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(HANSARD)

Tuesday, June 14, 2016

The Honourable GEORGE J. FUREY
Speaker

CONTENTS

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

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THE SENATE

Tuesday, June 14, 2016

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

Prayers.

SENATORS' STATEMENTS

THE HONOURABLE MADAM JUSTICE ROSALIE SILBERMAN ABELLA

CONGRATULATIONS ON HONOURARY DOCTORATE OF LAWS DEGREE

Hon. Wilfred P. Moore: Honourable senators, I rise today to pay tribute to Justice Rosalie Silberman Abella, of the Supreme Court of Canada, upon being awarded an Honourary Doctorate of Laws Degree by Yale University Law School at its convocation held in New Haven, Connecticut, on Monday, May 23, 2016.

Justice Abella, the proud daughter of Jacob and Fanny Silberman, was born in a displaced persons camp in Stuttgart, Germany, on July 1, 1946. Four years later, the family immigrated to Canada, arriving at Pier 21 in Halifax, Nova Scotia.

Her father graduated from Jagiellonian University in Poland in 1934. He articled at a law firm for four years and clerked at a Court of Appeal in Radlow. In July 1939, the Chief Justice of the Court of Appeal approved his candidacy for a judgeship, and the judicial examination was scheduled for October 1939. He had married Fanny on September 3. On the day he was to take the judge's exam, World War II started. He never got to take that exam. He never got to practise law in Poland. Instead, he and his wife spent three years in concentration camps. Their two-year-old son and Jacob's parents and three brothers were all killed at Treblinka.

Upon arriving in Canada, Mr. Silberman applied to the law society to become a member of the bar but was denied because he wasn't a Canadian citizen. In her address to the graduates, Justice Abella said:

> But the moment I heard the story about his being denied the ability to be a lawyer, was the moment I decided to become one. I was four.

Her father died a month before she graduated from law school. He never saw her get called to the bar, never met his two grandsons, and never lived to see her revel in the life of the law. Nevertheless, on Monday in New Haven, she said she felt her father's spirit and his legacy all around her, where she was joined by her all-lawyer support team — husband Irving, sons Jacob and Zachary.

So inspired, she followed her dream and graduated from the University of Toronto with an LL.B. in 1970. She was called to the Ontario Bar in 1972 and practised civil and criminal litigation. In 1976 she was appointed to the Ontario Family Court at the age of 29 — the youngest and first pregnant person appointed to the judiciary in Canada. She was appointed to the Ontario Court of Appeal in 1992. In 2004 she was appointed to the Supreme Court of Canada by Prime Minister Paul Martin. She is the first Jewish female appointed to the Supreme Court.

In delivering the citation, Peter Salovey, President of Yale, applauded Justice Abella for defending the vulnerable in society. He said:

> You defend human rights and justice in your home nation of Canada and around the world. As one of the world's finest living judges, you approach your work with zest, empathy, and superb intelligence.

In its 315-year history, Yale has awarded honourary degrees to only four Canadians — all men. Justice Abella became the first Canadian woman to receive this honour.

On behalf of the Senate of Canada we extend our sincere congratulations to Justice Rosalie Silberman Abella. You make us proud!

OVARIAN CANCER CANADA

WALK OF HOPE

Hon. Terry M. Mercer: Honourable senators, again this year my family and I will be participating in Ovarian Cancer Canada's Walk of Hope, being held in Halifax and in many other communities across the country on September 11, 2016.

The Ovarian Cancer Canada Walk of Hope is held in over 40 communities nationwide and is the only walk in Canada to direct all funding towards ovarian cancer.

In 1996, my wife Ellen was diagnosed with ovarian cancer. She is one of the lucky ones. Since her last chemo treatment in November of that year, she continues to be symptom free and has been so for almost 20 years now.

In Canada there are thousands of women living with ovarian cancer. Each of these women is central to a family, and every one of these women has people who love her.

Ovarian Cancer Canada provides support and encouragement to those women diagnosed with this disease, and they support scientific research to discover a reliable early detection test and, ultimately, a cure.

To date, the walk has raised over $21 million for Ovarian Cancer Canada programs and initiatives. This work is only possible with your help. So I will be looking for your support very

soon as Ellen, Michael, Lisa, our granddaughter Ellie — who in her first walk last year was in a stroller, but this year we hope she will be able to walk with us — and I will be walking in the Ovarian Cancer Canada Walk of Hope for Ellen as well as other women.

Ovarian cancer is the most serious of all gynecological cancers. Together we can create a movement to help more women today and in the future.

So let's do what we can to support more research and a possible cure. Your contribution would be greatly appreciated by your wife, your mother, your daughter, sister, aunt, cousin or friend.

Thank you in advance on behalf of all those affected by this terrible disease — ovarian cancer.

CREDIT CARD MERCHANT FEES

Hon. Pierrette Ringuette: Honourable senators, credit card acceptance fees are still too high in Canada. In fact, Canada merchant fees are among the highest in the world — an honour that we can do without.

Despite the backroom deal between the former Conservative government, Visa and MasterCard, acceptance fees in Canada still remain at an unacceptable level. Last week, Walmart announced that they will no longer accept Visa at their stores in Canada because the acceptance fees are just too high. Visa responded by saying they offered Walmart the best deal they could, which raises the question: If a big multinational corporation like Walmart cannot negotiate low enough fees, how is this affecting Canada's small and medium-sized businesses?

Canada's fees remain some of the highest in the world and nowhere near the levels of countries that have placed limits, such as Australia 15 years ago and the European Union two years ago.

I plan on once again tabling legislation this fall to set limits on these fees. Despite the code of conduct and the deal the Conservative government made with the credit card companies, Canada's fees still remain far too high. Australia has set limits at 0.5 per cent, and the European Union's limits are set at 0.3 per cent. These are reasonable limits, and despite their protests, Visa and MasterCard are still doing business in those countries. People still have access to credit card and loyalty programs.

• (1410)

There is constant evidence that these fees are a problem, but there has been very little action of substance. So I will once again table legislation this fall to limit these fees. My last bill, S-202, was killed in the Standing Senate Committee on Banking, Trade and Commerce by the majority of Tory senators, who are, actually, out of touch with the difficulties facing our small businesses in dealing with Visa and MasterCard.

I hope that this fifth time I can count on my colleagues in the Liberal government to support reasonable rates for our small- and medium-sized businesses.

ROUTINE PROCEEDINGS

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on Banking, Trade and Commerce have the power to sit on Wednesday, June 15, 2016, even though the Senate may then be sitting and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Senator Bellemare: Honourable senators, we will probably not be finished with Bill C-14. However, the Banking Committee is actually sitting to study Bill C-11. They will be receiving the minister and they will have experts before them. We have to move on with other bills, such as Bill C-11. That's why we're asking for leave on this matter.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*Translation*]

TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Michael L. MacDonald: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Transport and Communications be authorized to meet on Monday, June 20, 2016, even though the Senate may then

be sitting, and that the application of rule 12-18(1) be suspended in relation thereto.

[*English*]

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to the motion adopted in this chamber yesterday, Question Period will take place at 3:30 p.m.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that, as we proceed with Government Business, the Senate will address the items in the following order: Motion No. 27, followed by all remaining items in the order that they appear on the Order Paper.

[*English*]

THE SENATE

MOTION TO EXTEND WEDNESDAY'S SITTING ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of June 13, 2016, moved:

> That the provisions of the order of February 4, 2016, respecting the time of adjournment, be suspended on Wednesday, June 15, 2016; and
>
> That the provisions of rule 3-3(1) also be suspended on Wednesday, June 15, 2016.

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

Hon. Yonah Martin (Deputy Leader of the Opposition): I have one question for Senator Bellemare. I know that we are in the middle of debate on Bill C-14, which has been very important for this chamber. Would you clarify or specify what you anticipate will take us beyond 4 p.m. tomorrow?

Senator Bellemare: We don't know what will be going on tomorrow and we have government business to do. Debate on Bill C-14 may be lengthy, and we may have to proceed with Bill C-10 if Senator Plett is ready. That's why we are asking for this.

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

Hon. Senators: Agreed.

(Motion agreed to.)

CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Baker, P.C., seconded by the Honourable Senator Harder, P.C., for the third reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), as amended.

Hon. Elizabeth (Beth) Marshall: Honourable senators, I'll begin by speaking about safeguards.

Bill C-14 outlines numerous safeguards which are essential to prevent errors and abuse in the provision of medical assistance in dying. For example, "safeguards" are defined on pages 6 and 7, and they have been debated at length in this chamber.

We all recognize that the safeguards must be respected when medical assistance in dying is provided to another human being. Under clause 4 of the act, medical practitioners and nurse practitioners who receive requests for medical assistance in dying, as well as the pharmacists who dispense the substances, must provide certain information so that medical assistance in dying can be monitored, thereby ensuring that the safeguards have been met. After all, what good are safeguards if they only exist on paper?

Clause 4 also authorizes the Minister of Health to make regulations respecting the information to be provided by medical practitioners, nurse practitioners and pharmacists, and all that information is to be used to ensure medical assistance in dying complies with the requirements of the bill, including the safeguards.

Unfortunately, clause 4 of the bill will not come into force at the same time as the rest of the bill. As a result, medical assistance in dying will not be monitored to ensure the safeguards are actually being followed.

Paragraph 27 of the decision of the Supreme Court states:

> The trial judge then considered the risks of a permissive regime and the feasibility of implementing safeguards to address these risks.

Ultimately, the trial judge concluded:

> . . . the risks of physician-assisted death "can be identified and very substantially minimized through a carefully-designed system" that imposes strict limits that are scrupulously monitored and enforced.

Paragraph 105 of the Supreme Court decision again refers to "a carefully-designed system" that is "scrupulously monitored and enforced." Paragraph 29 of the decision further states that a "stringently limited, carefully monitored system of exceptions" would achieve Parliament's objective in the bill.

Honourable senators, the Supreme Court recognized that there must be safeguards to protect the vulnerable and that a carefully designed system must have stringent limits that are scrupulously monitored and enforced.

What we have before us is a system which does impose stringent limits, but without clause 4 and the accompanying regulations, the system will not be scrupulously monitored and enforced. In fact, will it be monitored at all?

• (1420)

Departmental officials have indicated that it may take 18 months before this section of the act comes into force. Honourable senators, it is not acceptable to wait 18 months before medical assistance in dying can be monitored. Accordingly, I will be proposing that the act be amended so that clause 4 will come into force 12 months after the rest of the bill comes into force, or on any earlier day that may be fixed by order of the Governor-in-Council.

Even though I'm recommending 12 months, I must say that I do have some concerns that the bill, if enacted, will actually operate without proposed section 4 for a 12-month period, and I do question whether the monitoring will be appropriate.

In addition, clause 4, page 10, line 11, states that "The Minister of Health may make regulations" regarding the information needed to monitor medical assistance in dying to ensure the legislation is being complied with and to ensure those provided with assistance in dying actually requested it. Also, page 10, line 32, states that:

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

I am recommending that the word "must" replace "may" in both of these instances so that regulations and guidelines are consistent among provinces and territories. Accordingly, line 11 would then read: "The Minister of Health must make regulations . . ."

Lines 32, 33 and 34 would read: "The Minister of Health, after consultation with representatives of the provincial governments responsible for health, must establish guidelines . . . ."

Honourable senators, my amendment will also clarify a third issue. The bill currently states that the information referenced in the regulations must be provided to the recipient designated in the regulations, which is, in my opinion, appropriate. However, the bill also states that if no recipient has been designated, then the information must be provided to the Minister of Health.

My amendment would require that a recipient be designated so that all information goes to one designated person. This would ensure that medical assistance in dying would be properly monitored by a designated recipient and would assure that those receiving medical assistance in dying received it in compliance with the act.

MOTION IN AMENDMENT

Hon. Elizabeth (Beth) Marshall: Therefore, honourable senators, I move:

> That Bill C-14, as amended, be not now read a third time, but that it be amended
>
> (*a*) in clause 4, on page 10,
>
> (i) by replacing lines 2 and 3 with the following:
>
> "ulations.",
>
> (ii) by replacing lines 9 to 11 with the following:
>
> "the recipient designated in those regulations.
>
> **(3)** The Minister of Health must make regulations",
>
> (iii) by replacing line 32 with the following:
>
> "**(3.1)** The Minister of Health, after consultation with repre-", and
>
> (iv) by replacing line 34 with the following:
>
> "health, must establish guidelines on the information to be"; and
>
> (*b*) in clause 11, on page 14, by replacing lines 12 and 13 with the following:
>
> "**11 Sections 4 and 5 come into force 12 months after the day on which this Act receives royal assent or on any earlier day that may be fixed by order of the Governor in Council.**".

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

Hon. George Baker: Just looking at this — and I haven't really examined it as I should, but on first glance, this is a dispute concerning the use of the word "may" and changing it to "must." Now normally, senators, you have a decision to make between using the word "may" and using the word "shall." In other words, the use of the words "may" and "shall" have come into discussion from time to time regarding legislation.

As I look at this legislation, I think the word "may" is appropriate. I'm going to cite just one case law to back up my argument for consideration in this amendment. This is the Manitoba Court of Appeal. I could quote the Supreme Court of Canada or other courts of appeal. This is *R. v. Neves* 2005 MBCA 112, paragraph 140. It reads this way:

> Thus, when seen in the context of the complete section, the word "shall" in s. 462.37(1) means "may" and the word "may" in s. 462.37(3) means "shall."

Then at paragraph 141:

> I do not mean that the legislative draftsman has made an error. The use of the word "shall" . . . does not really mean "shall" only when an alternative mode of proceeding is presented in subs. (3). . . . It is clear from past decisions of various courts that the word "may" can have a mandatory meaning, just as the word "shall" can have a permissive meaning . . . .

So we've often heard in committees of the Senate the Department of Justice justify the word "may" as really being permissive but meaning "shall." You can see from case law that these words are really to be dealt with in the context of the provision. I would suggest that the word "may" as it is used in these provisions really means "shall," but allows the provinces a permissive action, if you want to put it that way. But using the word "must" I think is rather extraordinary.

However, as I say, in the context of this legislation, in these particular sections, one cannot assume that the word "may" should be changed to the word "shall." In fact, the opposite I think is true.

Senator Marshall: I have a question for Senator Baker.

Senator Baker: Yes.

Senator Marshall: Senator Baker, if the word "may" remains — and I interpret "may" as "may" — how will we ensure that there is consistency from jurisdiction to jurisdiction?

Senator Baker: I think the permissive meaning of the word ''shall'' is intentional because we're talking about federal-provincial relations. I think that in the context of the regulations and the importance of the regulations, the intent of "may," as it was with the Manitoba Court of Appeal, is that it really means "shall."

Hon. James S. Cowan (Leader of the Senate Liberals): I have a question for Senator Baker. Is this a debate that only takes place between people from Newfoundland and Labrador?

Senator Baker: Well, I must say, I'm rather hesitant to be debating regulations with the former member from the Government of Newfoundland and Labrador who was the Auditor General.

Hon. Wilfred P. Moore: Senator Baker, would you take another question?

Senator Baker: Yes.

Senator Moore: I'd like to know the context of that Manitoba case that you cited, because I find that contrary to everything that was taught to me in legislative writing in law school.

Senator Baker: Well, it is within the context of a section of the Criminal Code that deals with criminal law and with the actions of one who is accused of a criminal offence. The use of the word "may" in 462.37(1) and 462.37(3, and the word "shall," in that particular case the trial judge said — and he was supported by the Court of Appeal — that in fact the use of the word "may" meant "shall" and the use of the word "shall" meant "may."

I'm simply saying that I recall having Deputy Minister Mosley before the Legal Committee many years ago. He is now a judge in the Federal Court. He explained the position of the government in legislation similar to what we have here today. It strikes me as very similar, and the word "may" was there, and we attempted to change it to "shall," but he convinced us all to leave it as "may" because what is intended is "shall" with a permissive interpretation.

• (1430)

Senator Moore: That's a new theory. To me, "shall" means that it shall be done. It's not that it might be done or, if we get around to it, we'll do it. "Shall" means that it shall be done, whatever the wording or the provision provides for. It doesn't mean you can do it some days and some other day you don't have to. You read off a section of the code, but you would have to know the exact context of what those particular set of facts were because I don't think that's right.

Senator Baker: I have never disputed the correctness of what you've stated. However, senator, this is not a question of using "may" and "shall," this is a question of using "may" and "must." You must admit, from your legal training, that it's not very often that you would see in legislation the word "must." You would see the word "shall."

Hon. Anne C. Cools: I wonder if Senator Baker would take another question on the meaning of the words "may," "must" and "shall."

Senator Baker: Yes.

Senator Cools: Honourable senators, I have always understood, Senator Baker, that a clause of this nature, being the minister may make regulations, is commonly used in many pieces of legislation.

Every piece of legislation usually has a clause that enacts the ability, the right or the duty of the minister to make regulations. I have always understood that it is the word "may" which gives Her Majesty's minister the widest possible range of duties and powers. In other words, it allows the minister to make a judgment in each and every particular case, whether or not this or that regulation is needed, or if any regulation is required.

I have always understood that the use of the word "may" gives the minister the highest degree of power possible to apply their best judgment and greatest level of competence respecting the needs for the regulations or the lack of them.

Senator Baker: I would have to agree, especially in a case like this where we have federal-provincial jurisdiction. I know the honourable senator wants to have the regulations clear and she wants to use the word "must," every province must do this or must do that, and I agree with her. There is no doubt that we need the regulations. Within the context of this legislation, we need the regulations.

The honourable senator is absolutely correct, when you're dealing with a piece of legislation that requires provincial regulation, because health is a provincial responsibility, that it is the normal process to use the word "may" instead of "shall," certainly instead of "must."

Hon. Jane Cordy: I probably should have asked Senator Marshall this. I thought she would expand further on the amendments when she introduced them. When I get them just a couple of minutes beforehand, I'm finding it hard to follow along to see how they would change the bill.

I won't get into the debate of "may" and "shall," although I do believe that using the term "must" — I think it was Senator Seidman in Social Affairs, in describing a bill, said that it's overly prescriptive. That's how I feel about the word "must," that it's overly prescriptive, particularly when we should be working in cooperation and consultation with the provinces, and not having a top-down process.

That's not even my question. My question is, for the second amendment, and I guess it's all one big amendment, when we look on page 10, the end of lines 2 and 3, when we stop after the "regulations," and it reads:

> . . . a medical practitioner or nurse practitioner who receives a written request for medical assistance in dying must, in accordance with those regulations, provide the information required by those regulations to the recipient designated in those regulations. . . .

Then it would be a period and it would be over. And excluding ". . . or, if no recipient has been designated, to the Minister of Health."

So what happens if there is nobody designated within it? There is nobody to send it to and it doesn't get sent? That's the end of it? The original document at least provides that if there is nobody designated as the recipient that it would go to the Minister of Health. If there is no designated recipient, what will happen?

Senator Baker: I think, within the context of these particular amendments, we all agree that the intent is correct and the statements of the honourable senator who moved it are correct. I think what the honourable senator is referring to are the ramifications if the regulations or the guidelines were not put in place. That's what is under discussion here. The honourable senator suggested we use the word "must" instead of the word "may," and it is restricted to the guidelines and the regulations.

Hon. Art Eggleton: I am following up on the question that Senator Cordy just asked you, and again staying out of the "may" and "must" and "shall" discussion.

The first part is about the recipient designated in those regulations, that a person must be appointed. At the bottom of page 9, the top of page 10, it says:

> Provide the information required by these regulations to the recipient designated in those regulations or, if no recipient is designated, to the Minister of Health.

Then it's the Minister of Health. If she doesn't designate anybody, then she gets it. Do you agree?

The Hon. the Speaker: Excuse me, Senator Baker, your time has expired. Are you asking for more time?

Senator Baker: Yes, please.

The Hon. the Speaker: Are you finished your question, Senator Eggleton?

Senator Eggleton: I have one more question. The one at the bottom of the amendment in bold lettering, sections 4 and 5, clause 11:

> . . . coming into force 12 months after the day on which this Act receives royal assent.

As the sponsor of the bill, can you indicate what the implications of that are? Usually regulations do come after. We don't usually set a time frame for them, but the honourable senator wants to set a time frame.

Senator Baker: I wonder, Your Honour, if the mover of the amendment could ask me a question and include in the question the answer to that question.

Some Hon. Senators: Oh, oh!

Senator Marshall: Yes, could you explain section 11 and give some insight as to whether this is usual?

Senator Baker: The honourable senator was supposed to answer the question of the honourable member to my left, instead of posing the question.

The Hon. the Speaker: What can happen here, Senator Baker, is we do not need to go to any kind of intricate process of asking questions to ask questions. If Senator Marshall wishes to enter the debate again, which she can under the proposed motion that we have already adopted in this house, she can enter the debate and then questions can be put to her again.

It's entirely up to Senator Marshall whether or not she wishes to enter the debate. For now, we're asking questions of Senator Baker, and I have two senators who wish to continue with questions of Senator Baker. Then we can go to Senator Marshall, if she wishes to re-enter debate.

Hon. Denise Batters: A brief question to Senator Baker, if he would accept one.

Senator Baker: Absolutely.

Senator Batters: Our Legal Committee pre-study came up with 10 recommendations, 5 of which were unanimous. I note that recommendation number 8 indicates:

> Ensure 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 (section 241.31(3) of the *Code*) (*adopted unanimously*).

• (1440)

Do you recall that? That was a pre-study comprised of Conservatives, Liberals, including you, and an independent.

Senator Baker: Do I recall it? Unfortunately, yes. However, that was the use of the word "shall," not the use of the word "must."

The Hon. the Speaker: Are there any other questions for Senator Baker?

On debate, Senator Marshall.

Senator Marshall: Thank you. My initial amendment did have the word "shall" in it. I did ask for the assistance of the law clerk and his officials in drafting the bill. When you look at the bill as it stands now, they don't use the word "shall"; they use the word "must." To keep consistency throughout the bill, it was recommended that, I use the word "must" as opposed "shall." For example, if you look at the safeguards on page 6, subclause (3) says "medical practitioner or nurse practitioner must," and that carries through. On page 8, subclause (7) says, "Medical assistance in dying must be provided," so the word "shall" wasn't used throughout the legislation. It was the word "must." It was recommended to me in drafting my amendment that I should really use the term "must."

The Hon. the Speaker: Senator Eggleton, do you have a question for Senator Marshall?

Senator Eggleton: Yes, I do. I will ask you the question I asked the sponsor of the motion.

What are the implications of clauses 4 and 5 coming into force 12 months after Royal Assent? I don't recall that being put into legislation before. Perhaps it has, but what makes you think that can be done in a 12-month period? Why do you feel that's necessary?

Senator Marshall: I feel it's necessary because of the significance of the issue that we're debating, and that's medical assistance in dying. Effectively we're euthanizing people, if that's the way to put it. I thought that it was really important.

The safeguards are all outlined, but clause 4 doesn't come in effect at all. It's a fairly good clause, so we'll be waiting for it to come into effect. It's going to outline and give a lot of direction as to what information has to be provided so we can track individual cases to ensure that the safeguards are in place and that the people receiving medical assistance in dying actually requested it and that there is no abuse in the system.

When I looked at clause 11, I saw clause 4 wouldn't come into effect. In fact, there is no date given. How long will we have to wait? I thought that it was really important that we establish a date.

I asked the Minister of Health the question when she was here in the chamber. I didn't think I got a good answer, so at a subsequent meeting of the Legal Committee I asked the Assistant Deputy Minister of Health, and she thought maybe about 18 months, but she wasn't definitive. I thought that 18 months is a long time to wait in order to get detailed prescriptive direction as to what type of information should be provided when people have received medical assistance in dying. So that's why I put in the 12-month time frame.

I noticed that when we were debating last night, we were talking about the independent review under clause 9.1 on page 13. There was some discussion about whether this would ever be done. We were talking about advance directives; I know it's here. Advance requests are referenced here and there has to be a study on it. We debated that last night, and my recollection is several senators were dubious that this would ever be done, and that's why they wanted to propose an amendment on advance directives last night. They weren't really sure that this would proceed as it is in the legislation.

I was concerned. Clause 11 just seems to hang out there. It's just going to come into force on a day to be fixed by an order of the Governor-in-Council, and that could be two or three years down the road. In the meantime, clause 4 is just sitting there. There is no direction being provided as to what information should be filed, and then when it is, what is going to happen to it? Who will track these individual cases?

Even disposal of the information is a concern. This is information on people. It's very confidential; privacy is an issue. Who is going to track this information and what is going to happen to it?

There was an article today on the CBC website. I know you can't always trust the media, but I want to read from it because it does raise the question. It says:

> At least 31 Canadians have reached out to their doctor asking for help to die since mid-January.
>
> But the number may actually be significantly higher . . . .

At least one province admits it isn't tracking medical assisted death requests, while another isn't ready to release the data on the issue.

It goes on to say that the Ministry of Health in British Columbia is waiting for federal legislation to lay out tracking guidelines.

The tracking guidelines are what clause 4 is all about. So there is one province out there waiting for some direction.

Also in Quebec, it says that:

> . . . medical institutions are compiling data on requests and death, and that information will be submitted to an independent commission on end-of-life care.

That's another area in clause 4. Who is going to get the information and what's going to be put on the death certificates? Are the death certificates going to say somebody died as a result of medical assistance in dying and also indicate their underlying illness? Or is it just going to be medical assistance in dying or is it just going to be their underlying illness or whatever?

It just seems like it's up in the air. "Prescriptive" is probably not the right word, but I think there needs to be more direction.

Clause 4 is just hanging there. I think what happened is that because of the June 6 deadline and the government was under pressure to get the legislation done, they focused on the first part of the bill. Then they thought, "We could hold on to the second part of the bill, and once we get the first part of the bill done by June 6, then we can take our time and do the regulations."

Senator Eggleton: Don't you think medical practitioners, people in the health care business, keep a lot of very detailed records about things that happen? In addition to that factor, which they are required to do by their colleges, by the provinces, et cetera, clause 4 does indicate quite a number of things under "Regulations":

> **(i)** the information to be provided, at various stages, by medical practitioners or nurse practitioners and by pharmacists, or by a class of any of them,
>
> **(ii)** the form, manner and time in which the information must be provided,
>
> **(iii)** the designation of a person as the recipient of the information, and
>
> **(iv)** the collection of information from coroners and medical examiners;

It goes on and on with quite a number of things. Don't you think that they would be collecting the raw data on these things right from the very beginning?

If there isn't anybody designated, the earlier part of the clause says it goes to the Minister of Health. So there is in fact information that will be assembled and information that will be provided to the Minister of Health.

Senator Marshall: Under the legislation right now, Senator Eggleton, clause 4 is not in effect. I know that you're saying that each jurisdiction is doing this, but we have no idea what each jurisdiction is doing. We don't know if they are doing it; and secondly, if they are doing it, we don't know if they are doing it consistently.

I will just mention British Columbia. They are waiting for their guidelines, and I'm sure they are probably collecting some information. But if you look at the guidelines from all the provinces and the territories that do have guidelines, nobody is talking about how it's going to be monitored. It seems like everybody is talking about the front part, about providing the medical assistance in dying, and nobody is talking about how it's going to be monitored.

The concern I have is that for individuals who avail themselves of medical assistance in dying, I would like to be sure that there is a system in place to track the information in order to make sure that they actually requested medical assistance in dying and that all the other safeguards provided in the bill were complied with.

• (1450)

I think that, as parliamentarians, if we don't do that, we're only looking at half of the issue. We're looking at the first half, and we're not looking at the second half.

The Hon. the Speaker: Senator Harder, question?

Senator Harder: On debate.

The Hon. the Speaker: Senator Cordy, question?

Senator Cordy: Thank you. I'll get back to the question I asked Senator Baker. It's related to filing information if you are a medical practitioner or if you are a pharmacist; it's on pages 9 and 10 of the bill. The language is the same in both cases. I'll speak about the pharmacist section where it says:

> Unless they are exempted under regulations made under subsection (3), a pharmacist who dispenses a substance in connection with the provision of medical assist-ance in

> dying must, in accordance with those regulations, provide the information required by those regulations to the recipient designated in those regulations . . . .

That is where you want to stop. The bill currently says, "or, if no recipient has been designated, to the Minister of Health."

Why did you choose to stop at the "recipient designated in those regulations"? What happens if no recipient is designated? Now, it would go to the Minister of Health. Are you saying if there is no recipient, that nobody would get the information? Nobody would get the information?

Senator Marshall: Once clause 4 goes into effect, somebody would have to be designated. They must be designated. Somebody has to be designated. The reason I stopped after regulations and said it would be a designated person is it says "or, if no recipient has been designated, to the Minister of Health," you have an either-or, or an or. The information could be going in several different places. So I put a period after "regulations" because I wanted it to be consistent, that the information would go to the same recipient. It wouldn't necessarily be the same recipient nationally, but it could be the same recipient provincially and territorially. Maybe it could be the chief medical examiner, for example. I just wanted to make sure that the information would all be accumulated in one place. I didn't want to end up in a situation where the minister has some information and the province has some information. I just wanted it to be all together in one place.

I would like to add that if this amendment went through, the minister could also be designated. My preference would still be to have one position or one individual designated, at least in each jurisdiction. But as a default, the Minister of Health could also be. My preference would be consistency and have one person.

The Hon. the Speaker: Question? Senator Joyal, question?

Hon. Serge Joyal: Would the honourable senator accept another question?

Senator Marshall: Yes.

Senator Joyal: Honourable senators, I voted in the committee in favour of the use of the word "shall," as my colleague Senator Baker did. I want to submit to you the following reflection. The section that you seek to amend under the heading "Regulations" on page 10 is within the purview of proposed section 241.31 of the Criminal Code. So what we are doing, in fact, is creating an obligation for the Minister of Health to issue regulations. It's an obligation recognized in the Criminal Code. It's very serious because if the minister does not conform to the obligation, in all of this subparagraph that is listed, the Minister of Health is, in fact, violating a disposition of the Criminal Code. For a medical practitioner, a nurse practitioner, a physician or anyone related to providing medical assistance in dying, that could become part of a defence, if the Minister of Health has not given effect to the obligation that we'll be creating there.

So here is an important element of distinction between the word "must" and the word "shall." With "shall," there is still an obligation, but there is not an obligation that could be sanctioned if there is a default or if there is a doubt over the way the minister has performed his or her obligation. What you have suggested is a similar wording of the use of the word "must" at page 6, and I quote it on page 6, under the heading of "Safeguards":

> Before a medical practitioner or nurse practitioner provides a person with medical assistance in dying, the medical practitioner or nurse practitioner must . . .

I totally agree with the use of the word "must" there because it is essential that all those safeguards be respected before medical assistance in dying is provided.

May I finish my question?

The Hon. the Speaker: The time has expired. Senator Marshall, are you asking for time to answer Senator Joyal's question? Granted?

Hon. Senators: Agreed.

Senator Joyal: I think the honourable senators are following very well the line of reasoning that I'm sharing with her.

In the case of a physician or nurse practitioner, one can easily understand why it has to be "must." The request has to be in writing. There have to be independent witnesses, not linked to the family or beneficiaries. There have to be two doctors and so forth. We understand why; it is because there are safeguards.

In relation to the obligation of the minister, we are not in the context of safeguards. We are in the context of monitoring how the system may work to collect data. Many of my colleagues who have been part of the Legal and Constitutional Affairs Committee know that we have, in terms of social policy, for instance, the DNA record. When we established a DNA registry, we established the obligation for a person found guilty to report their DNA and so on. The minister may make or shall make regulations to make sure that the registry is well kept and so forth.

By putting the obligation of the minister on the same footing as those who have the responsibility to dispense medical assistance in dying, that's where I feel it is problematic in its impact on the interpretation of the Criminal Code, in case there is a charge laid against one of the persons involved in providing medical assistance in dying — the pharmacist, the nurse practitioner and so forth. That's why I was at ease with the word "shall" in the way it has been interpreted by the court, and I'm less at ease with the word "must." I don't know if you understand how I see the interpretation of this. We're in the very context of the Criminal Code.

Senator Marshall: Thank you, Senator Joyal. You started off your question — I'm paraphrasing, and I hope I have interpreted you correctly — talking about how serious it is to use the term "must" or even the word "shall." As I said, initially, I had the word "shall" in there. That was the recommendation of the Legal Committee. I gave a lot of thought to it because I know it's serious to say "shall" or "must" for the regulations. It's a serious issue, medical assistance in dying. You are talking about the life and death of an individual. So I did think very long and hard about it. And as I said, initially, I did use the word "shall." I was

advised that the word "must" would be a more appropriate word. That's the reason I put forward the amendment, and that's how it ended up with this wording.

But do I feel very strongly that if clause 4 is coming in at a later date than the rest of the legislation, I am very concerned about it. It's the safeguards. I want to make sure that the safeguards are working. I'm especially concerned that individuals who receive medical assistance in dying actually requested it and that all the other safeguards were in effect.

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

Hon. Peter Harder (Government Representative in the Senate): Thank you. If I may, I shall speak to the second portion, and I must disagree. I'm going to be brief. I just want to recall to the chamber the conversation with the minister where she discussed why she was reluctant to engage in a time frame.

• (1500)

It is very rare, if not unique, for a Minister of Health to be referenced in the Criminal Code. The culpability associated, as Senator Joyal has described, is very significant, and the relationships that are required to collect this data between federal, provincial and territorial governments are significant.

The minister reminded us that these negotiations are under way, but it would be odd for us to have culpability in the Criminal Code accorded to the Minister of Health to produce the appropriate regulations within a particular time frame.

The commitment from the minister that I heard was clear: to do this as quickly as possible. Indeed, the work with provincial and territorial governments is under way. I don't think we need question the goodwill of the minister with due diligence and dispatch, but we should be very careful about using the Criminal Code to compel and to hold culpable ministers and, indeed, all officials involved in this amendment.

Therefore, while I cannot with much passion defend the wording, I wanted all to be aware of the reasons why, and why I believe the original intent is appropriate.

Hon. David M. Wells: I have a question for Senator Harder.

Where the minister is compelled — and you make reference to that, Senator Harder — if the minister did not do this within the time frame specified, would you see that as a violation of the law or would there simply be a void through their lack of action?

Senator Harder: Of course, it depends on what the law says. It clearly would be a significant point of debate with and amongst provincial, territorial and federal leadership on this issue. It would certainly be a public issue as the implementation of medical assistance in dying proceeded.

Frankly, I cannot conceive that within a reasonable period of time all authorities involved wouldn't want to ensure there is an appropriate set of guidelines in place to capture the data necessary.

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Colleagues, I like this amendment. I think it's appropriate, and I plan to support it. I will briefly explain why.

If we do not pass this amendment, then the Minister of Health is not obliged to make regulations. They can be left to the varying policies adopted by the provinces, assuming the provinces adopt policies. I don't think that's an appropriate way to deal with the Criminal Code in matters of life and death.

The Criminal Code is federal law; it applies across the country. It seems to me, therefore, necessary for us to have commonly formulated — that is, federally mandated — regulations across the country to respond to the fact that the same law applies across the country.

This does not preclude the possibility of federal-provincial negotiations reaching agreement, but what I do want to preclude is the possibility that the federal government might, in the end, say, "We'll just leave it to the provinces because it's so complicated, and we do have so many other important things to do."

It is not unusual for federal authorities to gather statistics on matters concerning the Criminal Code. On the contrary, if you ever stop to look at the list of material that Statistics Canada collects every year in connection with the Criminal Code, you would be astounded at the level of detail that those statistics concern. They don't just relate to provincial governments; they go right down to municipal levels.

I see no inherent reason why we should not have an obligation for national statistics to be collected on this extraordinarily important matter. I'd rather dispense with many other statistics than dispense with these.

There is a terrible tendency, once a law has been passed and disappears out into regular life, for details to fall by the wayside. They must not be allowed to fall by the wayside in connection with this supremely important matter.

I also support the provision of a deadline. It seems to me that a year is ample time, with proper application of effort, for good regulations to be adopted. If there is no deadline, things drag on.

On another matter, the other day in the Legal and Constitutional Affairs Committee we heard terrific witnesses from the Health Department, very knowledgeable and dedicated people. I found them extremely impressive. We were discussing a matter of regulation. It was important, but not as important as this, in my view.

We asked how long it would normally take for a regulation to be drafted and adopted. May I say that the minister may have been rather optimistic when she said 18 months, because the answer was that, normally, it would take two and a half to three years for the regulation to go into effect. Only then would the

data start to be collected, which would, presumably, be feeding into these famous studies that we're promised will be conducted. I just see this thing stretching out for a decade or more.

We asked the civil servants from the Health Department if the same regulations were to be drafted on an expedited basis — because they do this on occasion — how long that would take. The answer was three, three and a half months for the same matter.

I'm not saying anybody drags their feet. On the contrary, these people are working so hard to do a conscientious, proper and thorough job that by the time they have consulted seventeen ways from Sunday, two and a half or three years have gone by.

I'm not blaming them. It is their job to be careful, prudent and thorough. But if we do not impose a deadline here, they will be careful, prudent and thorough, and it may drag on for much longer than would be in the public interest.

Therefore, I think we do need national statistics, and I do support the creation of a deadline.

On the matter of "must" and "shall," I'm a traditionalist. "Shall" has served us well over the years, but Senator Baker can produce a court decision to create confusion or clarity on any subject known to man. He did tell us that there has been some confusion created by at least one court ruling. I would wish no confusion on this matter.

Even though, in general, I would go for "shall," I will bow to the use of the word "must" in this.

However, I will draw to your attention, colleagues, one last interesting element of this bill, which refers to a parliamentary committee which is to review the provisions enacted by this act. It looks as if the drafters just couldn't bring themselves to say to a bunch of parliamentarians, "You must do something." Parliamentarians don't like being told they must do something.

The phrase in this case is, "The committee . . . is to review" these provisions, which I find is a nice little euphemism.

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

Hon. Senators: Question.

• (1510)

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

The Hon. the Speaker: Accordingly, the motion in amendment is adopted, on division.

(Motion in amendment agreed to, on division.)

The Hon. the Speaker: Resuming debate, Senator Lankin.

Hon. Frances Lankin: Honourable senators, I will speak briefly in anticipation of moving an amendment, and I would ask the amendment be circulated at this time so you have an opportunity to see it.

I'm fearful to tread here because my amendment has the word "must" in it. As I will point out to you, the part of the bill that I am amending also has the word "must" in it; so I think I'm on safe ground, but one never knows.

Honourable senators, we have spoken often and with great passion in this chamber about the safeguards we wish to see in this important piece of legislation. We have had debates about the constitutional intent of the *Carter* decision and how, through the amendment that was moved during our first evening of debate, we sought to ensure that all Canadians were guaranteed accessibility under the terms set out by the court; but we also have spoken, moved and approved amendments along the way that seek to put in place, as part of the complex regulatory regime that the government is responsible for bringing forward, protections for vulnerable persons.

The bill itself anticipates that. As you know, clause 9.1, as the bill was amended and sent to us from the House of Commons, reads:

> The Minister of Justice and the Minister of Health must, —

— that's the word there; they've got it in the bill —

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

So the drafters of this legislation — the government and the House of Commons — believe there are further protections that should be part of a complex regulatory regime for which they think more study needs to happen. We've already put protections in the bill about the number of physicians that must be involved, the process, and timelines and about the clarity and the eligibility for giving consent. These reviews speak to some areas which, as the minister stated, were not anticipated by or spoken to in the *Carter* decision, and in which the government is of the view that further protections may well be beneficial to Canadians and should be embedded in this legislation but that study is needed.

As we were going through the discussions, I was struck that the reviews dealt with very specific categories of people, but much of the concern expressed in this chamber by senators opposed to, if I may colloquially call it, "the Joyal amendment" was that it brought in a large group of Canadians for whom natural death is not reasonably foreseeable and there were no counterpart protections for that.

As you know, Senator Carignan moved an amendment which was an attempt to bring in some protections. I supported it because I believe there are vulnerable persons within that larger category of individuals for whom natural death is not reasonably foreseeable, but that amendment failed.

The amendment that I will be proposing today and seek your support for will create a fourth area of study under this one or more independent reviews. It will look to vulnerable persons within that group for whom natural death is not reasonably foreseeable who have, by virtue of an earlier amendment, been brought into this legislation. Even if that amendment doesn't stand when it goes back to the House of Commons and is considered, it is my belief that there are vulnerable persons who require further protection and that we should be studying that.

I give specific examples of people from parts of the disability community. This is certainly not a position taken on behalf of all persons with disabilities. That would not be necessary. But within that community there are a number of people who would describe themselves and/or their colleagues within the community as "vulnerable" because of a range of factors such as social conditions, family conditions, socio-economic conditions and social isolation.

When I was involved in the legislating of capacity and consent-to-treatment legislation in the province of Ontario and substitute decision making, I remember being very concerned on behalf of people with disabilities and in particular another group of Ontarians, people with mental illness, that they may not be given the opportunity to express their own advance directives, that they may be challenged and deemed to not be competent to provide an advance directive.

We established a tribunal regime, a consent panel process for people to come forward and challenge their own capacity or the capacity of someone else to be giving these directives. That panel is made up of a combination of psychiatrists, doctors and laypersons. It's an opportunity to give a full assessment.

By the way, I'm under the opinion, at least in the province of Ontario, that that regime stands, and that advance directives on this legislation are completely consistent and available to people under that legislation, but that is not true in every jurisdiction in this country.

My concern was that someone who is competent to make this decision may be challenged by someone else and that the advance directive wouldn't stand or hold ground if they were challenged on the ground of competency. In fact, that happened often around issues of wills. Post-death, was a person competent to change the will?

We were bringing in a regime of advance directives with respect to financial matters and health matters. They were often called "living wills" at that point in time, as Senator Jaffer referred to last night in debate. We wanted to ensure that there was an opportunity to assess and assure competence so that further down the road challenges could not be made and substitute decision makers could not change the stated will of an individual in an advance directive.

In a sense, what I'm bringing forward now as a concern is the flip side of this. It is the fact that people in vulnerable situations may find themselves, either due to coercion or a sense of no alternative or hope, making a request under this legislation under circumstances in which their request could be questioned as to its voluntariness.

That's the concern that a number of people who have joined together in a coalition representing a large part of disability advocacy communities have brought forward before the Legal and Constitutional Affairs Committee and in meetings on the Hill as they met with MPs and senators.

The amendment I will put forward speaks to this by creating a fourth area of review where the social conditions or social determinants of health may add to the suffering of a vulnerable person and/or may bring into question the voluntariness of their request.

This does not create a process within the legislation. This is an area of study within the review section of clause 9.1. If this amendment passes, there will be a complementary amendment to the preamble of the bill, because these words are repeated, but that will come later in the day.

I hope you now have it before you. I did circulate this in advance by email a week ago. At that time, the amendment stood for both the preamble and 9.1, and for the reasons I stated regarding the preamble and how we have organized the debate, that amendment will be coming later.

• (1520)

MOTION IN AMENDMENT

Hon. Frances Lankin: Therefore, honourable senators, I move:

That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 9.1, on page 13,

(*a*) by replacing line 21 with the following:

"**9.1 (1) The Minister of Justice and the Minister of**"; and

(*b*) by replacing lines 26 to 28 with the following:

"**sistance in dying, to advance requests, to requests where mental illness is the sole underlying medical condition, and to requests where social conditions and**

> **social determinants of health contribute to a person's suffering and may call into question the voluntariness of their request."sistance in dying, to advance requests, to requests where mental illness is the sole underlying medical condition, and to requests where social conditions and social determinants of health contribute to a person's suffering and may call into question the voluntariness of their request.**
>
> **(2) The Minister of Justice and the Minister of Health must, no later than 18 months after the day on which a review is initiated, cause one or more reports on the review, including any findings or recommendations resulting from it, to be laid before each House of Parliament**."

Thank you very much.

The Hon. the Speaker: It is moved by the Honourable Senator Lankin, seconded by the Honourable Senator Omidvar:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 9.1, on page 13 —

May I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: Are there any questions for Senator Lankin? If not, on debate, Senator Cowan.

Hon. James S. Cowan (Leader of the Senate Liberals): Briefly, colleagues, I think this is a very wise amendment. I tend to support it. I think, as we heard last night, while there's general support for the issue of advance requests for Canadians and we've heard from many Canadians who wish to avail themselves of that service, there are legitimate concerns, many of which were expressed last evening. I think that the idea of having this studied within a strict time frame so it's not open-ended, so we know when the study begins, and we know, more importantly, the end date by which reports will be laid before both houses of Parliament.

I also think that Senator Lankin raises a good point in her amendment by broadening the scope of the study to include social conditions and social determinants of health. I think many of us have heard that there are real concerns about whether people would choose to access this service for reasons other than health reasons and because of underlying social determinants, which I think Senator Lankin correctly points out might put in question the voluntariness of the request itself.

I think it's entirely appropriate that the study be expanded to include this fourth category, and I also think that we would be wise to put a limit on the length of the study so that we can ensure that we do in fact have a report response, which if the report indicates that further legislative intervention is required, then that would be forthcoming. I think, as Senator Harder pointed out recently — I'm not sure exactly when — we can't anticipate what legislative intervention might be necessary until we see the results of the studies.

I repeat the point that I made last night: Without some parameters or some timelines, it's unlikely that parliamentarians would willingly take up the cudgels and address these issues. So I think Senator Lankin has put before us a useful amendment and I commend that to colleagues for their support.

Hon. Linda Frum: Senator Cowan, I was a little slow on my feet for Senator Lankin but seeing as you agree with her position on this, I'm wondering if in embedding this demand into the legislation we're also embedding an idea here that access to physician-assisted death ultimately belongs only to Canadians of means. If we are asking the question about social conditions and the vulnerability of people because of their socio-economic background, in effect, that we are creating a new level of discrimination that we inadvertently, accidentally, out of the best of intentions — I understand exactly what Senator Lankin is concerned about and her concerns are well-founded.

Equally, if you put this language into the bill, you do open up this question that there is some kind of socio-economic standard that might need to be met in order not to be deemed too vulnerable to access physician-assisted death.

Senator Cowan: Thank you, Senator Frum. Perhaps if you could just harken back to the discussions and the evidence we had before our joint committee and there were, I think, a number of witnesses who appeared before — Senator Ogilvie may wish to speak to this — our committee who were opposed to physician-assisted dying, as it was then referred to, on the basis that if you could address these underlying social and economic conditions, there would be no need for that. Now I believe the committee didn't accept that evidence, but there was a concern, which I think most of us or all of us on the committee took seriously, perhaps I could put it that way, that this was something that needed to be addressed.

I think that Senator Lankin makes the point that if there is a way, if there is some additional protection or assurances that could be given to people who are concerned about this service, that that would be a good thing to do. I do support that. I'm not sure that I follow exactly your point about discriminating here in a way, or creating different categories, but I think I'll just leave it at that. There are concerns and I think that this is a proper way to address them. As I said before, I think the bill as it stands now contains sufficient safeguards. I don't see the need for additional safeguards, but I do respect the views of those who do, and that's why I supported Senator Carignan's proposal.

If we could have these studies done in a timely manner, I believe it would demonstrate that we can proceed at least as far as allowing advance requests, if not getting into the other more questionable areas.

Senator Frum: Just if I may be a bit more clear, then, it seems to me that at the heart of this study is really the question of if people who are below a certain socio-economic standard are accessing medically assisted death, we should have concerns about them separately from others. Of course, I totally understand again the genesis of that concern, but that is what such a study would boil down to, it seems to me, is assessing people by their economic standard and then deciding that certain people who are below a certain economic level, their choices must be questioned and people above a certain economic level, their choices won't be questioned, or the care and concern that the physicians and the safeguards that are being followed for those above a certain level are not to be questioned but the safeguards for those below a certain level, well, those safeguards aren't adequate. So it introduces an element of distinguishing between Canadians by

their economic status.

The Hon. the Speaker: Excuse me, Senator Cowan.

Honourable senators, I understand that Minister Freeland has been temporarily delayed by business in the House of Commons. It is now 3:30, the time for Question Period. I ask the consent of this house to continue debate until the minister arrives.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Cowan: Thank you, Your Honour. Senator Frum, thank you.

Again, I go back to the hearings that we had in the joint committee and there was evidence that was presented to the committee that we all agreed that the request for this service has to be voluntary. Nowhere in this debate anywhere — contrary to what we might receive in our email basket every day — is there a suggestion that we're bringing in a regime that would involve substitute decision makers. That is, where somebody will be making a decision about somebody else. This is about personal choice about autonomy. I think we are all agreed on that.

• (1530)

We heard a body of evidence from some people who were very concerned that people might be pressured into requesting medical assistance in dying and that if you dug down into that and got behind it — as I would think physicians and nurse practitioners who would be assessing this would — that that would be a normal part of the evaluation of the patient, namely asking, exactly why are you asking for this? What alternatives are available? Have you tried palliative care? This is what Senator Eaton has spoken about and that is something that we all care about. What is the situation at home? Do you have caregivers? All of that would be considered I think as part of a normal practice. I think that would be done in any event. However, if a study were done that would allow individuals who have that concern to express their views, I think it would go a long way to alleviating a concern, which I don't hold myself, but I respect the fact that many people do. I don't think it can be disregarded. I think this is a good way to do it.

That's a long, convoluted non-answer to what was your very clear question, but it's the best I could do, Senator Frum.

The Hon. the Speaker: Senator Ogilvie, question?

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

Senator Cowan: Yes.

Senator Ogilvie: As I read this, the last part of the first section of this amendment refers to calling into question the voluntariness of their request. Am I correct in understanding that that deals with the overall issue of a person suffering from an irremediable medical condition, a person who is a competent adult and who is suffering intolerably under the circumstances? Is that your understanding of what this refers to?

Senator Cowan: It is, senator.

Senator Ogilvie: Would you accept another question?

Senator Cowan: Of course.

Senator Ogilvie: Thank you. It would seem to me that the language then gives the protection to the individual under the circumstances in which that determination is to be made, according to the conditions described in the bill, in the law, with regard to the two medical practitioners, et cetera.

I'm wondering, senator, if you could further explain to us how the question of voluntariness arises under that determination. That is, an individual suffering from an irremediable medical condition, a person who is a competent adult person and who is suffering intolerably under the circumstances.

Senator Cowan: I don't know that I can add much to the comments I said in response to Senator Frum, but I think you will agree with me that we did hear at the committee some concerns expressed about how we ensure that the person who is requesting medical assistance in dying is not doing so as a result of other pressures, such as those arising out of the social and economic conditions in which they live.

Now, I think we would agree that that would be part of the ordinary review process and that it would be identified in the implementation of the safeguards which we have already put in the bill. But this is certainly a concern that I recall being expressed. To have it addressed in a study within a reasonable period of time seems to me like a legitimate thing to do.

QUESTION PERIOD

Pursuant to the order adopted by the Senate on December 10, 2015, to receive a Minister of the Crown, the Honourable Chrystia Freeland, the Minister of International Trade appeared before Honourable Senators during Question Period.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, I understand the minister has arrived. We will now move to Question Period. Following Question Period, we will return to Senator Cowan's time to continue questions and debate.

Honourable senators, I wish to welcome the Honourable Chrystia Freeland, P.C., M.P., Minister of International Trade. She is with us today to take part in proceedings by responding to questions relating to her ministerial responsibilities.

As was the case in past weeks, I would ask colleagues to limit themselves to one question and, at most, one supplementary

question to allow as many senators as possible to take part in Question Period.

On behalf of all senators, minister, welcome. Please take your seat.

[*Translation*]

MINISTRY OF INTERNATIONAL TRADE

TRADE PROTECTIONISM

Hon. Claude Carignan (Leader of the Opposition): Hello and welcome, Madam Minister.

The North American Free Trade Agreement obviously had an unbelievably positive impact on the Canadian economy. The agreement created many opportunities for our exporters and attracted a lot of foreign investment.

We know that the American primaries have shown that protectionism is growing among both Democrats and Republicans, and that the two presidential candidates who will be running against each other in November have strongly criticized NAFTA at times.

I would like to know what your plan is to counter this growing wave of U.S. protectionism.

Hon. Chrystia Freeland, P.C., M.P., Minister of International Trade: First, I would like to say that it is a great pleasure and an honour for me to be here in this chamber for the first time. Thank you for inviting me.

That is a very good question, Senator Carignan. I have been doing a lot of work on this issue with our ambassador in Washington, David MacNaughton, who was here yesterday. The wave of protectionism we are seeing in the United States may be dangerous for Canada since the United States is our biggest market.

I believe that Canada will have to wage war against U.S. protectionism, and one way of doing that is by continuing to maintain a close trade relationship with the United States. I hope that honourable senators will be able to help us in that regard. We have a close relationship with people of influence in the United States, but it will be very important to maintain that relationship and to be prepared for what might happen here after the U.S. presidential election.

This relationship is very important to me and our international trade policy. I believe that this wave of protectionism is no accident. Many people in the United States, but also in Europe and even here in Canada, are worried about the 21st century economy. I believe that we need an evolving international trade policy.

• (1540)

We need to talk to Canadians, and our policy must be very open and transparent. That is why I believe that consultation is important. We also need to focus on small- and medium-sized businesses to reassure people that international trade is not just for large corporations, but rather for the entire country.

I apologize for my French. I promise to work on it.

Senator Carignan: I would like to congratulate you on the quality of your French. I am impressed. I am also impressed that you are using such strong expressions as "waging war against American protectionism." I would have liked to see the Minister of National Defence use that kind of language when he was talking about the war against ISIL, but he didn't.

We all know that our economy will be hit hard if the Americans close their borders to our products. What do you plan to do to ensure that our two biggest trade pacts, the free trade agreement with Europe and the Trans-Pacific Partnership, are concluded quickly, so that our exporters can find new market opportunities and be less at the mercy of the outcome of the American presidential campaign?

Ms. Freeland: Thank you for the question. I will begin by talking about our agreement with Europe, better known by the acronym CETA. It is a very important and historic agreement. I am very proud of the work we have done to encourage the implementation of this agreement.

As you are well aware, the agreement was concluded, theoretically, in September 2014. However, there has been no progress since that time. As we have already said, Europe is experiencing a wave of protectionism. Civil society in Europe has raised some questions about CETA, particularly regarding investments.

I talked about our progressive international trade policy. The changes we made to investments are the first step. These changes and policies make it possible for Canada to remain a country that is open to migration and international trade at a time when many countries around the world, such as the United States and certain members of the European Union, want to close their borders.

We made two changes with respect to investments. The first was to underscore the right of the state to make regulations. One of the criticisms of the investor-state dispute settlement mechanism was that this system could limit the rights of the state. We have corrected this situation.

Another very important change we made was to the arbitration process. With the Europeans, we created a much more open process with more independent judges. I am optimistic and I believe that thanks to these changes we made to the investment provisions, CETA will be signed this year and ratified by the European Parliament next year. That will be an historic and strategic moment for Canada.

[*English*]

DRUG PRICES

Hon. James S. Cowan (Leader of the Senate Liberals): Welcome, minister. My questions have to do with drug prices.

As you know, both the TPP and CETA call for an extension of the terms of drug protection. That was estimated by the previous government to be something that would add billions of dollars to what Canadians would pay for health care costs, and this at a time when our drug prices are already at a high level and when the level of investment, research and development by our pharmaceutical companies is declining, as I understand it.

Therefore, it seems that this is kind of a perfect storm, with rising prices, extension of drug protection or patent protection, and declining investment in a very important part of our economic fabric. Could you tell us what your government is doing to deal with that situation, which is of concern not only to individual Canadians but also to the provinces, which ultimately bear these costs for drugs?

Hon. Chrystia Freeland, P.C., M.P., Minister of International Trade: Thank you very much for the question, senator. It is an important question — one that both I and, in particular, the health minister have been devoting quite a lot of time and attention to. I will perhaps focus my remarks on CETA because that is the deal where we can see a path to ratification more immediately. As everyone here knows, the international politics around TPP are a lot more complicated, and there are 12 signatory countries.

I'll start by underscoring something that is probably evident to everyone here, which is that in any trade agreement there are trade-offs at the negotiating table. Our government was not in office when that particular chapter was negotiated, but it's understandable to me that our negotiators landed where they did.

An important point, which I think may not be fully understood by Canadians, is that our experts believe — which I agree with — that potentially higher prices as a result of CETA would only come into effect eight years after CETA comes into effect, so there is time for us to make any necessary policy adjustments.

Another important point when it comes to CETA is to appreciate that this was a deal we made with Europe. We have agreed with Europe in some respects to amend our standards to European levels as part of our agreement. It is important to note, however, that despite having had different standards, we currently pay, in pre-CETA Canada, higher prices for prescription drugs than most European countries. When we look at this issue, we need to realize that the cost of prescription drugs is an important element but that there are other ways of getting at this, which our European friends have demonstrated through their action to keep prices down.

I'm not the health minister, so I won't speak about the work that Minister Philpott is currently doing on prescription drugs, but this is an issue that she is passionately engaged in. She is working on ways to bring down drug costs in Canada. There are trade implications, so she and I work closely together to ensure that when we're entering into any trade agreements, her plans can be protected by those agreements.

CANADA-KOREA FREE TRADE AGREEMENT

Hon. Yonah Martin (Deputy Leader of the Opposition): Minister, other bilateral trade agreements are ongoing in Asia, and you talk about the complexity of TPP.

• (1550)

As you know, the previous Conservative government concluded and ratified the historic Canada-Korea Free Trade Agreement, and Korea is the first and only country in Asia with which Canada does have an agreement in force. On the first day the FTA came into force, January 1, 2015, Korea eliminated duties on 81.9 per cent of Canadian tariff lines; and once the agreement is fully implemented, 98 per cent of Canadian tariffs will be eliminated. Being well positioned in this region against our competitors is critical for Canada's long-term economic success, but this can only be completely realized by the full implementation of the agreement.

Minister, would you describe how in the past seven months of your mandate you have built on the work of your predecessors to identify ways to accelerate the full implementation of the agreement?

Hon. Chrystia Freeland, P.C., M.P., Minister of International Trade: Thank you very much for the question. Actually, I was in Seoul I'm going to say two weeks ago, but it could be three weeks ago. I'm losing track of time a little bit with my diary these days.

I supported the free trade agreement with South Korea when I was trade critic in opposition. It's a very important agreement for Canada. I might disagree with you slightly about how it puts us in a competitive position because the reality was, as can be the case with trade agreements, that we actually concluded our agreement after the U.S. and Australia did, so in some ways our exporters are finding themselves playing a little bit of catch up in Korea.

As you also know, very early on our beef exporters ran into some of those phytosanitary standards issues, which was a significant blow. I had some conversations yesterday with the trade minister for Alberta about this precise issue. He like me is Ukrainian-Canadian, and I'm originally from Alberta, so I'm a big supporter, as a trade minister but also just as a human, of our beef industry. We were talking about some work that we can do together to promote Canadian beef. As I'm sure you know, there is a huge market for beef in South Korea, often for some of the cuts that are less popular here, so I see tremendous opportunities there.

When I was in Seoul, I think it was a fortnight ago, I was also there with Christy Clark, the Premier of B.C. We did an event together with some B.C. exporters, so we see tremendous opportunities for that province as well.

More generally, an avenue of our broader relationship with South Korea that I think we can really explore is that they have tremendous interest in our educational system. I met with the Minister for Science and Technology, who is a former academic. It was a nice meeting because very many of my trade meetings are about some tough negotiations, and I went into the meeting with him, and he said, "We think what's happening in Canada is great. What can learn from Canada, particularly in my space?" I started

talking to him about the co-op program and the University of Waterloo, and he actually turned his notes around and showed them to me and circled a phrase, and he said, "This means 'University of Waterloo co-op program' in Korean." So I think there are some real opportunities for higher-education cooperation and maybe also getting more Korean students here.

Senator Martin: Building on what you just said, I was aware of your trip to Korea. Specifically, what were some of the outcomes that you did achieve? You talk about some of those areas where there is potential for cooperation, but are there specific programs, initiatives that you are expanding and/or initiating or that are being developed? I'm interested in the seven months that you have been minister. I understand there are many other interests and activities, but specifically, this is an agreement that is in force, and so what have you achieved in this time? And from the Korea trip, what specific outcomes did you bring back to Canada?

Ms. Freeland: As I said, the importance of the South Korea trading relationship is manifest in the fact that in our first seven months one of the trips that I did make was a visit to South Korea. In addition to talking with our exporters and helping them to promote their products in South Korea, I talked to many firms — I'm not going to say the number, but maybe a half dozen, probably more than that — and had many meetings with South Korean companies. Of these companies, one is very actively investing in Canada right now and is thinking about expanding that investment. That was an important meeting to have to give them a direct contact with our new government.

Another company has a joint project in the environmental space with a Canadian company, and again it was very important to talk to them about our focus on clean tech. That's precisely the area that they are working on. As you may know, because of the geographic position of Korea, developing fuel cells is a focus of their government, and there are particular opportunities.

Finally, I spoke with a Korean company — I won't name them because they haven't finalized what they are doing — one of whose co-founders is Canadian, that is thinking of establishing significant operations, including maybe moving its headquarters — it's a tech startup — to Canada.

INVESTOR-STATE DISPUTE SETTLEMENT

Hon. Janis G. Johnson: Welcome, Minister Freeland. The Senate Foreign Affairs and International Trade Committee has been studying the current state of international trade agreements, both on the multilateral and the bilateral side. One issue that has consistently come up is that of investor-state dispute settlement mechanisms. We have heard from all sides of the issue, and many questions remain.

Given that Canada and the European Union agreed to amend the CETA's ISDS provisions in order to make it more transparent, will we continue with this more open model in future trade agreements, TPP notwithstanding?

Hon. Chrystia Freeland, P.C., M.P., Minister of International Trade: Thank you very much for that highly informed and really important question, senator. I maybe will elaborate a little bit on what we have done with the investment chapter in ISDS in CETA. I worry that my poor French might have meant that my earlier explanation lacked precision.

I am very proud of and very pleased with the new investment chapter we have negotiated in CETA. It is transformational in two basic ways. One, it strongly reaffirms the state's right to regulate and ensures that in no way is it trumped by the trade agreement. This in a way is coming back to first principles of ISDS.

ISDS, investor-state dispute settlement, was always meant to protect foreign investors from discrimination because they were foreign. It was never meant to be on top of domestic law, and so affirming that state's right to regulate on areas like the environment, on areas like labour, is something that we do more strongly in CETA than in any other trade agreement I'm aware of. I think this will set a new international standard.

The second thing that we have done with ISDS in CETA is create a new, more transparent system of arbitration. The arbiters on the panels will be pre-appointed and will sit on a roster of arbiters. While they are on that roster, they will not be able to be in commercial practice at the same time. So that's the real ethical change. It's an important one.

I don't think we would be very pleased if our judges could go from the commercial court to private practice and back to the commercial court, so I think this is really significant.

Also, the judges who sit on arbitration panels, if there is a case, will be selected at random, rather than the previous practice, according to which you had the country choose one, the company choose one and then a third by agreement. So that's another guarantee of objectivity and independence.

As we were saying in our conversation about protectionism and the rising popular tide of protectionism, I do not think it is a partisan issue to be concerned about protectionism.

• (1600)

I think that we're very lucky and quite unique in Canada to have national cross-party support for being an open society in all of its respects, when it comes to trade and immigration. That is going to be a huge competitive advantage for our country to maintain that support.

I believe very strongly that an essential way to maintain that support is by addressing the legitimate concerns that some people have about trade agreements, by making clear to people that trade agreements are what I think they can be, which are agreements that benefit the whole of society, agreements that actually ensure stronger environmental protections, stronger labour protections, agreements that are great for small- and medium-sized companies, too. That's a very important core principle. I see our ISDS changes in CETA as an important step in that direction.

We are working with the Europeans. This is an important path forward for Europe as well. They need a partner. They can't have new trade ideas that are real without another country that is

doing it with them. They are very excited about Canada as a partner in developing this progressive trade agenda.

We have begun talking to other countries. Our trade agreement with Chile is up for modernization. Chile is quite similar to us in that structurally it is a trading nation and a society that very much believes in trade, but like us, they have a progressive government right now. I've spoken with Heraldo Muñoz, the Minister of Foreign Affairs, about bringing some of the ideas we have in CETA into our next generation agreement with Chile. Work on that area is just beginning, but I'm very excited about it.

We are also offering technical guidance and briefings to our Mexican partners on what we've done on CETA. They are a very important partner for us. I'm very excited that we're having a visit from the Mexican president coming up, and they are negotiating with the European Union now. They're keen to learn what we've done and work together.

BUY NORTH AMERICAN

Hon. Wilfred P. Moore: Minister, thank you for being here. I was interested in your last comment with regard to Mexico. Senator Johnson and I were part of a Canadian delegation that was in Washington in December 2014 for the first ever Canada-U.S.-Mexico interparliamentary meeting, discussing trade, discussing "Buy North America."

In your discussions with the U.S., is that on the table? Are we trying to advance that? We've got a huge marketplace within our own continent. Is that something you're looking to advance? If you are, what kind of headway are you making?

We're going to be there next week, by the way, so if you have some ammunition to give us, please do.

Hon. Chrystia Freeland, P.C., M.P., Minister of International Trade: You're going to be in Washington?

Senator Moore: We're going to be there next week as part of a delegation dealing with Senate counterparts.

Ms. Freeland: First of all, let me thank you for that work and for the trip that's coming up.

Going back to the question with which we began, I can't overemphasize the importance, particularly now, of contacts on as many levels as possible between Canada and the United States, in particular.

One of the central qualities of the U.S. is that it's a country with many different levels of government and relationships. You, as senators visiting American legislators, particularly the Senate and having a relationship there, is hugely in the national interest right now.

As everyone here knows — I don't mean to underscore — the United States is going through a particularly volatile election period. We do 70 per cent of our trade with the United States. This is a significant thing for our country, and the more friends we have come November, the better off we will be, whatever the outcome.

I'm going to continue, but I'm —

Senator Moore: Buy North America.

Ms. Freeland: Yes. We had a meeting, I think our first in two years, of the trilateral trade ministers — me, Penny Pritzker and Ildefonso Guajardo Villarreal — and we talked about a North American competitiveness strategy. It included a discussion of that. I would say there is enthusiasm at the technical level of all parties and enthusiasm at the political level in Canada and Mexico. We will go as far as we can. I do think this is an important moment, and the NALS meeting coming up the end of this month is a really important moment to lock in many of the things that we have achieved with the Obama administration.

One particular area that sometimes doesn't get mentioned but that I think is a huge success story is regulatory cooperation, particularly between Canada and the U.S. We've been talking about bringing Mexico into that.

NORTH AMERICAN TRADE

Hon. Pierrette Ringuette: Honourable senators, if possible, I have two very important questions.

First, Madam Minister, you indicated that 70 per cent of our trade is with the U.S. It's still at the level of 1993. I can understand that we want to expand throughout the world and sign all these world trade agreements. However, I find issues of concern for the fact that in the last decade, we lost 15 per cent of our small- and medium-sized businesses that were doing exports, from 45,000 to 39,000.

Particularly to the Atlantic region, I find it is very nice to engage in bilateral and multilateral trade agreements, but I find that we're still within the country with regard to helping our small- and medium-sized businesses in the export field and reaching out to those new countries where we gain access to markets. I find that we're still dealing with an infrastructure and policy that relate to the late 1980s.

Can you tell us if your government and your department in particular are looking at a revised comprehensive strategy for Canadians to access and further their exports and the slate of policies and infrastructure federally and provincially that would be required in order to really export to our full potential?

Hon. Chrystia Freeland, P.C., M.P., Minister of International Trade: Thank you for the question. There are a lot of questions in there. I'm going to try to take a few elements that you mentioned and then get to the big export and investment strategy piece at the end.

I think at the beginning you referred, senator, to this point about diversification of Canadian trade. I personally believe that's very important. That's one reason I'm such a big champion

of CETA. That holds great opportunity. The EU is our second largest trading partner.

You spoke about Atlantic Canada, and, again, CETA comes into play here. It's the part of Canada closest to Europe, and I think there are real opportunities in the agri-food and seafood space there.

On the point about small- and medium-sized business, this is something I think about a lot. I think one of the advantages of the 21st century and living in the age of globalization and the technology revolution is we're living in a time when companies, no matter how young and how small, can export right away.

I spoke recently to Tobi Lütke, the founder of Shopify, a great Canadian and, in fact, an Ottawa success story. He told me he only got his first Canadian customer after Shopify had been around for a year. That tells you something.

• (1610)

I, personally, and our department have a focus on small- and medium-sized businesses, and we are working with them to inform them about export opportunities and help plug them into those opportunities.

On January 5 this year, we launched a program called CanExport, designed specifically to help small- and medium-sized companies get access to new export opportunities. I was leafing through my notes to give you the exact figures. Since the launch of CanExport, we have agreed to $6 million in support for small- and medium-sized exporters. In order to qualify, you have to be a small- and medium-sized company, and you have to be exporting to a new market. The idea is to give you some assistance to explore that new opportunity.

Perhaps you were thinking about Korea, but it's too expensive to go on that trip. This program gives you that extra nudge, that extra bit of help.

It's a matching program. Companies can receive between $10,000 and $100,000 from the government to match their own contribution.

As part of that Asia trip, when I was in Tokyo with the Prime Minister, I was able to be present with a Vancouver-based company, a small technology start-up that, thanks to CanExport, was able to travel to Tokyo and sign an agreement there.

We are focused on that.

Finally, on the larger export and investment plan, that is something we are working on. It's in my mandate letter that the Prime Minister has asked me to come up with a new and stronger export and investment strategy. I hope we will be going public with some of our ideas in the fall.

Senator Ringuette: I'm certainly looking forward to that strategy in the fall because it is desperately needed. We don't need to add any new programs until we know that the current one is meeting the objectives.

Given the opportunity at the end of the month when the reunion of the Three Amigos will take place, and the fact that for the last 10 years I have been co-chair of the Canada-Cuba Friendship Group, I work closely with Canadian businesses that deal and want to deal in Cuba's current and upcoming markets, but we have a situation where Canadian companies that operate in the U.S. are subject to sanctions. The same issue also appears in Mexico.

I've done some research on that. We have a free trade agreement, the NAFTA, with the U.S. and Mexico on the one hand, but on the other hand the U.S. has a policy that would condemn Canadian and Mexican businesses from doing business in Cuba, notwithstanding the U.S. sidetracking its own embargo rules. Madam Minister, I would like for you, on behalf of Canadian businesses, to intervene and make sure that Canadian businesses operating in the U.S. and wanting to do business in Cuba would not be subject to any sanctions from the U.S. government.

Ms. Freeland: Senator, thank you for that question and that advice.

Like all Canadians, we're very aware of that situation. With the changing U.S. policies towards Cuba, I think there is a real opportunity in precisely the space that you describe, and it's something that we're working on.

[*Translation*]

STUMPAGE RATES—MARITIME EXCLUSION

Hon. Percy Mockler: Madam Minister, I would like to congratulate you on your excellent French. I did hear you say that the Senate has a role to play in international trade. There is absolutely no doubt in my mind that we will work on this together.

I would like to talk to you about the softwood lumber agreement and the Maritime provinces.

[*English*]

With the softwood lumber trade agreement, during the last 35 years, the Maritimes has been excluded from tariffs or any other trade restrictions. Many thousands of jobs are at risk as we share this information with you, minister.

The main reason for the Maritime exclusion and the lack of allegations related to stumpage is that the Maritimes has a high percentage of private land; over 50 per cent of the wood supply comes from private land.

Two, stumpage rates for Crown timber in the Maritimes are based on a survey of arm's-length private market prices.

Three, the Crown stumpage rates in the Maritimes have been and continue to be the highest in Canada.

Based on these factors, U.S. trade officials, in the last softwood lumber proceedings, recognized that the Maritime provinces were establishing a model benchmark for accountability related to Crown stumpage.

Will the federal government continue to ask for Maritime exclusion?

[*Translation*]

Hon. Chrystia Freeland, P.C., Minister of International Trade: I have no trouble answering that: yes, absolutely. However, with respect to the softwood lumber agreement, I can give you a somewhat more complete answer.

[*English*]

Absolutely, I'm very aware of the existing Maritime exclusion. It's something that our negotiators and I, personally, are very clear about in our discussions with the United States. In fact, I had a discussion about this particular issue with our negotiating team yesterday.

As you know, this is a historically complex issue in our relationship with the United States. We are seized of it. We are meeting regularly with representatives of the industry and provincial leadership from across the country and, of course, working very hard in our negotiations with the U.S. counterparties.

It's important for Canadians to also understand that it's a very tough issue. Something that I'm very clear with the American counterparties about is we're looking for a good agreement, not just any agreement.

The Hon. the Speaker: The time for Question Period has expired.

Minister Freeland, no doubt from the questions that you have heard today, you realize that having ministers here in the chamber has become a very important and helpful part of our Question Period process. We had a very long list of senators who did not get to ask questions today, so hopefully we can have you back again sometime in the near future.

On behalf of all senators, I thank you for coming today, minister.

Hon. Senators: Hear, hear!

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

FOURTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE PRESENTED

Leave having been given to revert to Presenting or Tabling Reports from Committees:

Hon. Daniel Lang: Honourable senators, I have the honour to present, in both official languages, the fourth report of the Standing Senate Committee on National Security and Defence, which deals with 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.

(*For text of report, see today's* Journals *of the Senate, p. 621.*)

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

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

• (1620)

CRIMINAL CODE

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Baker, P.C., seconded by the Honourable Senator Harder, P.C., for the third reading of Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), as amended.
>
> And on the motion in amendment of the Honourable Senator Lankin, seconded by the Honourable Senator Omidvar, that Bill C-14, as amended, be not now read a third time, but that it be amended in clause 9.1, on page 13,
>
> (*a*) by replacing line 21 with the following:
>
> "**9.1 (1) The Minister of Justice and the Minister of**"; and

(*b*) by replacing lines 26 to 28 with the following:

"**sistance in dying, to advance requests, to requests where mental illness is the sole underlying medical condition, and to requests where social conditions and social determinants of health contribute to a person's suffering and may call into question the voluntariness of their request.**

(2) The Minister of Justice and the Minister of Health must, no later than 18 months after the day on which a review is initiated, cause one or more reports on the review, including any findings or recommendations resulting from it, to be laid before each House of Parliament."

The Hon. the Speaker: Honourable senators, when we broke for Question Period, we were on debate on Senator Lankin's amendment. We were in the process of having questions asked of Senator Cowan.

Senator Cowan, are you prepared to take more questions?

Hon. James S. Cowan (Leader of the Senate Liberals): Of course.

Hon. Yonah Martin (Deputy Leader of the Opposition): Senator Cowan, following Senator Frum's line of questioning got me thinking about what happens when we create a list.

In listening to Senator Lankin's explanation of why she was putting forward this particular amendment, upon first hearing the explanation I thought it seemed worthwhile, and I was listening carefully. But I'm just wondering whether adding another category or creating this potential list inadvertently then excludes potentially other categories.

For instance, when Senator Omidvar talked about applying a lens of poverty, in my mind I heard, "What about the lens of cultural sensitivity?" There are many lenses that should be applied in these cases.

By adding such a category as worded in this amendment, for some reason it seems a bit subjective. When I say "subjective," I don't mean that that was what was intended, but poverty does not diminish how much someone loves another and at the end of life what decisions are made and how carefully a family or an individual will decide on what happens at the end of life.

I'm wondering if adding this additional category inadvertently does other things, whether it's exclusion or reinforcing perceptions that should not be there.

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

Senator Cowan: One minute.

The Hon. the Speaker: One minute.

As I explained earlier, honourable senators, it is up to the senator who has entered the debate to determine whether or not he or she wishes to answer questions in the first place, let alone ask for extra time to do so. Senator Cowan is asking for time merely to answer Senator Martin's question. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Cowan: I'm afraid I can't do much to alleviate your concerns. These questions should be put to Senator Lankin, whose motion it is, and I intervene simply to support that. The primary reason I was rising to support was because her motion also included termination dates for these.

I would say, of course, the government does not need legislative authority to embark on studies. They could study any number of topics. The ones specifically mentioned in the bill I agree with, although I would prefer, as per the debate last night, to have something in the bill about advance directives, but I accept the decision of the house and I support a future study on that. I'm prepared to support this issue because I know it is an issue of concern to many Canadians, and I support it.

I don't rank one as being more important, or I don't think we should look at this and determine if this will have an effect on something else. If we need to study other things, if the government needs to study other things, as we know the experience that comes as a result of this new regime that is in place now, whether or not we have this bill, then I think there may be other study topics which would commend themselves to the government and to Parliament.

So I have no concern. I still support the amendment proposed by Senator Lankin. In particular, I support the termination date of the studies.

Hon. Peter Harder (Government Representative in the Senate): Thank you very much, Your Honour. I'm rising to support the amendment as proposed by Senator Lankin.

Senator Plett: Oh, oh.

Senator Harder: I'm sorry? I thought you were welcoming my support. I do so with the obvious applause of my colleagues, and I welcome that.

The independent review clause of the bill is an important component of the bill as we received it, as it recognizes that there are issues attendant to the question around medical assistance in dying that we are not yet, in the view of the bill, ready to act on. Indeed, the public discourse on these issues has not yet formed a consensus or a direction that encompasses all of the points of data and information, let alone interest group attention, that one would wish prior to reaching a particular public policy conclusion.

I do think that Senator Lankin's amendment provides also a welcomed precision with respect to the end point of the studies and an assurance that the studies be tabled in both houses of Parliament, so that the public debate on these issues isn't

concluded or sent off in a particular corner of consultation but actually is hopefully the basis on which a broader public engagement on the issues of mature minors, advance requests and mental illness and, now with Senator Lankin's amendment, other areas of study.

As I say, I would welcome the precision with respect to reporting.

I do, though, offer a friendly subamendment, and I do this because I believe that there is an issue that would also benefit from inclusion on this list, and that is the area where a person's natural death is not reasonably foreseeable.

I know that aspects of this are dealt with in, as Senator Lankin referred to colloquially, the Joyal amendment, but as Senator Lankin articulated so well in the discussion around Senator Carignan's amendment, it would perhaps be useful to have a study in this area irrespective of the amendment adopted in this chamber, because it would inform the public, and indeed government and public policy-makers, on the aspects of this important issue.

MOTION IN SUBAMENDMENT

Hon. Peter Harder (Government Representative in the Senate): Therefore, honourable senators, I move:

> That the motion in amendment moved by the Honourable Senator Lankin be not now adopted, but that it be amended in paragraph (*b*) by adding, immediately after "sole underlying medical condition,", the following:
>
> "**to request where the person's natural death is not reasonably foreseeable,**".

I offer this in the confidence that these studies will ensure an ongoing participation by this chamber, by Canadians and by all interested parties on this important issue.

The Hon. the Speaker: Senator Harder, are you prepared to take a question?

Senator Harder: Certainly.

• (1630)

Senator Kenny: We don't have a copy.

The Hon. the Speaker: It's coming. Do senators want to take a minute to read the subamendment?

Some Hon. Senators: Yes.

The Hon. the Speaker: We'll take a minute.

Hon. Mobina S. B. Jaffer: Senator Harder, would you take a question?

Senator Harder: Certainly.

Senator Jaffer: It's such a pleasure to see you. You're also amending this bill. Welcome to our side.

When I read your request where the person's natural death is not reasonably foreseeable, is that another way of saying "not terminal"?

Senator Harder: It's another way of saying "not reasonably foreseeable." Of course it would include that as an area of study, and it is an intention with the amendment to recognize that this is an area that requires further policy consideration.

Senator Jaffer: Senator Harder, I should have asked this question of Senator Lankin. I apologize for that. After reflecting on what Senator Frum did, and I want to thank her for doing it very respectfully, but I don't understand it. I apologize for that. Can you please define what "social conditions" and "social determinants of health" mean in plain language?

Senator Harder: That is a question that is more appropriate to ask of the person who moved the amendment. I support the amendment, and I was speaking to the subamendment before us. As you remember, in the debate at the start of this journey together, a number of senators — I recall in particular Senator Omidvar — raised the issue of the poverty lens and the issues around poverty and class and social determinants of health. There was a broader discussion on this issue that Senator Lankin participated in. As a result of that, there were discussions amongst a number of senators who felt this was an issue that was worthy of further consideration in the enumerated lists of subject areas for policy work, and I thought that was a useful contribution to the debate. I'm happy to support that amendment and the additional area of inquiry.

Senator Jaffer: I'm sorry, I don't mean to belabour this, but I have some anxiety. Does it mean that if you're poor, you're vulnerable?

Senator Harder: Here I speak for Senator Lankin, and I'm happy to do that, but she is much more articulate in describing her work. Certainly if you are going to have a poverty lens or a social determinant lens on this subject, let's not presume; let's ask the question and gather the data. But it wouldn't surprise me, given the impact of poverty on a wide range of social and public policy issues that there might well be a poverty element to how this access is provided or abused. We ought to determine intentionally whether we have adequate protections and access for this population.

Hon. Joseph A. Day: Question, Senator Harder?

Senator Harder: Certainly.

Senator Day: You described this amendment as a "friendly amendment." Could you tell me whether you have had discussions with Senator Lankin and that she is in agreement with this "friendly amendment"?

Senator Harder: I can. The senator can speak for herself. I discussed this and shared it with her, as I shared it with other senators with whom I discussed the possibility of introducing such a subamendment. I do so recognizing and in total support of not

only the clause as it exists, but the expanded areas of subject for consideration that Senator Lankin has brought to this chamber, and I welcome it. It is friendly from my perspective, and I'll let the senator speak for herself.

Hon. David Tkachuk: Does this amendment or subamendment contradict or assist the amendment made by Senator Joyal?

Senator Harder: Thank you for your question. I think it is irrelevant whether Senator Joyal's adopted amendment impacts this. Were that amendment not to have been adopted, I would have supported it. Having been adopted, I am supporting it for the very reasons I outlined.

I would have preferred, as you know, that that amendment not have passed, but that doesn't influence this amendment on clause 9. I believe it makes an important area of inquiry irrespective of that clause, the earlier amendment.

Senator Tkachuk: So within a year, where the person's natural death is not naturally reasonably foreseeable, which means the other option where extreme pain or those other reasons where people ask for assisted suicide, that this would give it the force of law to, within twelve months, present the guidelines governing what Senator Joyal has already moved?

Senator Harder: I make no such assumption. First of all, to clarify the timelines, it's 180 days where the studies must be launched. In the amendment offered by Senator Lankin, it's no later than 18 months after. So I would at least have that time frame, which is closer to two years. I wouldn't presume what the reports recommend with respect to legislation or no legislation, or further study, or the complexities that we, as a society, will have to address. I do not prejudice the outcome of this initiative.

As the studies themselves require, they will be tabled in both houses of Parliament. I'm sure, senator, you will want to, as I will, participate in the discussions that these policy inquiries ought to shape and form.

Hon. Paul E. McIntyre: Senator Harder, would you take a question?

Senator Harder: Certainly.

Senator McIntyre: In her amendment, Senator Lankin is basically seeking reports following the initiation of reviews, which brings me to the preamble. Bill C-14 contains a 10-paragraph preamble, which notes, among other things, that

> . . . suicide is a significant public health issue . . ."

And further:

> . . . it is desirable to have a consistent approach to medical assistance in dying across Canada . . .

It continues:

> . . . the Government of Canada has committed to uphold the principles set out in the *Canada Health Act* . . . with respect to medical assistance in dying. . . .

These are very interesting elements. Does your government have any specific recommendations concerning those elements found in the 10-paragraph preamble to Bill C-14?

The Hon. the Speaker *pro tempore***:** Senator McIntyre, we're not discussing the preamble right now. We're dealing with Senator Harder's subamendment.

Senator McIntyre: Yes, I understand. But my question is somewhat related to Senator Lankin's amendment. She's talking about reviews, which was bringing me to the preamble. If you're not prepared to answer the question now, that's fine.

• (1640)

The Hon. the Speaker *pro tempore***:** Senator Harder, what would you like?

Senator Harder: I will be guided by the chair on the appropriateness of dealing with this subject matter now, but we will be dealing with the preamble later this afternoon. As Senator Lankin made clear, the preamble will have to interact with whatever conclusion we make with respect to clause 9. I have nothing to add to the wording of the preamble other than to make it consistent with whatever we adopt in clause 9.

The Hon. the Speaker *pro tempore***:** Senator Sinclair, are you rising on a question or on debate?

The Hon. the Speaker *pro tempore***:** Senator Omidvar, are you rising on a question or debate?

Hon. Ratna Omidvar: Would you take a question, Senator Harder?

Senator Harder: Yes.

Senator Omidvar: Thank you for calling into memory here again the poverty lens. Would you agree that the social determinants of health are the conditions under which people are born, grow up, work, live, age, die and maybe then choose to access physician-assisted death? Is it therefore also unfair to conclude that it is only poor people who have poor social health? In fact, we know that the social determinants of health are impacted by race, gender, class, and these intersect with poverty but not exclusively so.

Senator Harder: I welcome the comments through the question of the honourable senator. I totally agree that it is the interaction of those determinants that one would want to be assured, in the face of medical assistance in dying, are well balanced and understood.

The Hon. the Speaker *pro tempore***:** Senator Harder, your time is up. Would you request more time?

Senator Harder: No, I'm good. Thank you.

The Hon. the Speaker *pro tempore***:** Senator Lankin on debate.

Hon. Frances Lankin: Thank you.

Let me say first of all that I support and welcome the amendment from Senator Harder. While I have the floor, I'm going to take an opportunity on debate to respond to the questions that were directed to Senator Cowan but really I should be responsible to answer, although you did an admirable job, senator.

I truly appreciate Senator Frum raising the issue and the concern about whether or not this would set some kind of litmus test around socio-economic status that would differentiate or discriminate against Canadians. It's important to raise those questions. Quite frankly, it is one of the questions that I think the committee, the review, would actually look at and ensure that any recommendations coming forward would not engage such consideration of socio-economic status. As Senator Omidvar so eloquently put forward, social determinants of health include a broad range of factors, and socio-economic status is only one.

To Senator Martin I say the various kinds of concerns she raised that could also be considered come forward under this amendment, but within the context of people who meet the criteria of serious, grievous and intolerable, those Canadians who the Joyal amendment now brings under the scope of the legislation for eligibility to access.

There are groups of Canadians who we would often in language refer to as vulnerable for a number of reasons. I refer to parts of the disability community as an example, but similarly, just as not all disabled people are vulnerable, not all poor people are vulnerable. However, within that there are certainly the interconnections that Senator Omidvar spoke to.

This is an opportunity to examine that and for those groups to bring forward and talk about the question: When does subtle discrimination or not so subtle discrimination become pressure or coercion? People from the disability community who raise these concerns will talk about the fact that they often believe themselves and not the advocates who have developed a fulsome perspective of what discrimination looks like and how it's experienced. Many vulnerable people with disabilities experience a diminished sense of self-worth and the value of their lives, and they will argue that it is reinforced every day.

With respect to those who say that the protections in the bill are enough, under review we'll hear from them that even with their physicians and with others, they think this diminished sense of worth leads to people dealing with them in a different fashion than they do with other Canadians, whether it's their inability to access the world around us or to be accommodated within workplaces in order to earn a living, or their inability, without financial supports like employment, to access the home care support they may need in adequate amounts to provide a level of tolerance to the condition they are experiencing. All of those things don't necessarily become protections that get built into legislation but become an examination of the social provisions, policies and programs that may be required to support this group so that we're not facing a situation where they feel coerced or feel a sense of having no options or that there is not a true voluntariness to their request. That's the area of study, but the recommendations that come forth, I don't know.

This subamendment to the amendment is absolutely crucial. In the debate of Senator Cowan's amendment, many of us talked about the fact that having opened up access to those Canadians for whom natural death is not reasonably foreseeable — and, as you know, I supported Senator Joyal's motion — there was still a need for some protection for this other group. As the ministers brought forward themselves, they have concerns for this group of vulnerable Canadians and had not had time to build in the protections.

In debating Senator Carignan's motion, the Senate in its wisdom did not support it and felt that perhaps it was too complex or that it engaged the courts too much beyond our willingness to support their involvement in health care decisions and personal autonomy. But this review would allow a second look at what might be necessary to put in place and would give the minister a place to do so.

I might read into Senator Harder's support — although he is independent and is only representative of the government, not from the government — that there is a willingness to look at this.

Senator Plett, I didn't hear what you said. Was it important to this?

Senator Plett: He is the leader.

Senator Lankin: He's the representative, yes. That's a debate for another time I would say.

My belief is that the government may be open to my subamendment and that it is appropriate.

Lastly, I want to say, because I did not in my original participation on this amendment, speak to the time limit. "Total" would be a total of two years now. When Senator Tkachuk was speaking, he said one year, but it would be up to 180 days to get started. Anytime they get started, it is then 18 months after that they must report, with recommendations to be tabled in both houses.

I would like to stress the importance of this. We have heard from many senators the concern that nothing may happen. These reviews may happen and nothing follows.

Last night, honourable senators urged that if we didn't pass the amendments on advance directives, we'll never get back to it because no House of Commons, no duly elected Parliament, wants to bring this kind of legislation before the house again. I would argue that with the tabling of these reports in both houses and the ability for senators to examine the recommendations, it may well be that this Senate takes hold of those issues for future protections and/or for future engagement around issues like advance directives through an inquiry or through a Senate bill, so we would have an opportunity to take action in the future. Thank you very much.

Hon. John D. Wallace: Senator Lankin, would you accept a question?

Senator Lankin: Yes.

Senator Wallace: Your subamendment includes social conditions and social determinants as part of the study or the independent review, and you explained that very well. Certainly

from the social policy point of view it makes eminent sense. There is a question in my mind about the study of those issues, as you said, regarding individuals who would be impacted by them, because they may have a diminished sense of self-worth. That's important. That has to be looked at. How does government respond to that?

• (1650)

As valid as all of that is, we're dealing here with the Criminal Code. We're dealing with amendments to the Criminal Code. The Criminal Code is neither a social nor a medical public policy document. The Criminal Code defines criminal behaviour and sets out very clearly what the sanctions are. It's that black and white.

My question for you is this: Do you believe that the Criminal Code is the proper venue through which to have this type of study? I believe such a study should take place. However, I have real reservations about whether it should be done in the context of the Criminal Code. I'd appreciate your comments on that.

Senator Lankin: Thank you very much, Senator Wallace. I appreciate the question.

The answer is somewhat unknown until we have the review and we see what the recommendations are. The recommendations may bring about further Criminal Code amendments. I'll give an example of the other reviews.

The review of ''mature minor'' may bring about recommendations that would suggest removing the age of 18 as a criterion for eligibility. That would be a Criminal Code amendment. On "advance directives," recommendations may come forward to say that this is a matter of provincial regulatory access and that the Criminal Code does not need to be further amended in order for the provinces to set up a proper regulatory regime to give people access and also the right protections. So that may not engage in a further Criminal Code amendment.

This area that we're talking about involves people of vulnerable status — the very people about whom the ministers said their concerns and their lack of time to build the appropriate protections caused them to give a narrow focus of eligibility for C-14, which focused only on those people for whom their natural death was reasonably foreseeable. Regarding broadening that, their objection has been that they have not put or considered what kinds of protections need to be put in place, if any, for those vulnerable people. This review would allow them to look at that and, if appropriate, bring forward the right kind of Criminal Code amendments and/or, outside of that, the right kind of social policy.

Hon. Lillian Eva Dyck: Would you take another question, Senator Lankin?

Senator Lankin: Yes; I will.

Senator Dyck: I was listening carefully to you talking about vulnerable groups and how the government was concerned about vulnerable groups who may be coerced into giving consent to medically assisted death. In your speech, you talked several times about the disabled, the physically disabled. I'm wondering why, in the list of groups that you list here, you have not included the physically disabled. You have included those with mental illness, and then you have the other groups that are defined by social determinants.

Senator Lankin: Thank you very much, Senator Dyck. Actually, I haven't included the reference to mental illness. That is in the existing legislation. It is for people for whom the sole underlying condition is mental illness. That just repeats what is in the act and adds the group that I referred to, and the subamendment adds, for greater clarity, those people for whom natural death is not reasonably foreseeable.

Senator Dyck: I may not have heard you correctly, but what was the rationale for leaving out the disabled?

Senator Lankin: I did not leave out the disabled. I didn't engage in putting in a list, as Senator Martin pointed out. When you start to name groups, you actually start to eliminate other groups. The more specified a list is, the more it presumes that others were not included for a reason. This sets out that it is for those people who, for the social conditions of their life and/or the social determinants of their health condition, may face further suffering and/or their voluntariness may be brought into question. It could involve disabled people, but it could be more than disabled people.

Senator Dyck: As a follow-up question, you haven't included the physically disabled because it wasn't in the original. I guess I would like a fuller explanation of why you didn't include it. It wasn't in the original list, but why have you, in a sense, chosen to exclude them?

Senator Lankin: Thank you. I'm going to be a bit repetitive. I apologize for that.

The original list of reviews involves mature minors making requests, advance directive requests and requests from those whose underlying condition is one of solely mental illness. To that we're adding a broad review of vulnerable people, which would include people with physical disabilities. My answer before, Senator Dyck, was if I said "physical disabilities" and started listing them, the interpretation of that — that is, when you provide a list — is that you're excluding others. So I have included a broad category of people who are the people that the ministers have said they are concerned about in terms of vulnerability and why they narrowed the legislation in the first place. Senator Harder can speak to his subamendment, but it is to give a more fulsome inclusion, given the Joyal amendment, of all those people whose death is not naturally foreseeable.

Senator Dyck: If the purpose of the amendment is to address those who are vulnerable, I would like to know why you didn't include in the amendment something about vulnerable groups such as those social conditions and social determinants of health so that it is clear that you're seeking to look at vulnerability and that it may include other things that you have chosen not to list.

Senator Lankin: I think that could have been an equally fine way to draft this. The inclusion of the words "social conditions" and "social determinants of health" in and of themselves, in terms

of their common application, deals with vulnerable peoples. It could have provided greater clarity. I appreciate that. I didn't think of that at the time I was drafting and working with legislative drafters and with the disability community. The coalition of disability groups has worked with me and helped provide some of this language. However, it's a great suggestion.

Particularly now that we have had so much discussion about it, if someone wants to interpret it and they come to the debates, they will see exactly what we have been talking about. Your interventions have been helpful, Senator Dyck. Thank you.

The Hon. the Speaker: Question, Senator Wallace? We're out of time. Senator Lankin, are you asking for more time?

Senator Lankin: Do you want to ask another question?

Senator Wallace: Yes, please.

Senator Lankin: Yes.

The Hon. the Speaker: Is time granted, honourable colleagues?

Some Hon. Senators: Agreed.

Senator Wallace: I have had a concern as we have gone through this debate and as we have covered a wide range of topics. At times I felt that, as a chamber, we have gotten beyond simply reviewing and commenting on the legislation and, rather, we moved into the development of public social and medical policy. That is not our role. Our role is to comment on the legislation and not to say that all of these issues that are coming up are or are not valid. Are they worthy of study? They are. Once again, I have a question of whether they should be studied under the auspices of the Criminal Code.

We previously dealt with two issues: One, should family members or dependents be able to assist and be available in that final moment where a person is receiving medical assistance in death? Should they be not able to be there because they may seem to have a conflict, some interest? I have great concern about that. I won't revisit that whole issue.

The other issue is palliative care. We have introduced that amendment. Again, it is a completely valid issue. However, with those, and together with your suggestion, senator — in my mind at least — we're clearly moving into the development of public social policy. It should happen. Should this be occurring under the auspices of the Criminal Code, which is very specific and defined in terms of what it is there for?

• (1700)

Once again, I would ask whether, in a broader sense, you still feel this is an appropriate venue, through the Criminal Code, for this topic.

Senator Lankin: Thank you again, Senator Wallace. Let me touch on the points you've raised.

Senator Plett's amendment with respect to beneficiaries does not deny family members the right to be present. I think it's important that we stress that. It simply says that people who would be beneficiaries of the will — or who believe they would be beneficiaries — shouldn't be administering or assisting in the administration of the substance with respect to medical assistance in dying.

I would say to you that a regulation about what beneficiaries can or cannot do is already contained in another piece of legislation, this Criminal Code amendment. Senator Plett's amendment simply took that and put it in two other places where there is an interaction at the end where he felt and this chamber felt it's appropriate to put limits on what beneficiaries do or do not do. And it is for the protection, as we know, in situations where people might, in fact, engage in wrongdoing. It does not prevent family members from being with a loved one at the most important time that they wish to share. I voted for Senator Plett's motion on beneficiaries.

Second, with respect to Senator Eaton's motion on palliative care, I agree, it is an incredibly important issue. I voted against it, not because I don't support palliative care but because I believe that it is rightly within the jurisdiction of provincial governments and that it is inappropriate for us to be adding it into legislation that didn't contemplate it in the first place.

With respect to my amendment, I'm still of the opinion — this might not surprise you — that it is appropriate within the context of this bill. This bill sets out three areas for review. The ministers came here and said the reason why they restricted eligibility under Bill C-14 to those for whom natural death was reasonably foreseeable was that among the rest of Canadians who might meet all of the physical intolerable suffering and grievous illness, all of those factors, there could be those with other vulnerabilities, and they hadn't had the time to develop the necessary protections. It seems, then, that we should put our minds to a review to develop what those protections might be, some of which, Senator Wallace, might appear in the Criminal Code, and some of which may be sent someplace else after the review and recommendations come forward.

The Hon. the Speaker: Senator Lankin, are you asking for more time? Your time has expired again.

Senator Lankin: I'm reading your body signals, and you're shaking your head "no" as you say, "Are you asking for more time?" Just for Senator Batters, because I think she had a question for me previously and I wasn't able to answer it.

The Hon. the Speaker: It is not my prerogative to say yes or no. It's entirely up to the senator.

Senator Lankin: That was my poor attempt at humour, Your Honour.

The Hon. the Speaker: Senator Lankin is asking for time to answer one more question. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Hon. Denise Batters: Just a brief question to Senator Lankin.

Last week, Senator Lankin, you voted for Senator Joyal's amendment, which would allow for assisted suicide where the person's natural death is not reasonably foreseeable. Now you've told us late this afternoon that you support Senator Harder's subamendment, which provides that requests where this sort of situation is the case — the person's natural death is not reasonably foreseeable — would simply be studied for the time being.

I'm wondering if you've changed your mind on Senator Joyal's amendment within the last week, or was it because the justice minister has said that she will not be accepting the sort of amendment that Senator Joyal brought forward? And she did say that hours before we even voted on that.

Senator Lankin: Thank you very much, Senator Batters.

It has nothing to do with what the government or the minister will or will not do. In my introductory comments on moving this amendment, I spoke clearly of my support for Senator Joyal's motion and for Senator Carignan's motion, which was to place some kind of greater protection for that group of Canadians for whom natural death is not reasonably foreseeable.

In speaking to that, I made it clear that there are protections in the bill around eligibility for those whose death is reasonably foreseeable: number of doctors, time limits, written application. A number of protections are set out. In speaking to Senator Carignan's motion, I was clear in saying that I think for this group of people the protections may be different, and I supported his amendment. That amendment failed, as you know.

What I am bringing forward in supporting Senator Cowan's subamendment to my amendment is to say that among that group of Canadians for whom death is not reasonably foreseeable, do they meet all the other criteria? There is a group of vulnerable people who require the examination, at least, as to whether more protection is necessary. I think it is prudent to do that study, given that is the reason the government didn't open up the bill in the first place.

Senator Batters: Just a brief supplementary question. I'm confused. For people whose death is not reasonably foreseeable, do you support that they receive assisted suicide, or do you only support at this time that that issue be further studied because more protections are needed?

Senator Lankin: I support Senator Joyal's amendment and I believe that for a subgroup of those people, greater protections could be brought forward. I think the debate we're having is important in terms of exploring this. I hope the study does come forward. That's why I put a timeline on it, to bring forward further amendments potentially.

However, it does not at all change my core belief that the *Carter* decision is one that provided this fundamental right of access to medically assisted dying to all Canadians who meet the physical illness criteria as stated in *Carter* and that Bill C-14 narrowed that. I understand that the reason they narrowed it is because they felt they needed more time for protections. I support moving ahead with the broadening of the eligibility criteria as with Senator Joyal's amendment but saying: Ministers, if you believe you need to do more study — and there are Canadians who support you, like the disability community — let's have the review and let's have those recommendations come back to both houses and determine whether or not, as Senator Wallace has said, it's appropriate for there to be any further Criminal Code amendments or not — simple.

The Hon. the Speaker: Senator Patterson, on debate on the subamendment?

Hon. Dennis Glen Patterson: Yes, thank you.

Honourable senators, I do think we're making progress. I listened carefully earlier this week when Senator Joyal and Senator Ogilvie, to name only two, spoke passionately about these other classes of people that the subamendment addresses: people with Lou Gehrig's disease; people with Huntington's disease; people whose natural death, though, is not reasonably foreseeable or imminently foreseeable, who have rights, they argued, to medically assisted death and who they say were clearly contemplated by the *Carter* case. They talked about intolerable suffering and the rights of those people to seek relief. Senator Ogilvie challenged us to go to hospital wards and experience these agonizing situations. These are very compelling challenges.

As I said earlier, I have expressed my concern that we have so far enlarged the classes eligible for medically assisted death, but we have not included protections or safeguards, nor have we had time to consider the implications. This subamendment goes in the direction of authorizing a study that could very well allow us to carefully consider those implications, and I hope it will.

To me, it's a comforting subamendment which can and, in my opinion, should stand alone, even if what we now fondly call "the Joyal amendment" is rejected by the other place. I think we all know there's every indication from the sponsoring minister that that will happen, based on her clear public statements.

With this friendly subamendment and the amendment it is linked with, to me we have been presented with a beautiful compromise.

• (1710)

If Senator Joyal's amendment is rejected, it will allow us reach out to and address the issues around this class of people who many Canadians, I believe, and myself are not comfortable including in the bill today. It will allow us to reach out to them and address those issues.

I speak in support of the amendment. I'm not eager to see the scope of medically assisted death broadened right now, but I would be in favour of a thoughtful and measured study of all implications and lessons learned elsewhere.

The subamendment and the amendment it's tied to will allow this proposed study or studies to be laid before this house. I would hope that senators or a committee of senators might be given this

important task, and I think we could do it well. We've shown, perhaps because we've had more time to consider this issue, that we are capable of examining all the nuances and all the implications if we were given more time and an orderly and timely process.

I will support the subamendment. Thank you.

The Hon. the Speaker: On debate on the subamendment, Senator Joyal.

Hon. Serge Joyal: Honourable senators, I would like to offer some reflection on the amendments and the subamendment that has been brought forward by Senator Harder.

What is the essential substance of clause 9 as it is originally drafted? Clause 9 essentially says that there should be studies on three groups of people. The first one is mature minors. The second one is those who have an advance request. The third one is people who suffer from mental illness as the sole condition.

The purpose of that clause originally was to conclude that those three groups of people, let's call them patients, would in certain potential conditions have access to medical assistance in dying. But they were not, per se, included in the judgment of the Supreme Court of Canada. In the famous paragraph where the four conditions are stated, the Supreme Court concluded: "We make no pronouncement on other situations where physician-assisted dying may be sought."

What did the court say in that conclusion? The court said there might be other situations whereby medical assistance in dying should be covered by section 7. That's essentially what the court stated there. The court stated they pronounced on the cases they had in front of them. They established the four criteria for those people to have access to medical assistance in dying, but there might be other situations whereby a person who is not an adult, a mature minor, might have access; where the person might be suffering only from mental illness, which might raise the issue of competence, the second criteria; and the third one is advance request, which means that the person who is requesting assistance in dying is not immediately experiencing intolerable suffering.

Clause 9 leads us to understand that there might be other situations whereby a patient might have the right to assistance in dying. That is the gist, in my opinion, of clause 9.

Clause 9 invites us to reflect on broadening access to medical assistance in dying under section 7 of the Charter, beyond what the court decided in the criteria in *Carter*. That's the way I understood it when I first read clause 9.

Then Senator Lankin came forward with another element that doesn't address broadening access but factors that might intervene in the mind of a person to request assistance in dying. That's a totally different subject of reflection that's easy for any of us to understand. I think Senator Lankin has thoroughly explained what she is looking at in relation to that study: factors that can influence the voluntariness of a person to request assistance in dying. That's another domain that has nothing to do with reflecting on or studying the broadening of access to medical assistance in dying under three categories that were listed first in clause 9.

Now there is another amendment or subject of study, the one introduced by Senator Harder. As honourable senators know, the *Carter* decision, in my humble opinion, has covered the issue of access for persons whose death is not reasonably foreseeable. The Supreme Court has ruled quite clearly on it, and they restated it clearly when the lawyers from the government went back to court in January, less than five months ago. I quoted Justice Karakatsanis very clearly when he said, "we rejected terminally ill." There were five justices of the Supreme Court in the debate with the government lawyers when the government sought the extension. We had five justices of the Supreme Court, the majority of the court, who heard the request and said "we rejected terminally ill."

This question of not being terminally ill has been restated by the Supreme Court, has been implemented by three justices of the Court of Appeal of Alberta three weeks ago, and by two other justices — one in the Superior Court of Ontario and another one in Manitoba — who were faced with a request from a patient who was not at the end of life or terminally ill.

Many justices, honourable senators, have pronounced on access and have already implemented the right to access to medical assistance in dying for those who were not terminally ill.

What Senator Harder proposed today is not, in my opinion, to reflect upon broadening access to medical assistance in dying to patients who are not terminally ill. It can't be that. They already have their rights, and the Supreme Court, again in its decision of January 15, stated at least three times — paragraphs 6, 7 and 14 — that persons who qualify under *Carter* have a right. That's what the court says. They have rights under the Charter. So if they have rights, they exercise them.

They have exercised their rights under decision of the Court of Appeal, under decision of the Superior Court of Ontario and the decision of a judge from Manitoba. We have more than 10 justices who have pronounced on this. I contend that that has been established, and it's on that basis that we voted.

• (1720)

If we are invited by Senator Harder this afternoon to study the request from those whose death is not reasonably foreseeable, we can study different factors. For instance, as Senator Lankin mentioned, it is one factor that might happen to influence a person who is not terminally ill to request. There might be other elements that the study might want to consider. They might want to consider how many requests are under that category versus the requests from a terminally ill person, where they come from, their social background, the kind of disease they have, the kind of illness they suffer from, the kind of handicap they suffer from. We can look into all of those to try to understand what could lead a person who is not terminally ill, who is in an intolerable condition of suffering, who has a grievous and irremediable condition, who is competent, who is an adult to request assistance in dying — but, of course, not in the context of challenging the right of that person to have access to medical assistance in dying.

As I stated in this chamber, the Supreme Court, the Court of Appeal, the Superior Court of Ontario and the court of Manitoba have already ruled on that. Five justices of the Supreme Court of Canada have stated that they reject "terminally ill." In my opinion, it's quite obvious, and we're totally founded to support the amendments I introduced.

I have no objection to studying the facts of people being non-terminally ill seeking medical assistance in dying in some of the examples that I have described to you. But — I want to be very clear about this — certainly not in the context of questioning their rights. Their rights are already established. That is clear in my mind.

That is why, honourable senators, we have to understand what we are adding in terms of clause 9 to better understand the vote that we're going to be expressing in relation to those amendments.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved in subamendment by the Honourable Senator Harder, seconded by the Honourable Senator Bellemare:

> That the motion in amendment moved by the Honourable Senator Lankin —

May I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it. Accordingly, the subamendment is rejected.

(Motion in subamendment negatived, on division.)

The Hon. the Speaker: On debate on the amendment.

Hon. Murray Sinclair: Honourable senators, I'm tempted to get into the "must," "shall" and "may" discussion that we had earlier because I know we need to go back to refresh ourselves, but I'm going to avoid that. I know that I will forever have your gratitude in that regard.

I want to point out that the amendment proposed by Senator Lankin is one that I think accomplishes a number of purposes here that we should bear in mind. I think it's appropriate for the kind of amendments that this body should be considering because it does improve the bill in a significant way. It addresses things that the provisions of the bill now are not particularly clear on raising with regard to the question of what kind of reviews are intended by the bill. I think the bill talks clearly about those categories of reviews that Senator Joyal has enunciated for us, but it does seem to forget that there are other issues as well and other groups of people who may be negatively affected by certain factors that are also worthy of review. It does create an additional review for a group of people who are affected by social conditions, as the proposed amendment talks about, and social determinants of health.

I've heard the questions that were asked earlier about what is meant by "social conditions" and "social determinants of health," and I refer your attention, honourable senators, to the website of the Canadian Public Health Association, which has done a major study on social determinants of health in Canada over the years. In fact, they do regular annual reports on what the impact of social conditions of health are on the access of individuals to the medical system. They include things like disability, income, geography, race, gender and a number of other factors as well. The list seems to be pretty thorough and is intended to identify whether those particular social conditions of health have an impact upon a person's ability to get medical treatment in an equitable way in Canada.

The conclusion of most of the studies is that social determinants of health are in fact a significant factor in one's ability to access medical care. In the report, which I had the privilege to co-author at the Truth and Reconciliation Commission, we identified that indigenous people are one of the groups in Canada that is negatively affected by social conditions and by social determinants — some of which have a direct connection to residential schools but all of which have a direct connection to their economic and geographical locations — that require considerable study and further work in order to ensure that they can access the medical system in a more equitable way.

So I support the proposed amendment because it allows for the minister to create reviews to look into whether those social determinants of health do not simply affect one's access to medical care, but whether those social conditions of health in fact have an impact upon the ability of a person to give their consent voluntarily to provide assistance in dying or whether it may, in fact, cause more pressure to be brought to bear upon them to give consent because they can't access medical treatment or palliative care or proper medical care, and, therefore, their only option to get relief is to ask for assistance in dying. I think that's a legitimate area of need that we should be prepared to support.

I don't see the amendment, as was raised in a concern by a couple of the senators, as creating a potential category of people for whom assistance in dying might be denied because they do have greater access than others or don't have access to medical care or have better access to medical care. I think, in fact, this review simply says, "Let's look at the question of the social conditions of people who are asking for assistance in dying and determine whether the social conditions that they are facing and

the social determinants of their lives have an impact upon their willingness to turn to assistance in dying or not." I think that's a legitimate question for us to look at and to study.

The other impact of the amendment, which I truly appreciate, as I mentioned yesterday, was that it puts a tight timeline on the reporting of the reviews. Yesterday, during the course of debate, there was concern expressed here that to give an open-endedness to the ministers not to have to report back or do something within certain timelines was a matter of some concern, and I agreed with that. This particular amendment addresses that by saying that once the review has been started, a certain amount of time is given for it to be done and a report has to be provided. If they have not completed the report within 180 days, they need to file an interim report, so some kind of report needs to be put forward.

I support the amendment on that basis, and therefore, honourable senators, I encourage you all to support this particular amendment.

• (1730)

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

Senator Sinclair: Yes, thank you.

Hon. Tobias C. Enverga Jr.: Thank you, Senator Sinclair. We value your opinion. I also thank Senator Lankin for the amendment.

You speak about social conditions and social determinants. Would you agree, Senator Sinclair, that we should have a focus on our Aboriginal friends because of the recent suicide attempts among Aboriginal youth? Don't you think it would be better if we focused on them for more studies?

Senator Sinclair: Thank you for the question.

The issue of youth suicide in indigenous communities in Canada is a very serious one. There is no doubt about that. I do not see it, though, as an issue with regard to medical assistance in dying. I see it as a reflection of, in fact, the poor social conditions that many of those young people are facing.

I don't know that that would give rise to the ability to apply for medical assistance, because unless they can establish that they suffer from a grievous and irremediable medical condition which gives rise to intolerable suffering, I'm not sure that that would necessarily, just because of their social conditions or their frustration around that, give them the right to apply for medical assistance in dying.

But assuming that might be the case, the point that the amendment tries to make is that we need to know more about this. That's really the question: What are the impacts of those social conditions and social determinants, and how much of a role are they playing in those who are applying for medical assistance and exercising their right?

Senator Enverga: Senator Sinclair, what I'm concerned about is if we put it in general terms, we will not be able to focus on indigenous people because it is like putting them in one basket.

Do you think it will be better, because of the current conditions, to study it further than we have until now?

Senator Sinclair: Thank you for the question, senator.

When you look at the social determinants of health that are listed on the website of the Canadian Public Health Association, one of the social determinants that they do study as part of their work is the question of race, with a particular study area of Aboriginal people. So it is a factor now that they look at in terms of the study.

My thinking would be that with this particular amendment, it would already be on the agenda for review, in any event. It doesn't need to be specifically listed.

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

It is moved by the Honourable Senator Lankin, seconded by the Honourable Senator Omidvar:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 9.1, on page 13 —

May I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do we have agreement on time?

Senator Mitchell: Thirty minutes.

Senator Plett: Thirty minutes.

The Hon. the Speaker: The vote will take place at 6:04 p.m.

Call in the senators.

• (1800)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker
Bellemare
Campbell
Cordy
Cowan
Downe
Duffy
Dyck
Eggleton
Fraser
Gagné
Harder
Hubley
Jaffer
Joyal
Kenny
Lankin
Lovelace Nicholas
Massicotte
McCoy
Mercer
Mitchell
Moore
Munson
Omidvar
Pratte
Ringuette
Sinclair
Tardif
Wallin
White—31

NAYS
THE HONOURABLE SENATORS

Ataullahjan
Batters
Beyak
Carignan
Cools
Dagenais
Day
Doyle
Eaton
Enverga
Frum
Greene
Housakos
Johnson
Lang
MacDonald
Maltais
Manning
Marshall
Martin
McInnis
McIntyre
Merchant
Meredith
Mockler
Ngo
Ogilvie
Oh
Patterson
Plett
Poirier
Raine
Rivard
Runciman
Seidman
Smith
Stewart Olsen
Tannas
Tkachuk
Unger
Wallace
Wells—42

ABSTENTIONS
THE HONOURABLE SENATORS

Sibbeston—1

• (1810)

The Hon. the Speaker: Honourable senators, it is now past 6 o'clock. According to rule 3-3(1), I am obliged to leave the chair until 8 o'clock, unless there is consent from the chamber to not see the clock.

Is it agreed not to see the clock, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Resuming debate, Senator Cowan.

Hon. James S. Cowan (Leader of the Senate Liberals): Colleagues, this amendment that I will propose now and that I would ask the pages to circulate cleans up two small errors that our Law Clerk's Office found when reviewing the amendments that we passed in the course of third reading debate on this bill.

The first correction relates to the French version of the amendment proposed by Senator Eaton, passed by this chamber on June 9. The English version of that amendment referred to "a palliative care consultation," and those were the words used by Senator Eaton when she moved the amendment. The French version referred to *une consultation sur les soins palliatifs*. That is a palliative care consultation. And then added the words *ou une évaluation à cet égard*, requiring either a palliative care consultation or a palliative care assessment. The amendment that I am proposing would bring the French version in line with the English version.

The second correction fixes a verb tense in one of the safeguard provisions as amended the day before, on June 8, namely paragraph 241.2(3)(b)(ii). The amendment referred to the person's request for medical assistance in dying needing to be signed and dated after the medical condition "had begun" to cause enduring suffering, when grammatically it should read "has begun."

There are two technical amendments to clarify, one in the case of a difference between the English version and the French version, and the other to remedy a discrepancy in tense.

MOTION IN AMENDMENT

Hon. James S. Cowan (Leader of the Senate Liberals): Therefore, honourable senators, I move:

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

(*a*) by deleting, in the French version, in line 2 (as replaced by the decision of the Senate on June 9, 2016), the words "ou une évaluation à cet égard"; and

(*b*) by replacing, in the English version, in line 35 (as replaced by the decision of the Senate on June 8, 2016), the word "had" with the word "has".

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

Hon. Senators: Question.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the "yeas" have it. The motion is adopted.

(Motion in amendment agreed to, on division.)

The Hon. the Speaker: Senator Carignan, on debate.

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): Honourable senators, you know how important the legislative review work we do here in the Senate is. Sometimes, we may find typos that were missed in the original bills. Along the lines of what Senator Cowan was saying, the revisers found two typos in the preamble of the English version of the bill, on line 21 of page 2.

[*English*]

You have seen that my English has improved so I can find mistakes now. Thus, at line 21, we say different groups have unique needs.

[*Translation*]

What is more, in clause 3, on line 2 of page 9 of the French version, paragraphs 241.2(3)(*b*) to (*h*) must be corrected. The senators opposite added an amendment to paragraph (*i*), but the correction was not made to the bill.

MOTION IN AMENDMENT

Hon. Claude Carignan (Leader of the Opposition): Therefore, honourable senators, I move:

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

(*a*) in the preamble, on page 2, by replacing, in the English version, line 21 with the following:

"unique needs, and it commits to working with provinces,"; and

(*b*) in clause 3, on page 9, by replacing line 2 with the following:

"graphs 241.2(3)(b) to (i) and subsection 241.2(8) is guilty".

The Hon. the Speaker: Honourable senators, in amendment, it was moved by Senator Carignan, seconded by the Honourable Senator Greene, that Bill C-14, as amended, be not now read a third time, but that it be amended—

Shall I dispense?

Hon. Senators: Dispense.

[*English*]

Hon. Denise Batters: Senator Carignan, perhaps you said this at the start of your remarks, but now that I have my bill out, it seems to me these are very small amendments. Is it correct that the first one is to add in the word "and"? What is the change you're proposing to that second one? Is it because it says (h) and it should be (i)?

[*Translation*]

Senator Carignan: It is a verification that the person must make before administering medical assistance in dying. Different safeguards are being put in place before the doctor or nurse practitioner can administer medical assistance in dying. We added the following at paragraph (*i*):

(i) if the person has difficulty communicating, take all necessary measures to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision.

• (1820)

Furthermore, the subclause that deals with failing to comply with the safeguards lists the requirements that the medical practitioner or nurse practitioner must verify before the safeguard, and someone forgot to include the verification in subclause (i).

[*English*]

Senator Batters: When I brought an earlier amendment, right after I finished bringing the amendment, Senator Plett asked me a question suggesting that something I had proposed should have been (i) instead of (h), and I thought it was potentially a drafting error. I was later informed by the table clerks that actually the version I had proposed was correct.

I'm just wondering if you've received that same check with the table clerks to ensure that this is the right correction that we're making here.

[*Translation*]

Senator Carignan: The correction was discussed with the table clerks and with the clerk's office. We can confirm that it was a clerical error.

[*English*]

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

Hon. Senators: Question.

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

Some Hon. Senators: Yea.

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

Accordingly, the motion in amendment is carried, on division.

(Motion in amendment agreed to, on division.)

Hon. James S. Cowan (Leader of the Senate Liberals): Colleagues, if I am correct, I think we've now finished the bill and are now in the preamble. Perhaps I should pause for a moment in case anybody has any other amendments before I propose one with respect to the preamble.

This arises out of discussions that I've had with a number of colleagues and reflecting on the debates that we've had over the last few days, when many senators have expressed concern about the fact that we need to stick to amending and providing or dealing with exemptions and amendments to the Criminal Code and that we sometimes may be straying into territory that ought to be occupied by the provinces and territories and by their various regulatory agencies. That was certainly the case last night when we dealt with the advance directives issue, and it was certainly the case when we were dealing with Senator Carignan's amendment dealing with additional safeguards for those who were applying for medical assistance in dying but were not at the end of life.

MOTION IN AMENDMENT

Hon. James S. Cowan (Leader of the Senate Liberals): After discussions with colleagues, I would propose that rather than seek to come up with a suite of additional safeguards that we could embed in the legislation, we insert a paragraph in the preamble to the following effect. Therefore, honourable senators, I move:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in the preamble, on page 2, by adding after line 2 the following:
>
> "Whereas the Government of Canada has committed to work with the provinces and territories to support the establishment of any additional safeguards that may be needed to protect vulnerable persons who may seek medical assistance in dying while not at the end of life;".

The Hon. the Speaker: In amendment, it is moved by the Honourable Senator Cowan, seconded by the Honourable Senator Fraser:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in the preamble, on page 2 —

May I dispense?

Hon. Senators: Dispense.

The Hon. the Speaker: Are there any questions for Senator Cowan? Senator Manning, on debate?

Hon. Fabian Manning: A question, Your Honour.

The Hon. the Speaker: Question, Senator Cowan?

Senator Manning: I was wondering if you could elaborate, Senator Cowan, on exactly what this will do to the preamble that's in place now. I know you started the process, but I'm not sure I heard everything you said, so maybe you could take a minute to explain to us, with the addition of this to the preamble, what difference it makes in relation to the provincial and federal side of things and how we're going to deal with the safeguards.

Senator Cowan: Thank you, Senator Manning, for the question. The intent is that it's an addition, not a substitution for anything that's in the preamble at the moment. It's intended to reflect the discussion that we've had over the last few days where concern has been expressed by many senators that we're getting too far down in the weeds of what should properly be the responsibility of the provinces or particularly the health profession regulatory agencies in those provinces.

Rather than trying to specify specific additional safeguards here, over and above the ones that we've put in place, as amended, we would recognize in the preamble to the bill the primary responsibility that the provinces have for the delivery of health care and that many of these things really do speak more to the way in which health care is delivered in the various provinces and territories than they do to the federal level with respect to the Criminal Code. That's the background for it. That's the rationale for it. I don't think it diminishes in any way or takes away in any way from any other part of the preamble.

Senator Manning: Again, I may be reading this incorrectly. In the bill as it is now, are we agreeing with the fact that the federal government will now already work with the provinces to develop some safeguards? One of the concerns I have — and I haven't commented on many of the amendments — is that we have a patchwork of rules across the country where health delivery is a provincial jurisdiction and that we don't have national guidelines or national rules or national regulations, whatever you may want to call them. In the bill as it states now — I don't have it in front of me — I thought I had read that there's a process now where the federal government will negotiate with the provincial governments on creating those safeguards and putting them in place.

Is this just a kind of backup to that plan, or is it something else? I just want to make sure what I'm voting on here.

Why do you think it's necessary to have this there if we already have in place a process where the federal government will already negotiate with the provincial government on putting safeguards in place?

Senator Cowan: I think it is a backup, Senator Manning. I'm sure the federal government, whether or not we have a bill or this bill, will obviously be liaising and facilitating discussions with the provinces and territories to try to ensure as much a common standard of practice as can be. But we have to recognize that at the end of the day it is up to the provinces and to the colleges of physicians and surgeons with respect to nurses and nurse practitioners and their equivalents, to prescribe standards of practice for their membership within each province. We will never get to the point where the standards will be completely uniform across the country.

We tried, through Senator Carignan's amendment, to get agreement at this level, in this Parliament, for a set of additional standards or additional safeguards for those not at the end of life or terminally ill, but, as you know, the amendment failed. Rather than try to come up with an alternative to that, it seemed to us that an alternate proposal that might merit our support would be to put in the preamble of this bill what I've suggested.

The Hon. the Speaker: Question, Senator Mercer?

Hon. Terry M. Mercer: Yes. Thank you. Senator Cowan, you've got me a little confused because you say here:

> Whereas the Government of Canada has committed to work with the provinces and territories to support the establishment of any additional safeguards that may be needed to protect vulnerable persons who may seek medical assistance in dying while not at the end of life;

• (1830)

I don't see any protection in here. How does this offer more protection for the vulnerable?

Senator Cowan: Only that if the provinces and territories feel additional safeguards are necessary, and if they are prepared to work collaboratively with the other provinces and territories and with the federal government, then something might be developed. We can't tell the provinces and territories, or particularly the regulatory agencies who are reporting and operating under provincial laws, how to do these things. That's not within our jurisdiction. Our jurisdiction is limited to dealing with the Criminal Code. That's what we're doing here.

I'm sure you heard the concern expressed by many senators that a lot of what we were trying to do, particularly in Senator Carignan's amendment or in the amendment I proposed last night — some of the other amendments that were proposed were not adopted and were seen by some senators to be an intrusion into what ought to be an area of provincial responsibility.

Senator Mercer: I have a great deal of respect for provincial-federal responsibility. However, when it comes to the protection of the vulnerable, I don't think anybody should be taking chances. The wording tells me that we're passing the buck because one of the reasons we're here is to protect the vulnerable. This is a very sensitive issue for me, as you will hear in my speech later on, not tonight, but at some other time during this debate. My major concern about this legislation is the protection of the vulnerable. I do not see that in here.

I don't care what the Constitution says about the province or the federal government. I think that at every opportunity both the Government of Canada and the Government of Nova Scotia should be doing whatever they can to protect the vulnerable. I don't think the wording is strong enough to send the message about what we mean by protecting the vulnerable. I'm concerned that it needs to be stronger.

Senator Cowan: Senator Mercer, I understand your views. My personal view is that we have sufficient safeguards in the bill to protect all of those who would be eligible to apply for medical assistance in dying, including the amendment that we adopted last week. We adopted an amendment and expanded the categories of people who could apply for medical assistance in dying. As I said before, I think the safeguards are sufficient. But, as we know, a majority of senators probably do not agree with me on that. I respect that.

We have tried once with a detailed amendment from Senator Carignan, which I supported but a majority of senators did not. I haven't been able to ascertain from my discussions with colleagues around the chamber a majority support developing for any detailed alternative to that put forward by Senator Carignan. For that reason, if there is another amendment which would command the support of a majority of the senators, let's do it. We could put it in here and that would address the issue that Senator Carignan tried to address with his amendment, which I supported. However, I haven't been able to ascertain that consensus emerging from colleagues.

The alternative seems to be rather than simply ignore it, which I think you would agree with me we should not do, put something in the preamble which calls attention to the responsibility that health care in Canada is a shared federal-provincial responsibility. There is a role for the federal government, a federal Parliament; there is a role for the provincial legislatures. Under them, there is a role for the provincial and territorial colleges of physician and surgeons and their other professional association counterparts. This is my suggestion to deal with that issue because I don't see an alternative to it.

The Hon. the Speaker: Excuse me, Senator Mercer. Time is moving on and there are other senators rising to ask questions. Time permitting, we will come back to you for a third question.

Senator Sinclair, a question?

Hon. Murray Sinclair: Thank you.

I think I heard in your comment, senator, the fact that this amendment is intended to identify ongoing obligation or commitment on the part of the Government of Canada to take

steps, along with the provinces, to protect vulnerable persons. Then you referred to the bill as having some provisions in it now which protect vulnerable persons. I'm afraid I don't read the bill that way.

Having said that, if the amendment ended right at the phrase "to protect vulnerable persons," it might have been okay. But then you go on to say "who may seek medical assistance in dying while not at the end of life."

What evidence do we have before us that the Government of Canada is committed to working with the provinces to protect vulnerable persons who may seek medical assistance in dying while not at the end of life? I haven't heard anything from any government representative who spoke here; that is, both ministers who spoke to us. I haven't seen anything in the material provided to us that this is a commitment they are prepared to make or that they are interested in making. I do not see anything that suggests, in fact, that the Government of Canada as it's now constituted is doing anything other than ensuring that only those who are facing natural death, as was in the original bill, were intended to be caught in the bill.

I'm not sure where this phrasing that the Government of Canada has committed to working with provinces in this way comes from. Perhaps you can clarify it for me, senator.

Senator Cowan: I certainly don't speak for the Government of Canada, but it's my understanding that the government is having ongoing consultations with the provinces and territories about issues arising out of medical assistance in dying, and this seemed to me to be a reasonable reflection. I would not have thought that the Government of Canada would be opposed to this, but, as I say, I don't speak for the Government of Canada.

I see Senator Harder's on the edge of his seat. He may be better able to answer that question than I could, so I might defer your question to Senator Harder.

The Hon. the Speaker: Senator Cowan, your time has expired. Other senators have risen to ask a question. Are you asking for five more minutes?

Senator Cowan: Sure.

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

Hon. Senators: Agreed.

Senator Sinclair: As a follow-up to my question, it is your amendment, senator, so I wanted to bring the onus back to you to point out to me where the commitment is that you say the Government of Canada has to working with provinces to provide safeguards for vulnerable people who wish to end their life who are not at the end of their life.

The reason I say that is because it was pretty clear to me in the course of the presentation and in the original draft of the bill that they were not interested at this point and time in providing any right to assisted suicide for those who were not facing natural death as the bill anticipated. So now what we seem to be saying is that, despite what they have publicly been saying to this point in time, we're going to make it look like they said the opposite. I'm not sure that I agree with us trying to do that.

I'm curious as to whether you have any more information than I have on that point?

Senator Cowan: I do not.

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

Hon. David M. Wells: I have a question for Senator Cowan if he would be so helpful to answer.

• (1840)

In the preamble, in your proposal, you suggest additional safeguards. Of course, as Senator Baker has mentioned numerous times in the past, the Supreme Court often uses our debates as reference points to determine what was actually intended, in addition to what was actually written.

Of course, in this chamber, we have already turned down some additional safeguards that have been proposed. Do you propose that those safeguards that may have been turned down would be back on the table in discussions between the federal and provincial governments in the future?

Senator Cowan: Thank you, Senator Wells. I'm not proposing any particular safeguards at all. I'm proposing that those discussions would be carried out, should the provinces wish, between the federal government and the provinces and territories.

Senator Wells: Senator Cowan, I wasn't suggesting you were proposing specific safeguards, but just that safeguards that had already been turned down by this chamber would be back on the table, or may be back on the table, in ad hoc discussions between the federal and provincial governments.

Senator Cowan: Senator Wells, it would seem to me that which safeguards were on or off the table in discussions between the federal and provincial governments would be for them to decide, not for us to dictate.

The Hon. the Speaker: Senator Harder, on debate.

Hon. Peter Harder (Government Representative in the Senate): I would like to put on the record that this is the first time I have seen this amendment, and I'm troubled by it, because I think it's an attempt to do by the back door what wasn't done by the front door with respect to safeguards.

Furthermore, I share the comments and observations in the question by Senator Sinclair that perhaps the Senate of Canada at this point is considering going beyond the original bill, but the Government of Canada is not. This is an amendment that I certainly couldn't support, particularly with the reference at the end to "medical assistance in dying while not at the end of life."

As Senator Sinclair has suggested, were that to be removed, there might be some merit in recommending to the government such a preamble amendment; but I think it's not up to us, frankly, to determine in preamble language what the Government of Canada has committed to, when it has been made very clear in the bill that they sent us, in my comments on the amendments, that the Government of Canada is not at this time contemplating medical assistance in dying while not at the end of life.

The Hon. the Speaker: Do any other senators wish to ask Senator Harder a question?

Senator Mercer, on debate.

Senator Mercer: I will now conclude the argument that I was trying to make earlier in questions to Senator Cowan.

This is my concern: This is 2016. We are all here. We have had a debate; we have had discussions; we have accepted some amendments and rejected others. But I'm going to be gone from here in six years. Many others will have gone before me, and soon after me. I am concerned that our intent and the intent of this legislation be very clear when it comes to protecting the vulnerable. It should be extremely difficult for a future government to change this law such that the protection of the vulnerable may be lessened. I think we should be extremely clear in what we say about the protection of the vulnerable because I worry about the future. The language here concerns me as well: "vulnerable persons who may seek medical assistance in dying while not at the end of life."

The people who aren't at the end of life are not the people that I thought we were trying to address here; rather, people who are close to death or who are in grave pain and agony. But even there we have to be careful. There are young people who are either in real pain or are perceived to be in real pain that I would not want someone in the future to say, "Oh, well, this is just a small addition to this bill because the people in 2016 just got this part wrong, and we'll just add this little line to it." Suddenly, the people who we consider vulnerable today will be at risk through this piece of legislation. I'm very concerned about anything that does not continue to protect the vulnerable; we need to be as explicit as possible that we want to extend that protection to them.

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): The debate is on the preamble. Some people are questioning the request to state in the bill that the government is committed to working with the provinces to protect vulnerable persons. I cannot believe that someone would be opposed to such a proposal, and I am even more surprised to hear that coming from the government leader.

The phrase "while not at the end of life" seems to be the sticking point here. Whether someone is at the end of life or not, if they are vulnerable, they should be protected. I would like everyone to agree that Canada will work with the provinces to protect vulnerable people.

MOTION IN SUBAMENDMENT

Hon. Claude Carignan (Leader of the Opposition): Honourable senators, I therefore move:

> That the motion in amendment moved by the Honourable Senator Cowan be amended by deleting the words "while not at the end of life".

This subamendment would delete the phrase "while not at the end of life" and keep "Whereas the Government of Canada has committed to work with the provinces and territories to support the establishment of any additional safeguards that may be needed to protect vulnerable persons who may seek medical assistance in dying".

I hope that this subamendment will be unanimously passed.

The Hon. the Speaker: This is a subamendment. The Honourable Senator Carignan, seconded by the Honourable Senator Platt, moved that Bill C-14, as amended, be not now read a third time—

[*English*]

May I dispense until all senators have a copy of this?

Hon. Senators: Dispense.

The Hon. the Speaker: Honourable senators, we will have to pause for a moment, as this amendment has just arisen.

I know, Senator Mitchell, you wanted to speak on the amendment. We will have to wait until we deal with the subamendment.

Unfortunately, colleagues, we will have to wait a moment until we get copies so that everybody can read it.

Senator Carignan, would you accept a question while we're waiting?

Senator Carignan: Yes.

[*Translation*]

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senator, my question is the following. I understand your subamendment, which is designed to ensure that all vulnerable people, regardless of their life expectancy, should be protected against suffering. How will this add to the provisions already in the preamble, which states, "Whereas vulnerable persons must be protected from being induced, in moments of weakness, to end their lives"?

Senator Carignan: I am talking about the notion of collaborating with the provinces. We see in the bill that the Department of Health, for example, collects a tremendous

amount of information. If that information can be useful and shared with the provinces so that they can fulfill their responsibilities and create rules or provide guidelines for doctors and nurse practitioners in order to protect the vulnerable, then that is the least the federal government can commit to doing.

• (1850)

We talked, for example, about the idea of insurance. There are some aspects that can have an impact on provincially regulated matters. We want to ensure that the federal government does not hold on to the information, but shares it with the provinces when it is necessary to protect the vulnerable. I do not understand how anyone can be against that.

[*English*]

The Hon. the Speaker: Honourable senators, unfortunately the table officers are having trouble interpreting the amendment. I suggest that we suspend for 10 minutes with a 2-minute bell and have the table consult with Senator Carignan and have copies made so we're all on the same page. Agreed?

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

The Hon. the Speaker: Honourable senators, are there any questions for Senator Carignan?

Hon. John D. Wallace: Senator, your amendment of Senator Cowan's amendment, would consider additional safeguards that may be needed to protect vulnerable persons.

I am wondering who you consider to be vulnerable persons. We've heard from many of our colleagues, and they've expressed their view of it — including those who are financially disadvantaged and have disabilities. There seems to be a far range of persons that could be covered under that description of "vulnerable persons."

I would suggest to you that we are dealing with medically assisted suicide and that anyone who is suffering from a grievous and irremediable condition and is considering medically assisted suicide is a vulnerable person. That has to be an emotional, psychological low point, a very stressful time.

So I would think anyone who is contemplated as being covered by the bill would be a vulnerable person. Your subamendment, which would have the Government of Canada and the provinces deal with safeguards to protect those vulnerable persons. Do you see your subamendment as being so broad that it would relate to everyone who could be covered by this bill?

[*Translation*]

Senator Carignan: Unfortunately, I don't have the Supreme Court's *Carter* ruling here, but if memory serves, paragraphs 114 and 115 list the vulnerable persons the government wants to protect. That is its pressing and substantial objective. If you read the *Carter* decision, check paragraphs 114 and 115, where you will find the list used by the government. It includes people who could be victims of others who wish them ill, who might seek to take advantage of their disability or weakness, perhaps to gain an inheritance, or who might brainwash them.

We must take steps to prevent that from happening. I think that is one of the pressing and substantial objectives the government wishes to achieve with this bill. It is also one of the reasons this bill is so restrictive, if I understand correctly. It therefore seems clear to me that we have to do everything in our power to protect these people.

[*English*]

Senator Wallace: Senator, I think then, to state the obvious, your conclusion would be that the vulnerable persons your subamendment relates to would be those as defined in *Carter*? It would be vulnerable persons as defined in *Carter*? Is that who you would say it applies to?

[*Translation*]

Senator Carignan: What I said was that, if you look at paragraphs 114 and 115 of *Carter*, and I am relying on memory here, you will see the list of vulnerable people that Canada's Attorney General referred to in his argument, people he feels should be protected. Let me be clear: an elderly person who is severely disabled, who has difficulty communicating, who is bedridden, or who may lack the means, may be at the mercy of someone who wants to abuse or exploit that person, whether it is to collect insurance money or to make that person change his or her will. These are people in need who could be victimized. Those are the people we want to protect.

[*English*]

Hon. George Baker: I wonder if the senator could explain the question that was asked earlier. This reads "whereas the Government of Canada has committed to work with the provinces and territories." Where did they commit to do that?

The Hon. the Speaker: Excuse me, Senator Baker. That would be a question more properly put to Senator Cowan on the amendments. We're now debating the subamendment, which is merely just the removal of the last few words in the actual amendment.

Senator Baker: Let me ask a question, then, on the subamendment.

The Hon. the Speaker: On the subamendment?

Senator Baker: Yes, on the subamendment. I listened to the honourable senator in French. I did not have the translation on, and I did not hear him say "additional safeguards." He said "safeguards," yet in his printed amendment he doesn't remove "additional." Was I correct in the honourable senator's recollection that in fact he took out the word "additional" when he introduced his amendment to the chamber and now it remains in there?

[*Translation*]

Senator Carignan: No, the subamendment is about removing only the following:

> . . . while not at the end of life;

It is therefore a question of removing this expression so as to not make any distinction. The people likely to need medical assistance in dying are people who could be victims and who could be vulnerable because of their situation and their suffering. These people could be victims of abuse and we want to protect them, whether they are at the end of life or not.

• (1910)

[*English*]

Senator Baker: Just to clarify, I listened to him carefully as he suggested verbally the amendment. When he read it out, he did not say "additional safeguards." He said "safeguards." He did not mention the word "additional." At least I didn't hear it. I was listening to the French.

Is this the correct version of his amendment that we have here?

Some Hon. Senators: Yes.

Senator Baker: Or did he mean to remove the word "additional," which he did not say, I do not believe, when he made it verbally?

[*Translation*]

Senator Carignan: What I am reading in French states, "toute mesure de sauvegarde additionnelle qui pourrait émaner de l'autorité provinciale".

For example, colleges of physicians and provincial authorities are adding verifications, such as the number of doctors who will be involved in a request for medical assistance in dying. They are writing guidelines to ensure that patients give free and informed consent. It is a type of additional safeguard above and beyond what is set out in the Criminal Code and in Bill C-14. Furthermore, this could open the door to other guidelines intended to prevent the abuse of the vulnerable.

The federal government will obtain a great deal of information from the studies that will be done. I believe that it makes sense to ask the government to work with the provinces in order to protect the vulnerable. It seems to me that the House should unanimously support this type of initiative.

[*English*]

Hon. Lillian Eva Dyck: Would the honourable senator take another question?

Senator Carignan: Yes.

Senator Dyck: In your response to Senator Wallace, you referred us to paragraph 114 of the *Carter* decision, which does list a group of patients who could be called "decisionally vulnerable," and it does go through a numbered list, but it also says in another sentence that Canada argues that there is no reliable way to identify those who are vulnerable and those who are not. So Canada doesn't know who is vulnerable and who isn't. How does that then affect this particular amendment if we don't really know who those people are?

[*Translation*]

Senator Carignan: If you carefully read the *Carter* decision, you will see the list of people considered to be vulnerable. Canada uses this argument to justify complete prohibition. Since it is difficult to identify these people, the government believes that a blanket prohibition is required. I believe that is what you have understood from this phrase.

[*English*]

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

Hon. Senators: Question.

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

> That the motion in amendment moved by the Honourable Senator Cowan be amended by deleting the words "while not at the end of life".

All those in favour of the motion in subamendment will please say "yea."

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

We'll do it again, colleagues.

All those in favour of the motion in subamendment will please say "yea."

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it. Accordingly, the motion is defeated.

(Motion in subamendment negatived, on division.)

The Hon. the Speaker: Resuming debate on Senator Cowan's amendment.

Hon. Grant Mitchell: Colleagues, I have a couple of serious problems with this amendment. I share the concern raised by our colleagues Senator Harder and Senator Sinclair that somehow in this amendment we would be making a commitment on behalf of the Government of Canada that the Government of Canada hasn't made*, ergo*, it wouldn't be true and we know it. We can't really vote for something that isn't true when we know it.

It's startling to me, actually. If you read this amendment, particularly now that it has been unamended, it says something that addresses exactly what I was talking about last week and what Senator Sinclair and Senator Harder have been talking about more recently. Let me read the startling part of this:

> Whereas the Government of Canada has committed to work with the provinces and territories to support the establishment of any additional safeguards that may be needed to protect vulnerable persons who may seek medical assistance in dying while not at the end of life;

It explicitly admits that there need to be additional safeguards, but the moment this bill is passed with the broader amendment, "while not at the end of life" will take effect, and so there will be a period of time, even if the Government of Canada made the commitment to consider these safeguards, where additional safeguards for vulnerable people will be needed, but the bill will still apply.

Senator Cowan: May be needed.

Senator Mitchell: Well, it absolutely says "may be needed." The fact of the matter is that the bill is set up to do what can be done now, knowing what we know about foreseeable death and the experience the medical profession has had with that. This amendment and the government's next steps go into the area past foreseeable death. What this amendment explicitly admits is that they don't know whether or not additional safeguards may be needed. At the very least, they don't know whether there may be some. Do you know why? Because the government hasn't had time to consult with 13 provinces and territories, to consult with multiple professional associations in various jurisdictions, to figure out whether there need to be more safeguards.

The fact of the matter is they know more safeguards are needed because they moved several safeguard amendments that were defeated, so we know those safeguards don't exist. The question I would ask is what safeguards exist in this additional area?

This amendment specifically admits the argument that we've been making, that we're moving into an area, a range, where vulnerable people are particularly vulnerable, and there need to be safeguards or consideration given to the need for safeguards which don't now exist. So implicit in this is that there will be a period of time over which that consideration needs to be done.

This amendment and the further amendments mean that this bill will operate immediately before that period of time, and the consideration that will go under that period of time will be able to take place. The bill as it was originally created addresses that very issue. That is the power, balance and prudence of that bill. It says: "To a point, yes, we're ready. To go beyond that point, we're not ready." This amendment says we're going beyond that point, and it admits that we don't have the safeguards to support vulnerable people. It's really a startling admission.

Senator Johnson: Question.

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

Hon. André Pratte: Thank you. Frankly, I'm rather indifferent as to whether this new part of the preamble is in or not, first of all, because, as Senator Mitchell said, the government really hasn't made such a commitment. Second, this would be part of the preamble, which will disappear as soon as the bill becomes an act, and therefore it won't be anywhere in the Criminal Code. Third, it's nice to wish all of that, but I don't think whether it's in or not will make any difference.

Therefore, I could vote for it knowing that it won't be very useful, but I'd rather not vote for something that I think will not be of very much use. Therefore, I won't vote for it; I'll vote against it.

Some Hon. Senators: Question.

The Hon. the Speaker: Senator Lang, on debate.

Hon. Daniel Lang: Colleagues, I want to bring everybody back to the realities we face in Canada. The fact is, all the provinces and territories have guidelines in place with respect to medical assistance in dying.

• (1920)

I disagree with my colleague Senator Mitchell that there isn't anything in place and that therefore we need this amendment for the purposes of consultation.

Everybody is talking about the threat to those individuals who are vulnerable. I would ask everyone to take some time and read the guidelines that are in place and the law of the land for that particular province or territory as far as this procedure is concerned.

I go back to Senator Wallace talking about individuals who are vulnerable. When you go through this process, everyone, no matter their status, is duly protected because there is a process. It's not as if you go in that day and you get your tooth extracted and it's done. There is a process, and one doctor has to check with

another doctor. There's a witness. All sorts of steps have to be taken, because the provinces and the territories realize how serious this is.

We talk about consultation. Not one jurisdiction has allowed for a medical practitioner, a nurse, to be directly involved in the authorization of this procedure. Every province has called for two doctors for that procedure. Yet at the federal level, because we're smarter than the provinces and the territories and because we don't administer the hospitals and are not in charge of the day-to-day health care, we decide that we'll just broaden all of that.

The provinces brought in their well-thought-out processes and procedures to ensure that the most vulnerable and every individual is protected to the best of their ability as they move into these new uncharted waters.

I say to senators here, the provinces have the direct responsibility. They are exercising that responsibility. Quite frankly, the more the debate goes on in this place, the more I am comfortable with the provinces, even if we didn't pass any law.

The Hon. the Speaker: Senator Dyck, on debate.

Senator Dyck: I'd like to say a couple of words about this amendment.

First of all, I do not think it is an implicit admission of the need for more safeguards. Actually, if you look up the definition of the word "may," in laymen's language it's expressing a possibility. "May" can mean "may, yes," but also mean "may not." That is how I interpret it, that there may be a possibility that additional safeguards are needed.

Secondly, I will not support this motion because it's committing the Government of Canada, and I don't think we have evidence that the Government of Canada has committed to this. I don't feel we have the right, therefore, to meet that amendment.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Cowan, seconded by the Honourable Senator Fraser:

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

May I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

Accordingly, the motion in amendment is defeated, on division.

(Motion in amendment negatived, on division.)

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

Hon. Art Eggleton: Honourable senators, earlier on we had a debate about Senator Lankin's amendment. All of the debate was about the first part of that motion, which dealt with social conditions and the social determinants of health.

The second part is the one that I want to rescue with a slight amendment. It's very simple and straightforward.

What I think is important here in clause 9.1, these independent reviews, these studies on mature minors, advance requests and mental illness, are all going to be undertaken, according to the amendment in the House of Commons, within 180 days. But there is, as we've discussed, no back-end time frame as to when they should be finished and when they should be reported. That's what I think is important to capture here.

I don't see why we would disagree with that. There was no discussion on it on the previous motion of Senator Lankin.

I have made one slight amendment. Instead of 18 months, I've said two years, but the essential part of this amendment is to say, "Look, you're going to start it within 180 days, complete these studies within two years and file your findings with both houses of Parliament."

Surely we would want to see the results of this in a timely fashion. Surely we would want to see it presented to our house as well as the House of Commons.

MOTION IN AMENDMENT

Hon. Art Eggleton: Therefore, honourable senators, I move:

> That Bill C-14, as amended, be not now read a third time, but that it be amended in clause 9.1, on page 13,
>
> (*a*) by replacing line 21 with the following:
>
> **"9.1 (1) The Minister of Justice and the Minister of"**; and
>
> (*b*) by adding after line 28 the following:
>
> **"(2) The Minister of Justice and the Minister of Health must, no later than two years after the day on which a review is initiated, cause one or more reports**

on the review, including any findings or recommendations resulting from it, to be laid before each House of Parliament."

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Eggleton, seconded by the Honourable Senator Harder:

That Bill C-14, as amended, be not now read a third time —

Dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

Accordingly, the motion in amendment is adopted, on division.

(Motion in amendment agreed to, on division.)

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

The Hon. the Speaker: Adjournment of the debate?

Senator Bellemare: I propose to move the adjournment of the Senate.

The Hon. the Speaker: Senator Bellemare, you're moving the adjournment of the debate, correct?

Senator Bellemare: No. Your Honour, may I explain? We have other business. I know everyone is tired. The other business may take a short time. It's to accept a report of the Selection Committee.

By adjourning the debate, we could go back to the Orders of the Day and ask leave to only take the question on the motion that the Honourable Senator Carignan adjourned in his name with respect to the adoption of the Selection Committee report, or we can wait until tomorrow.

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): Just to be sure we understand each other correctly, have we finished the debate? In accordance with the Senate's decision to examine Bill C-14 by theme, we should end all discussion of the preamble.

Are there other amendments to debate or have we finished examining the themes of Bill C-14? If so, tomorrow, we can continue debating Bill C-14 as a whole. If there are any other amendments to the preamble, we should finish debating those tonight.

[*English*]

The Hon. the Speaker: There are no other amendments proposed, and it's not imperative that the adjournment of the debate on Bill C-14 be moved at this time unless, as Senator Bellemare has asked, the Senate would like to entertain the Committee of Selection motion. If not, we will wait until tomorrow. There will be no need to adjourn the debate on C-14, and Senator Bellemare can move the adjournment of the Senate.

Senator Cowan, do you have something to say?

• (1930)

Hon. James S. Cowan (Leader of the Senate Liberals): I have a point of clarification. We are now through with amendments to the bill. We will ask our staff to review all of the amendments to ensure they are consistent, that there are no errors or omissions, and then we'll return tomorrow. There will be no further amendments but senators will be afforded an opportunity to speak about the bill in general, as amended at third reading. At the conclusion of that, we will have a vote on the bill, as amended.

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): It is my understanding that if the law clerks and the table officers do find something that needs to be tidied up, as a result of what we have already done, that we should keep the door open for the first order of business tomorrow to be a rapid tidying up by way of amendment.

These are not amendments of substance or of changing the bill in any way that does not reflect what has already been done. It will simply be tidying up. But if we close the phase of the debate where amendments can be put, then we can't make those changes.

The Hon. the Speaker: We are not closing that particular phase right now. The table has been instructed to inform the Senate, before debate begins tomorrow, whether or not any actual tidying up needs to be done.

Thank you for raising that point, Senator Fraser.

Senator Cowan, your assessment is correct. If we move the adjournment of the Senate now, then tomorrow it will be up to Senator Bellemare whether or not she wants to bring for consideration the motion of the Selection Committee or whether we proceed with debate on C-14.

Senator Bellemare: Your Honour, I believe I understood you to say that I could call, with leave, the adoption of the report before we return to Bill C-14, even though it is not a government order of business; is that correct?

The Hon. the Speaker: If it's the wish of this house that you do that. You will need consent, Senator Bellemare.

Senator Bellemare: We will do that.

(The Senate adjourned until tomorrow at 2 p.m.)

CONTENTS

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