislative steps, even though it knew that the bill was not perfect. The Senate is now called upon to play an important role, namely to ensure that this bill is constitutional, that it protects the vulnerable and that it helps those who are suffering. This is the task at hand. This is the task that Canadians have assigned us. We have a fiduciary obligation to these vulnerable people, and it is up to us to fulfill it.

Some Hon. senators: Hear, hear!

[English]

Senator Baker: Senator, in giving your speech, wouldn't you agree that you're confusing an order given by the Supreme Court of Canada to the superior court judges in Canada, that here are the guidelines that you have to operate within, gave them the guidelines, they were to operate as the gatekeeper to make sure that justice was done, that the Supreme Court of Canada was only giving orders to Supreme Court judges in Canada to operate a system for four months? They were not declaring what the law should be.

Don't you agree that you are confusing an order given by the Supreme Court of Canada to the superior court judges to operate within those confines? Surely you're not suggesting that the Supreme Court of Canada has said, "Here's the law, Parliament, we don't need you because this is the law;" Parliament is not needed? Surely you have to agree that you're confusing the orders given to the superior court judges to operate within four months; you're confusing that with the responsibility of Parliament to come up with a law to replace what the superior court judges were doing.

[Translation]

Senator Carignan: I thank the senator for the question. It is a bit late and I took some prescription drugs, but I don't think I'm confusing things. The Supreme Court of Canada interpreted section 7 of the Canadian Charter of Rights and Freedoms and identified and interpreted the words "Liberty," "Life," and "Security." It did not put liberty, life, and security in ascending or descending order. It put them at the highest level.

It identified a group of comparable people, those suffering intolerably with an illness, an impairment, or an irreversible disability for which there are no solutions, and ruled that those persons must have the right and liberty to choose. It identified that group of people and said that when they are not given the choice or when they are denied the liberty to choose, their constitutional right is being violated.

Obviously, as legislators, we must take into account this interpretation made by the Supreme Court, this unconstitutionality of the Criminal Code, and determine for this group the parameters, the means or the measures needed to ensure that the constitutional rights of these persons are not violated.

That is how I understand the Supreme Court's ruling. Obviously, given that the legislator's request to extend the deadline for passing legislation was granted, authorizations and directives were given to the superior courts to provide a constitutional exemption to people requesting medical assistance in dying while waiting for us, the legislators, to provide the legal framework.

However, the Supreme Court very clearly identified a group of individuals whose rights have been violated.

[English]

Senator Baker: Surely, though, the Supreme Court of Canada said they're making a ruling for superior court judges within the jurisdiction of those who wish to apply, and they will act as

"gatekeepers." That was the expression used by the Supreme Court of Canada — gatekeepers. Until legislation is passed, they will operate as gatekeepers. How are they going to operate? Where's their frame? Three sentences in paragraph 127.

Surely you're not suggesting that the Supreme Court of Canada is saying that is the new law of Canada and that Parliament can't go outside of those three sentences because if they do it's unconstitutional? Surely you're not suggesting that the Supreme Court of Canada is making the law and Parliament is really not needed.

[Translation]

Senator Carignan: I actually do think that intervention by Parliament is not necessarily essential. We saw this with the abortion issue in particular; the Criminal Code provision was struck down, and Parliament did not intervene.

However, this obliges Parliament, it obliges us as parliamentarians, to take action to create a framework in order to avoid situations of uncertainty, and I think that is our mandate here today, that is, to try to ensure that when people's constitutional rights are violated, we can set parameters to minimize the impact and give those individuals access. We can ensure that their constitutional rights are not violated and give them access to medical assistance in dying within certain parameters.

This is our duty as legislators. We can choose to do it or not to do it. If we don't do it, that could create added uncertainty. That is why, and it is written into the Criminal Code, in Canadians' best interests in that regard, we must take action and set parameters in order to safeguard against abuses and protect vulnerable people.

That is the purpose of the bill, as the Minister of Justice said, and there are definitely some concerns.

• (2150)

I believe that the parameters, the safeguards that have to be in place for people receiving end-of-life care, can differ from those for people not receiving end-of-life care because a person who is not in an end-of-life care situation may need more protection.

A person can be paralyzed from head to toe and be suffering but still have a life expectancy of 15 or 20 years. That person might be lying in bed looking at the ceiling. That person might be much more vulnerable than an end-of-life person because there might be people who would benefit from insurance or an inheritance if that person dies. Stricter safeguards have to be in place in such cases. That is the kind of thing we will have to consider in terms of amendments.

[English]

Senator Baker: You suggest a preference for the Quebec law — that's what you said a few moments ago. Are you suggesting that we change this present bill so it only applies to end-of-life persons?

[*Translation*]

Senator Carignan: There must be some translation problems. I did not say it should apply only to end-of-life persons. That would further restrict the number of people entitled to medical assistance in dying and significantly increase the number of people whose constitutional rights would be violated.

What I did say was that I used my understanding of the principles in Quebec's end-of-life legislation to inform my thinking about how I would like to be treated if I were in such a situation.

Subclauses 2(1) and 2(2) deal with rights and freedoms, compassion, courtesy, fairness, and respect for their dignity, autonomy, needs and safety. These are certainly concepts and basic principles that I would like to see applied if I were in this situation and, most importantly, I would like to choose. I would not want someone else's beliefs to be imposed on me.

[*English*]

Senator Cowan: In an effort to alleviate Senator Baker's confusion, I wonder if you would agree with me, Senator Carignan, that the contents of the wording of paragraph 127 of the *Carter* decision establishes and sets out the category of citizens who have the constitutional right to seek medical assistance in dying and that our role as parliamentarians, if we choose to take it on, is to provide for those persons a framework as to how and under what circumstances medical aid in dying is provided.

It is not open to us to pick and choose amongst those persons identified with those characteristics and with those conditions specified in 127. It is not for us to pick and choose and decide that we can restrict access to medical assistance in dying below the level set forth in 127.

Would you agree that that's a correct assessment of what the court said and what our role is if we want to do it in response to that challenge?

Senator Carignan: It is clearer in English than in French. For Senator Baker, I would say yes.

Senator Ogilvie: Colleagues, we are at a remarkable time in social evolution. We are an incredibly fortunate group to be here at this time, and to be dealing with something that is important to all of our society, to every member of our society, either in concept or in practice.

I have had the unique good fortune — privilege — in addition to having been appointed by this body, to join the group of 15 who had the opportunity to provide advice to the government as to how to respond to this unique social development, this historic time in Canadian society. I had the additional good fortune to have the opportunity to co-chair that group and not only to be part of the total dialogue, but to see the dynamic of individuals throughout the process.

I want to tell you again, as I did earlier, that that group of people acted on behalf of Canadians in a manner that we can all be enormously proud of.

It was an extraordinary privilege to have been part of the majority report that came forward from the deliberations of the joint special committee. I can tell you that each day I become more proud of that report. That report not only attempted to deal with a specific request of the *Carter* decision of which we have just heard, and have been hearing all evening different views on what it implies, but we had the opportunity to look ahead and see what responding to that would do and to where it would lead — to other issues that almost certainly Canadians will want to have the opportunity to benefit from.

During my life, I have always thought that parliaments and a democracy were intended to respond to the needs of society and look ahead, where they could, and to make possible opportunities for society that require a legislative base.

I have heard during this discussion people on the one hand arguing that the courts have no right to tell Canadian society how they will deal with issues of this nature. Quite frankly, I think over the last period of history we have seen Canadian legislatures actually avoid dealing with critical issues, leaving it to individual challenges to the highest court to get redress and opportunity that is important to society as it moves forward.

I think we have a responsibility as a legislative assembly to recognize, at a time in our evolution that we can understand the needs of our society fully and to make those opportunities available to that society and not force, in this case, people suffering intolerably to take the last days of their lives and challenge under our Charter of Rights and Freedoms for rights that we as a legislative assembly should provide.

In this case, as has been indicated, we have a Supreme Court decision that has led us to this discussion today. I'm not going to repeat all of the important arguments that have been made in favour of a good bill which is based on the *Carter* decision and brings benefit, opportunity and protection to Canadians. I associate particularly with my colleagues Senators Cowan, Joyal and Carignan in their description of the issues from a legal point of view and others in terms of their interpretation from an individual and social point of view.

Now, I'm not going to go over all of those issues and those details tonight, but I do want to address a couple of things specifically in ways that they haven't been touched on completely to this point.

First of all, I believe we must have legislation. Second, I am extremely disappointed in Bill C-14. I think it is a bill that is flawed in every section.

• (2200)

The special joint committee attempted to recognize the *Carter* decision as a legal decision, and then to recognize the impact it has on society. Most importantly, we dealt with the issue of vulnerabilities. In our report, we tried to advise government as to how to provide protection for those who are most vulnerable. There are two major categories. There are those who might be

herded into the application of applied death against their will. Then there are the ones on which the fundamental *Carter* decision was based, and that is those who are suffering intolerably.

I've heard remarkable things here this evening. I would invite any senator who thinks there shouldn't be the right to alleviate intolerable pain to spend one night in a hospital room with those suffering from ALS, Huntington's and other diseases. They have been admitted after they can no longer be dealt with at home but still are some distance from dying a natural death. If you can bear that suffering, and think they should bear that suffering, I yield to your strength of character. I have other opinions of it.

As a scientist, I know that there are no pain remediations available to us today which can deal with much of the pain that is suffered by individuals and still give them a quality of life. If you believe, as has been suggested here this evening, that anesthetizing an individual on a permanent basis is a solution, then I tell you frankly, I beg to differ.

Now, many of you have difficulties with this issue and have difficulties with some of the possibilities for medical assisted dying, including psychiatric conditions. I urge every one of you to read the Alberta decision. It is a clear example of a psychiatric condition in which an individual suffers intolerably over a period of years, and yet who is entirely competent to make decisions around their life. If you don't have it, contact my office. You must read this before you reach your conclusion.

It also deals with the issue of terminal versus ongoing, which has been thoroughly explored this evening. We have a responsibility to help the individual who has suffered intolerably for years, been subjected to many psychiatric and physical treatments and is in continuous decline and may continue to do so under conditions that are intolerable for years to come.

With regard to the wholesale slaughter of Canadians that we have heard about, you must be competent, you must request and there must be, according to the recommendations of the special joint committee, an independent analysis of your request. You cannot have somebody who is compromised or in conflict of interest with regard to your situation involved in that decision. It's not possible for society to be carried away with this particular issue through Bill C-14, which I think is really flawed.

I had hoped that the government, after receiving the recommendation from the special joint committee, would respect our advice with regard to building legislation which implemented the core decision. It did not. Therefore, I can only express disappointment in that, but disappointment that it didn't consider advance requests. It sort of considers the implementation of looking into a clear study that will lead to more thorough understanding of mature minors and areas of that nature.

Colleagues, here we have a situation where a decision has been made on the Charter of Rights and Freedoms which is essentially based on non-discrimination. The limitations placed in Bill C-14, relative to our recommendation, represents cruel and unusual punishment for Canadians suffering from medical conditions intolerable to them under the circumstances. Anyone who would

urge the creation of a bill that would require individuals to suffer the agony, discomfort and pain of modern medication over a long period of time, I really can't relate to you.

Every individual reacts to chemotherapy in very different ways. I urge you to spend one night in the chemotherapy ward. There we are dealing with people at the end of life who presumably are being treated. Some people can't even lie down, sit or do anything. The chemicals affect different people in different ways. We cannot and should not as a society force people into an even greater state of agony by requiring them to accept medication that is unacceptable to them under the circumstances.

Honourable colleagues, I urge that we send this bill to committee. It must get through second reading. I fully support that. I hope our committee takes a serious look at key recommendations that they will bring back to us, and I hope in this chamber we will see fit to at least move a few key amendments that will bring great benefit to Canadians and not force those suffering intolerably to further challenge for a right that has already been granted.

Thank you very much.

Senator Tkachuk: Would Senator Ogilvie take a question?

Senator Ogilvie: Yes.

Senator Tkachuk: From the studies that you did early on, were estimates given as to how many people would take advantage of a bill on legally assisted suicide over a period of one year?

Senator Ogilvie: Thank you, senator, for the question.

There was not an analysis done of the experience of other countries and states that have this form of legislation. We were, however, provided with the numbers for those granted medical assistance in dying in other countries.

I will give you a personal opinion in answer to your question, not one on which I will claim any authority of detailed analysis. My anticipation, given the size of the population of Canada, would be that on an annual basis, at least in the initial years, it would be in the order of 100 to 500, but that's a purely personal estimate.

• (2210)

Senator Tkachuk: With other countries that have reported 5,000 in a year, are their guidelines looser than those we are anticipating? There seems to be such a great difference from what we have heard from other speakers, and certainly from what I have read about what the numbers are in the other countries that do this.

Senator Ogilvie: May I have an additional five minutes?

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

Hon. Senators: Agreed.

Senator Ogilvie: Thank you. If you look at several of the countries in Europe, for example, in the first years the numbers were low in the area I'm talking about. It took several years for the numbers to build up to the numbers that are currently given. We also have to consider the population. We have 36 million people, and many of the countries that have this authority have higher populations.

I made it very clear to you, senator, that it was a personal estimate. I give no more credibility or credence to it than that, and I submit that your estimate, what you predict if you look at all of them and over a period of time and come to a conclusion, is likely to be as good as mine.

Senator Baker: The vast majority of people I've spoken to in this chamber suggest advance directives. Our committee, Legal and Constitutional Affairs, passed a motion to send to the other place. You passed a motion; you people decided, the joint committee. The idea of advance directives has been rejected about three times now in the House of Commons, rejected in the house itself twice and in the committee.

Advance directives are in place in every province in Canada under provincial legislation. Advance directive legislation in the provinces allows somebody, when they get to a certain point, to withhold lifesaving equipment and also to receive palliative sedation, which makes you unconscious and hurries your death. It does, according to all the evidence I've seen. That is allowed. That is in legislation. Anybody can do it in any province in Canada, including my own province; you can do your advance directives.

Did the committee look at this? Can you answer why, then, is there not some way, since advance directives already exist with palliative sedation, to apply them to physician-assisted death in the circumstances of the bill?

Senator Ogilvie: Thank you, senator. Actually, there are a number of aspects to your question. First of all, we must recognize, and the special joint committee recognized, that there are areas where the action under any legislation has to be carried out within the provinces, and the procedures and so on that will implement the legislation must be negotiated by the federal government with the provinces. If you look at our report, we have a number of cases.

To come to your specific issue, one of the comments that you made is partly why I believe we felt that at this time in society we are ready for an advance request authorization under this legislation, because there is such experience in Canada with do-not-resuscitate orders and other requests across the provinces in Canada, and Canadians have considerable experience.

Now, I would say to you, however, that we would hope that there would be guidance from the federal government with regard to advance requests under this kind of legislation because the way in which it is done in the provinces varies all over the map. But that does say that society is ready for those kinds of things, but we recommend a very clear process to get an advance request that would meet and safeguard the needs of Canadians.

Senator Jaffer: Would Senator Ogilvie take another question?

Senator Ogilvie: Certainly.

Senator Jaffer: Thank you. Senator, one of the things I struggle with is that this bill is drafted, as all bills are — you heard me ask the question of the ministers yesterday — in terms that lawyers understand — “foreseeable,” “reasonable,” “probable.” You're a scientist, so as a scientist, what would you like to see in the bill that would make it clear to you this is what it means and this is how I want it to proceed?

The Hon. the Speaker: Honourable senators, Senator Ogilvie's time has expired, but I would ask again for your indulgence to answer the question. Agreed?

Hon. Senators: Agreed.

Senator Ogilvie: Thank you very much. First of all, I'm very proud of our report that has been written in very clear language and has been widely acclaimed for dealing with these very important issues in clearly understandable methods.

Senator, I am appalled at the way in which much legislation is written. I am appalled at the way the advice to the Minister of Justice often is such that makes it so confusing that an ordinary Canadian has great difficulty interpreting.

As a Canadian, let alone as a scientist, I cannot understand and fathom why the most important things we deal with affecting our lives can't be put in language that a reasonable person can understand.

An Hon. Senator: Hear, hear.

An Hon. Senator: Then what would the lawyers do?

Senator Ogilvie: That's right. That wouldn't lead to much profit, sir.

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

Hon. Victor Oh: Honourable senators, I rise today to speak on second reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts.

Colleagues, while I agree with medical assistance in dying, I do have some reservations about this bill. Some of these concerns may not be entirely new, but I still would like to go on record.

My first reservation stems from the proposed eligibility requirements. It is unclear when death becomes reasonably foreseeable. I understand that medicine is not an exact science and that ambiguity allows health care providers to make these decisions on a case-by-case basis. However, I am concerned that different interpretations may lead to unequal standards of care.

I am surprised that “reasonably foreseeable” was added to the eligibility criteria. As far as I am aware, no other jurisdictions where medical assistance in dying is legal have this requirement.

Dr. Grant of the Federation of Medical Regulatory Authorities of Canada said at the Legal and Constitutional Affairs Committee on May 10 that “if the language remains unchanged, there will be a variety of interpretations of ‘reasonably foreseeable’” across the provinces.

Honourable senators, I urge you to request that the Government of Canada provide clearer parameters to the provinces and territories so that health care providers are prepared to handle requests for assisted dying. This step would ensure that Canadians who need end-of-life support have equal access to this treatment and that those involved in this process are given the necessary guidelines and protections.

My second reservation has to do with the exclusion of Canadians who suffer from progressive or chronic illnesses but who are not terminal. Those who are diagnosed with debilitating physical or mental conditions can experience a serious decline in their quality of life although their death is not reasonably foreseeable.

• (2220)

Colleagues, I think we should ask ourselves: Who are we to determine what an acceptable quality of life is for another person? One cannot decide what the right choice is for someone else.

For this reason, I want to emphasize the importance of respecting a patient’s right to choose. The decision to end one’s life is a personal one. We must avoid taking a patronizing approach.

This bill disregards the *Carter* decision by limiting eligibility to those who are near death. We need amendments to ensure that this legislation respects the constitutional rights guaranteed by the Supreme Court’s decision. This is a matter of compassion and justice.

Finally, I am disappointed that Bill C-14 does not provide Canadians with the option to request medical assistance in dying through an advance care directive.

I agree with the recommendation made by the Legal and Constitutional Affairs Committee to enable patients diagnosed with chronic or progressive illnesses that are not terminal, such as Alzheimer’s, to have the autonomy to make important medical decisions.

Allow me to get personal for a minute. A close friend of mine suffered from a disease that caused him intolerable pain that couldn’t be relieved by palliative therapies. His disease severely impacted his quality of life until he travelled abroad last year to access medical assistance in dying.

I am not sure whether he would have been covered by this bill, but I am thankful that he was able to die peacefully and legally, surrounded by his family.

I am saddened that others have had to endure unimaginable suffering until their natural death or take severe measures to end their own lives. This is not acceptable.

I have heard from Canadians regarding Bill C-14. I understand that it is a sensitive issue, but where we all agree is that this legislation is needed and that we should do our best to improve it.

Honourable senators, we have a unique opportunity to ensure that those wishing to end their lives can do so in a safe and dignified way. Bill C-14 is not perfect, but it’s a start.

Thank you.

(The Senate adjourned until tomorrow at 9 a.m.)

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