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(HANSARD)

Friday, June 17, 2016

The Honourable GEORGE J. FUREY
Speaker

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

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THE SENATE

Friday, June 17, 2016

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

Prayers.

SENATORS' STATEMENTS

IRAN

DETENTION OF HOMA HOODFAR

Hon. Linda Frum: Honourable senators, as I rise today, I note that it has been almost exactly one month to this day since the Senate of Canada conducted its inquiry into the plight of innocently detained political prisoners in Iran.

Today, I wish to remind us all that holding Iran accountable for its flagrant abuses of human rights cannot solely take place during a two-day inquiry, or even an annual Iran Accountability Week; it must take place every single day, because, sadly, there is great cause for vigilance on this matter.

Last month, I drew attention to the devastating case of Saeed Malekpour, the Iranian-Canadian who was arrested in Iran while on a family visit in 2008. He is still in prison to this day.

And now, as of some weeks ago, another Iranian-Canadian, this time a dual citizen, was apprehended.

Homa Hoodfar is a professor of social anthropology at Concordia University in Montreal. The 65-year-old scholar travelled to her native country of Iran in February for both personal reasons and academic endeavours. She is known for her work on women's issues in the Middle East, in particular the prevention of the stoning of women and the prevention of female genital mutilation.

Although Hoodfar did not plan to stay in Iran long, the Revolutionary Guard had a different plan for her. Hoodfar, a widow in poor personal health, had her passport and possessions confiscated, was repetitively and forcefully interrogated, deprived of consular access, and has now been detained in Evin Prison since June 6.

This is, as we all know, the very same jail where another Iranian-Canadian woman, also known for her interest in women's human rights issues, Zahra Kezemi, was brutally raped and murdered in 2003.

In the words of Hadi Ghaemi from the New York-based International Campaign for Human Rights in Iran, Hoodfar's arrest:

. . . reflects a security and intelligence apparatus out of control in Iran. They are snatching and detaining people without cause and with total impunity, creating a virtual

quarantine of Iranian society so that they may more firmly hold it in their grip.

Honourable senators, newspaper reports suggest that our federal government is "actively engaged" in this case and working closely with allies to assist Homa Hoodfar. It is my hope that their efforts to free both Saeed Malekpour and Homa Hoodfar from the malign and criminal Iranian regime will be successful.

In the meantime, I know that all honourable senators will continue to follow their cases with deep concern as we continue to condemn the brutal regime that has seen fit to take them hostage.

PAUL G. KITCHEN

ROTHESAY NETHERWOOD SCHOOL— CONGRATULATIONS ON RETIREMENT

Hon. Joseph A. Day: Honourable senators, education is fundamental to a prosperous Canada. It gives me great pleasure to stand here today to acknowledge an educator who truly embodies this principle, the long-serving headmaster of Rothesay Netherwood School, Mr. Paul Kitchen.

Come June 30, Mr. Kitchen will be retiring after dedicating nearly 30 years to serving the students of the small private boarding school located in Rothesay, New Brunswick.

During his tenure, Mr. Kitchen also served as president to both the Canadian Accredited Independent Schools and the Atlantic Conference of Independent Schools, two organizations dedicated to the pursuit of educational excellence.

When Mr. Kitchen was appointed headmaster in 1987, the campus was in dire need of upgrading. The school was in debt, and the relationship with the community needed attention. In order for the school to improve, or indeed survive, Mr. Kitchen recognized that some changes needed to be made quickly.

Little by little, the school started to reflect the improvements taking place. The boarding school's relationship with the community became a priority. The financial situation dramatically improved. The campus upgraded its facilities, and, consequently, school enrolment nearly tripled during Mr. Kitchen's tenure as headmaster.

When asked, Mr. Kitchen credits the institution's rejuvenated state to the encouragement and enabling of the talented team of educators at the school to focus on individual needs of the students. Facilitating the personal and intellectual growth of all students became a heightened priority for the faculty, and that did not go unnoticed.

The changes made a tremendous impression on the students, their parents and the alumni of the school. Just last week, four Rothesay Netherwood students were flown to Washington, D.C., to accept the ExploraVision Gold Medal for the grades 7 through 9 competition. Five thousand entries were submitted from across North America, and this small Atlantic Canadian school won.

An Hon. Senator: Wow!

Senator Day: By simply adjusting the school's educational and social approach, M. Kitchen assured a future for Rothesay Netherwood School and its students that has never looked brighter. There may well be lessons learned from the Rothesay Netherwood School approach to education that have a wider application.

Senators, after his 30 years of service to Rothesay Netherwood School and its many students, please join me in congratulating Mr. Paul Kitchen on a remarkable educational career and a well-deserved retirement. He truly has made a difference in the lives of many.

NUNAVUT

FISHERIES MANAGEMENT PLAN

Hon. Dennis Glen Patterson: Honourable senators, Nunavut's fishery has grown to be a major employer. In 2013-14, the total market value of Nunavut's turbot shrimp and Arctic char harvest was \$86 million and created more than 370 seasonal jobs. Since 2005, over 700 people have been trained in this sector. This is huge for Nunavut's developing economy.

Three Nunavut Inuit-owned companies now own all their own fishing vessels. Nunavut's fishery has grown because past governments have awarded Inuit a fair share of fishing quotas in Nunavut's coastal waters, rights recognized in the Nunavut Land Claims Agreement.

Colleagues, there's still more to be done to ensure the rights afforded in the Nunavut Land Claims Agreement are properly protected.

In 2003, Last In, First Out, LIFO, was introduced by DFO as part of the Integrated Fisheries Management Plans.

Under LIFO, as quotas are reduced due to climate change, the newest licence holders are first to lose their shrimp quotas. Since Nunavut was established in 1999, this policy favours older and established fishing companies that have been trolling for fish and shrimp in our Arctic waters for decades. The LIFO policy directly discriminates against Nunavut.

• (0910)

[English]

In November 2002, the federal government accepted the recommendations in the report of the Independent Panel on Access Criteria for the Atlantic Coast Commercial Fishery that

[Senator Day]

stated, with respect to the Nunavut Land Claims Agreement, section 15.3.7, that:

Government recognizes the importance of the principles of adjacency and economic dependence of communities in the Nunavut Settlement Area on marine resources, and shall give special consideration to these factors when allocating commercial fishing licences within Zones I and II. . . . The principles will be applied in such a way as to promote a fair distribution of licences between the residents of the Nunavut Settlement Area and the other residents of Canada and in a manner consistent with Canada's interjurisdictional obligations.

The panel also recommended:

. . . no additional access should be granted to non-Nunavut interests in waters adjacent to the territory until Nunavut has achieved access to a major share of its adjacent fishery resources.

Despite this and the fact that adjacent jurisdictions in the rest of Canada hold 80 per cent to 95 per cent of the quotas in their adjacent waters, Nunavut continues to have less than 38 per cent of the total allowable catch in its adjacent waters, also known as Shrimp Fishery Areas (SFA) 0, 1, 2 and 3.

Honourable senators, under the land claim agreement, the government is also required to consult with the Nunavut Wildlife Management Board on wildlife management measures before policies are established or implemented. LIFO is one such policy, but no consultation occurred.

In the spirit of this government's stated commitment to a renewed relationship with Canada's indigenous peoples, I urge the government and the Honourable Dominic LeBlanc, Minister of Fisheries and Oceans, to consider the recommendations of the Nunavut Wildlife Management Board and the issue of adjacency and consultation when making his determination on northern shrimp quota allocations early next month.

All Nunavut asks for is to be treated fairly and to have the terms of their land claim respected.

THE LATE GILLES LAMONTAGNE, P.C., O.C., C.Q.

Hon. Claudette Tardif: Honourable senators, Senator Dawson has asked me to read this message on his behalf. It is a tribute to a friend who passed away earlier this week.

[Translation]

Honourable senators, I would like to pay tribute briefly to Gilles Lamontagne, who died on Tuesday, June 14, at age 97.

Mr. Lamontagne and I arrived in the House of Commons in mid-June 1977, 39 years ago. Prior to that, while he was presiding over the future of Quebec City as its mayor, I was presiding over the CECQ, Quebec City's school board. We

both decided to jump into the federal arena following the election of the Parti Québécois in 1976, to deal with this sovereigntist threat to Canada at the time.

Mr. Lamontagne was a great Quebecer and a great Canadian. Behind his affable nature was a formidable decision maker who was not easily intimidated. The expression “an iron fist in a velvet glove” fit him . . . like a glove.

I offer my deepest condolences to his family and loved ones. He contributed significantly to making Quebec City the magnificent city that we are so proud of today.

Thank you, Mr. Lamontagne.

[English]

ROUTINE PROCEEDINGS

PUBLIC SECTOR INTEGRITY COMMISSIONER

2015-16 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, pursuant to section 38 of the Public Servants Disclosure Protection Act, I have the honour to table, in both official languages, the 2015-16 Annual Report of the Office of the Public Sector Integrity Commissioner.

OFFICIAL LANGUAGES

STUDY ON BEST PRACTICES FOR LANGUAGE POLICIES AND SECOND-LANGUAGE LEARNING IN CONTEXT OF LINGUISTIC DUALITY OR PLURALITY—SIXTH REPORT OF COMMITTEE TABLED DURING THE SECOND SESSION OF THE FORTY-FIRST PARLIAMENT—GOVERNMENT RESPONSE TABLED AND REFERRED TO COMMITTEE

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the government response to the sixth report of the Standing Senate Committee on Official Languages entitled: *Aiming Higher: Increasing bilingualism of our Canadian youth* tabled in the Senate on June 16, 2015, during the Second Session of the Forty-first Parliament.

The Hon. the Speaker: Honourable senators, pursuant to rule 12-24(4), this response and the original report are deemed referred to the Standing Senate Committee on Official Languages.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS—
MOTION FOR CONCURRENCE IN COMMONS
AMENDMENTS AND FOR NON-INSISTENCE
UPON CERTAIN SENATE AMENDMENTS
ADOPTED

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying).

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

That the Senate concur in the amendments made by the House of Commons to its amendments 2(c)(i) and 3 to Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying);

That the Senate do not insist on its amendments 2(a), 2(b), 2(c)(ii) and 2(c)(iii), to which the House of Commons has disagreed; and

That a message be sent to the House of Commons to acquaint that house accordingly.

The Hon. the Speaker: It is moved by the Honourable Senator Harder, seconded by the Honourable Senator Baker, that the Senate concur in the amendments made by the House of Commons —

May I dispense?

Hon. Senators: Dispense.

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

Senator Harder: Honourable senators, I do not propose to speak long because we have, over the course of the last two and a half weeks, debated extensively the matters before us, and we all understand the situation that we now face with a message from the House of Commons. I think it is important for me to say a few words with respect to where we are with the message and the motion that I have tabled.

I believe that the Senate has done its work. We have, through the exercise of debate and the work of the Senate, engaged Canadians on the issues involving Bill C-14.

We have, through our amendments, perfected the bill to a great degree and provoked, in the other chamber, yet another debate of reflection, and in the broader public, a debate with respect to the amendments that we made.

This is the role of the Senate, to provoke, to inquire, to make recommendations for improvement, to urge the government to consider our reflections.

The role of the House of Commons and the government is to consider the recommendations that we have made, to take seriously the amendments and the views of the Senate, and I believe they have done that. They have done that in a respectful fashion, by seeking to accommodate and engage the other chamber with respect to the amendments that have been brought forward.

That is their role. They are the representatives of the people, and the government will be held accountable for the implementation of the bill that, hopefully, this chamber will conclude later today is worthy of Royal Assent.

There are differences between our roles in the Senate and the House of Commons. Even in this period of transition, as the chamber itself is refreshed with a more independent style, it is important that this developing relationship with the other institution reflect the changing and different roles of our respective institutions.

I was gratified that the ministers acknowledged in their remarks yesterday the importance that they placed in the role of the Senate in this process, the value of the presentations that the Senate has made, the quality of their engagement both from Committee of the Whole through to the debate in the other chamber yesterday and, indeed, after. We can be proud, as an institution, that the bill is widely viewed as having been improved due to the amendments that have been accepted in the other chamber, while the basic integrity of the bill remains.

• (0920)

In fact, as you all know, the other place agreed with five — really, five and a half — amendments and respectfully disagreed with only one. This means that we have, as a result of the work of this chamber, strengthened the requirements around palliative care, reporting, studies and improved language identified by this chamber.

Now is the time for us, as an institution, to deal with the message that we have received, and we do so in the context of developments, both in the courts of Ontario and in other stakeholder engagement that will continue, not just in the last few days but continuing as we move forward.

As I mentioned in the first debate that I contributed to on second reading, this is the start of a process of implementing, through the legal regime of the Criminal Code, that which the Supreme Court has asked Parliament to legislate. It is — by the very nature of the bill itself, the commitments made, and indeed by engagement with the public — but a first step, and one that is important for this chamber and for Parliament.

[Senator Harder]

I would like to thank all senators for the contributions they have made and for the deliberations they have undertaken as we have considered various amendments. However, at this juncture I respectfully submit that now is the time that we concur with the message from the other place and allow Canada to have a legislative framework for assisted dying that complies with the Supreme Court of Canada requirement and what they have asked Parliament to do.

I thank you for your deliberations and hope that we can reach a point of view in this chamber as soon as possible today.

Hon. Mobina S.B. Jaffer: Senator Harder, thank you very much for what you just said. Will you answer a question, please?

Senator Harder: Certainly.

Senator Jaffer: Thank you, Senator Harder.

I don't have your notes in front of me, so I can't quote what you said, but the way you set out the role of the Senate is the first time I have heard that description of our role. On another day, hopefully we will debate that.

I respectfully suggest and would like your comment on the following: I have been here for over 15 years, and all the time I have been here, I have been told — and have absolutely integrated into my being — that the role of the Senate is to protect minorities, which I believe we do proudly and effectively.

However, the other role of the Senate — which is why we are formed as a house of second sober thought — is to always protect the Constitution. I apologize; I don't have your remarks in writing, but I did not hear you speak about our role of protecting the Constitution, and I believe our role is to protect the Constitution.

While I'm asking the question, I don't for a minute think we should not work toward the safeguards that this bill covers, but we still have the issue of how do we stand up for the Constitution of Canada.

Senator Harder: I thank the honourable senator for her question. This, of course, is an issue that has been debated in this chamber over the past two and a half weeks.

It is the Government of Canada's view — and indeed my view — that this bill conforms with the Constitution and with the Charter. I know that is not a view that is shared amongst all senators, but it is the view of the Government of Canada, the Attorney General of Canada, that this bill is in conformity with the Charter.

Of course, the Senate of Canada has an obligation with respect to the Constitution, but we have before us a different view of the Constitution between the Attorney General and some members of this chamber, and it would be wrong to suggest that the only protection of the Constitution is by those senators who have a particular view of this bill with respect to the Constitution.

I certainly respect the Attorney General, the Government of Canada and the other chamber — all of whom have accepted the view that the message that came to us yesterday, and the bill as amended, is compliant with the Constitution and the Charter.

Senator Jaffer: Senator Harder, I don't believe that anybody in this chamber does not respect the Attorney General. Of course we all respect her, but we have different points of view.

Senator, since this message has come to us, I have received many calls from people who are saying that if we don't stand up for what we have fought for in the last few days, we will deny access to people like Kay Carter. How do you answer that?

Senator Harder: I would point out that there are a number of people who believe — even Mr. Oliphant, co-chair of the special joint committee, yesterday in the other chamber, voted to support the message we received. I would like to quote his response, because I think it is relevant to the question you asked.

Mr. Oliphant, MP, says:

It is now apparent to me that having legislation in place will at least save vulnerable Canadians from the costly and inhumane tribulation involved in having to appear before a judge to access their right to medical assistance in dying.

He has not changed his view, of course, with respect to the risks that he sees in respect of Charter compliance. But he has concluded, and has voted accordingly, that the vulnerable are better protected with the bill that is before us, and the message that is before us, than without.

Hon. Art Eggleton: Senator Harder, in addition to talking about how you see the different responsibilities of the two institutions of Parliament, you also talked a lot about respect and that what we did was respectfully received.

How can you say that is the case when, before we even finished the debate on third reading, the Minister of Justice, in public, said that she would reject the particular amendment that had at that point passed in this chamber by a 41-30 vote? How respectful is it to make that kind of a statement before we had even finished our debate and before we had submitted our proposition?

Senator Harder: I thank the honourable senator for his question and would suggest that the ministers — and indeed the government and the other chamber — formed a view that Bill C-14, as originally sent here, was a finely crafted, balanced bill that was Charter compliant and that responded to the requirements that Parliament was asked to undertake, and that the basic integrity of eligibility and safeguards was poor. So it wouldn't be surprising that ministers, or others involved, would speak to the importance of maintaining that integrity.

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

Hon. George Baker: First, I would like to thank the Government Representative in the Senate for granting me the privilege of sponsoring this bill. I don't imagine there was a rush of volunteers, but I considered it to be a privilege.

I also want to put on the record my thanks to the Prime Minister and the Minister of Justice for praising the Senate. The Prime Minister went out of his way to say what a great job the Senate had done in sending its recommendations to the House of Commons and amending what had been proposed to the Senate.

• (0930)

I also want in the process to sort of apologize to Senator Marshall. I say "sort of" because the minister —

Senator Moore: You "may" or you "shall" or you "must"?

Senator Baker: Well, it centres around that, because when I went back to the office after disputing the word "must" that she had inserted, which now the government is thankful for you doing, I had two emails from professors of law, one from Manitoba and one from New Brunswick. Each one of them pointed out to me what the facts were concerning the use of the word "must." Of course, our judge in the back row here also pointed out to me after that it should be the word "must" instead of "shall" that I had suggested.

The only conclusion I can come to, as I read out in case law, "may" could mean "shall" in certain circumstances, "shall" could mean "may" in certain circumstances, and "shall" could mean "must," "must" could mean "shall," but "may" may never mean "must" and "must" must never mean "may." It's a distinction —

Senator Mercer: I can't wait for the transcript.

Senator Baker: It's a distinction between "may" and "must," and the government congratulated you on making it a definitive thing, that the regulations "must" be drawn up by the Minister of Justice. So I congratulate Senator Marshall.

Hon. Senators: Hear, hear!

Senator Baker: I want to briefly address the question before the Senate on two things. Number one, what are the facts right now? What is before us? What is the standard? I want to just repeat the standard, the bar that I'm going to address in making my decision whether to agree with the motion or to reject what the House of Commons has done. The facts are these.

There were two speakers in the House of Commons yesterday who referenced that it was the Senate that made an error. I'll quote:

Importantly, while the other place expanded eligibility in the bill, it did not introduce new safeguards for the very circumstances where the most caution is required.

We all know that Senator Carignan proposed a motion that was defeated, and we all know that certain members of the Senate were expecting to have those additional safeguards put in. However, the Senate is not to blame for not putting in those safeguards. The House of Commons could have put in those safeguards. The government could have suggested those safeguards. An amendment could have been made to the Senate recommendation to the House of Commons, adding words that would provide those safeguards, if the safeguards were needed.

Well, honourable senators, the fact of the matter is that the House of Commons is collectively rejecting expanded eligibility. Reasonable probability of death is the standard the House of Commons requires.

Now, the reason I say that is this: The house leader put a motion yesterday in the House of Commons. At 10:21 a.m. in the House of Commons, the house leader rose on Standing Order 53 saying that the Rules will be altered, that notice is not required, that the House of Commons can deal with this matter from the Senate before them before 2 o'clock. And the motion was put.

Now, that motion is debatable. Motion 53 requires at least 10 people to rise to object to it. Then there would be a vote. Well, honourable senators, nowhere close to 10 people rose to object to that motion by the house leader. Collectively, the House of Commons wanted to deal with this matter from 10:21 a.m. until 2 p.m.

Some Hon. Senators: Shame.

Senator Baker: Then a motion was put by one of the speakers during that period, and that motion was to amend what the government had suggested to the House of Commons and to reinstate the suggestion of the Senate on expanded eligibility. They called it on their record "Senator Joyal's amendment." I say that because it's in the record of the House of Commons.

After Question Period yesterday — at 3:25 p.m., to be exact — the motion was voted on because the debate ended at 2:00. It was voted on as to whether or not they would reinstate what the Senate had suggested on the expanded eligibility. Here is the result of the vote: yes, 54; no, 240. That's what you call a definitive decision by the House of Commons. That's definitive.

The final vote on all of the matters before them was 190 to 108.

I point that out because when you look at the record, we had the joint committee recommending this expanded eligibility. One of the motions the Senate Legal and Constitutional Affairs Committee in pre-examination of the bill sent to the House of Commons was to expand the eligibility. The Justice Committee of the House of Commons voted to expand the eligibility. Motions were put at report stage and third reading to expand the eligibility. They were all rejected by the House of Commons.

Then the ultimate: The Senate, the chamber of sober second thought, sent a recommendation to expand the eligibility. It was rejected by the House of Commons. It was rejected during the

vote at 3:25 p.m. to reinstate the expanded eligibility, defeated 240 to 54. One has to conclude that that is the final decision of the House of Commons. There it is.

The only question remaining for me and for each individual senator — we all respect one another. That is the great part about the Senate. There are people in this place who disagree vehemently and view the standard of judgment to say we shouldn't have physician-assisted death at all. I respect their opinion, and I applaud them when they give speeches. We all do. We respect one another's opinions.

I think the standard, as I have mentioned before, should be found in the Canadian Charter of Rights and Freedoms, whereby section 7 determines whether or not a law that violates a person's Charter rights is demonstrably justified in a free and democratic society. That is the standard. If it can be demonstrably justified in a free and democratic society, then your right can be violated by that law. I emphasize the word "democratic" because we live in a democracy where people are elected to make our laws.

The final standard is one used every day in our courts, as judges would testify. When violations are made against sections 7 and 15 of the Charter, which are under contention in this legislation, that is the standard. Section 24(1) of the Canadian Charter of Rights and Freedoms: Would it shock the conscience of the community? Then, as His Honour knows — because he is a former litigator who has litigated the matter many times in criminal law — the final standard is if something would bring the administration of justice into disrepute.

• (0940)

What is my position? I represent Newfoundland and Labrador. I'll tell you what the situation is in Newfoundland and Labrador. I'll be brief with this and then I'll conclude. A news story yesterday from CBC News reads this way:

A St. John's man who is asking the Newfoundland and Labrador Supreme Court to declare that a doctor can legally help end his life will have to wait for a ruling from the judge.

This is after the Minister of Justice proclaimed in Newfoundland and Labrador, as most ministers of justice did across the country, "We will not prosecute anybody who assists in physician-assisted death." Attorney General after Attorney General, Minister of Justice after Minister of Justice and the Newfoundland Minister of Justice was especially powerful said, "There will be no prosecutions. I have given orders to our Crown prosecutors not to prosecute anybody involved in physician-assisted death." And regulations were issued by the medical association. Here is what you do. Documents show this man is in the last stages of cancer. It goes on to say:

Chief Justice Raymond Whelan said he would not be coming to a decision right away, but would file a written decision soon.

[Senator Baker]

Court documents say the man's doctor will not help the cancer patient die until the court grants a Declaratory Order stating that helping the cancer patient die would not be illegal.

His lawyer said that his client, in the final stages of cancer, is "... keeping tabs on what's happening. Whenever I visit his room, he usually has the Senate on [the Cable Public Affairs Channel]."

Honourable senators, he is listening to this debate right now at this very moment.

Now, Newfoundland and Labrador is not the only place where there is confusion. Here is New Brunswick, just from yesterday:

A directive from the prosecution services has failed to allay the fears of medical professionals in New Brunswick wary of proceeding with requests for physician-assisted death.

Crown lawyers have been told not to prosecute health professionals who take part in physician-assisted death, so long as the Supreme Court guidelines are followed.

Anthony Knight of the New Brunswick Medical Society says that clarifies a few points or concern, but not enough.

We don't think (the proposals) are necessarily helpful . . . I think it's good to know that individuals are likely not to be criminally prosecuted, but at the same time there are a lot of unanswered questions as a consequence of the absence of legislation from the government.

The Nurses Association of New Brunswick is waiting for final legislation, as well.

And then it goes on to quote the nurses association.

That's not the only one I noticed yesterday. Look at Ontario and *The Globe and Mail*, a fine reporter by the name of Sean Fine. The first sentence is:

A man with terminal brain cancer will ask a Toronto judge on Wednesday for an assurance that no one who helps him end his life will be prosecuted.

So that's the situation across Canada, specifically in the area I represent. I'm a senator from Newfoundland and Labrador. That is the situation in Newfoundland and Labrador as I have read it. This man, in the last stages of cancer, is listening to this proceeding right now, at this very moment. So when I consider the test, am I going to reject, given all those circumstances, the decision of the House of Commons at this point? Given the facts that I have outlined, do I feel that my decision can be demonstrably justified in a free and democratic society if I were to reject what the House of Commons is finally decided after due consideration? I think the answer would be no. And if I decided to send this matter back to the House of Commons after the history

of this particular question, would that bring the administration of justice into disrepute? Yes, I think it would. Thank you very much.

Hon. Judith Seidman: Honourable senators, I rise once more in this chamber to speak to the issues around Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying — MAID), and specifically of the importance of federal legislation.

This is the third time in the last year that I have been challenged with the soul-searching that such a piece of legislation demands. The first time was our own Senate bill, Bill S-225, sponsored by two of our colleagues, Senators Campbell and Nancy Ruth. I spoke to that bill at second reading, just one year ago. Might I quote directly from the introduction to the speech I gave on June 2, 2015:

Public opinion has forced countries around the globe to engage in a public discourse on the merits of legalizing physician-assisted death. Senators Ruth and Campbell have brought forward a bill that is both relevant timely. It will facilitate discussions languishing in the background, and overdue. However, there is no question that we shall immediately find ourselves in the realm of the abstract, with issues difficult to discuss, and rarely resolved in debate; issues that often raise more questions than inform answers. For example: How do we balance the seeming conflict between individual and collective rights, between freedom of choice and those societal factors that constrain choice? Does the Hippocratic Oath prevent physician-assisted death, and if so, under what circumstances? How do we protect vulnerable individuals from too broad interpretations of the legislation and ensure there are clearly stipulated terms of reference? This public discourse will challenge us to confront big questions of philosophy, ethics and religion, moral values of our time, and our prevailing societal paradigms.

Honourable senators, we have done that very confronting, right here in our chamber in this debate these past two weeks. I will return to this, our debate, in a moment.

My second challenge with legislation on MAID clearly came with the privilege I had to sit on the special joint parliamentary committee this past January 2016 with 15 other colleagues from the Senate and the House of Commons. We were asked, as you know, to provide advice to the government on the legislation put forward, Bill C-14. Over an intense, short period of time, we listened to 61 witnesses, received over 100 submissions and had the benefit of major reports from the federally mandated External Panel, the Provincial-Territorial Expert Advisory Group and the Canadian Medical Association.

My decision then, to sign on to the majority report of the special joint parliamentary committee, was one I thought long and hard about. This report, titled *Medical Assistance in Dying: A Patient-Centred Approach* I believe will stand the test of time, and experience, going forward with MAID in Canada.

Now, upon the third personal challenge exploring legislation on MAID — of course the same C-14 I struggled with earlier this year on the special joint parliamentary committee — I have

become aware that my thinking has continued to evolve over these months. Especially here, in this chamber, with these last two weeks of listening and learning from the remarkable debate — your debate, colleagues — it has become ever-clearer to me that we must have federal legislation. Why? I find myself emphasizing now, with even more certainty, what I presented in my second reading speech during this chamber's debate on C-14.

First, to secure the very basic framework to protect Canadians, to provide them coherent access and standards they can trust.

Second, to ensure the critically important oversight through a national data collection system with a built-in review that will provide evidence-based data to update this piece of legislation.

• (0950)

And third, to provide physicians and other allied health professionals, especially nurse practitioners and pharmacists, both freedom of conscience and the reassurance of protection in the criminal code so that they are free of prosecution if they help provide MAID.

Colleagues, I thank you for all you have shared with us here: the stories of Canadians but also the important debate that airs the questions, the knowledge and the experiences most relevant to MAID. It appears to me that the Senate has lived up to the responsibility mandated by our Constitution. To quote our founding father, Sir John A. Macdonald:

There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, but it will never set itself in opposition against the deliberate and understood wishes of the people.

The Supreme Court, most recently in their 2014 ruling on the issue of Senate Reform, was very clear on our mandate when they said:

... the Senate would be a *complementary* legislative body, rather than a perennial rival of the House of Commons in the legislative process. Appointed Senators would not have a popular mandate — they would not have the expectations and legitimacy that stem from popular election. This would ensure that they would confine themselves to their role as a body mainly conducting legislative review, rather than as a coequal of the House of Commons.

If we have done nothing else, we have mirrored and debated so many feelings and viewpoints Canadians themselves have been engaged in. We have sent to the House of Commons our best compromise, our sober second thought on C-14 as guided by Canadians.

[Senator Seidman]

And, yes, we have the obligation of conscience vote, but that conscience vote I do not think is one of personal belief or viewpoint. I believe the decision about our vote must be placed within our contexts — that is, our times, our communities, our values, our standards, our witness hearings, our argumentations.

So, ultimately, based on our very best knowledge and understanding of all the evidence before us, we must do the right thing for Canadians. This is how I view a vote of conscience, and clearly, surely, we may have different evaluations of our “contexts,” and even different contexts.

Finally, I will support the federal legislation, Bill C-14, as amended by the house, however minimalist it is, with the knowledge that we have understood it to represent a national commitment to an iterative approach to MAID through review and re-evaluation that will be reported back to each house of Parliament within a defined period of time. And I will hope that further study in a timely fashion, the independent reviews as defined in this bill, will ensure that vulnerable Canadians will have both the protection and the access they so rightly desire and deserve. Thank you.

Some Hon. Senators: Hear, hear.

Hon. André Pratte: I am convinced the government is making a serious and cruel mistake by taking away the right to medically assisted dying from a group of patients, those who are not terminally ill yet suffering terribly. But the government will answer to the people for that error. And hopefully, in the not too distant future, the courts will remedy that mistake.

If we reject Senator Harder's motion, there will be a legislative deadlock, the consequences of which are uncertain. We thought provincial guidelines would suffice to give access to medically assisted dying, but we found out this week that in Ontario at least, according to one Ontario judge, each procedure might require a court application. Those applications, the lawyer involved said, “are expensive and they take time, and some of the people most in need of this don't have time, and many of them don't have money.” In other provinces also, as Senator Baker said, access might be much more difficult than we thought. Yet, for whatever negative impacts of the legislative deadlock produced by our actions, we, as unelected officials, will pay no political price since we are not elected.

So in the end, although it saddens me greatly for the patients I am letting down, I have decided to vote for Senator Harder's motion. I believe we have worked well and done all that we could to warn the government of its error and alert public opinion. It is now for the latter to hold the government to account and for the courts to give their rights back to the people who will have lost them.

Thank you.

Some Hon. Senators: Hear, hear.

Hon. Serge Joyal: Honourable senators, the opening remarks of the government leader would of course trigger a very animated debate if this morning we were called to define the role of the

Senate because, according to his suggestion, we are here to inquire, to urge and to consider. What about voting and amending, as the Court of Appeal of Quebec in the Senate Reference and the Supreme Court of Canada have confirmed? We are a legislative house, bringing a different perspective to the study of legislation. What is the different perspective that we are bringing to the study of legislation?

First, we are the only stable house of Parliament. I repeat — the only stable house of Parliament. We bring to the consideration of legislation historical perspective. In other words, we are the institutional memory of Parliament because this house never ceases to exist in its membership, while the other house is empty once it is prorogued. So our permanent status helps us to understand the historical perspective of how an elected majority behaves in Parliament. We have had it repeatedly thrown in our faces in the other place that we are not elected; we have to defer to public opinion; we have to take into consideration that they answer for their deeds, while we can do anything and we have no responsibility really.

Well, honourable senators, let's think a while. Let's go back to a couple of examples when the other place decided to join in on both sides to use their power of an elected majority to strip Canadians from their rights.

Remember, we have eight paintings of the First World War here around this chamber. Well, you know what happened when the war was declared and Canada decided to participate? Parliament was called back in August of 1914 and there were two bills tabled in the other place. The government was Tory and the opposition was Liberal. Of those two bills, one was to amend the immigration acts to declare the status of "enemy alien." And the other bill was the War Measures Act.

In those two bills, adopted unanimously by the other place, there were two fundamental failures concerning Canadian rights. The first one in relation to the foreign alien touched the Ukrainians. Our friends Senator Andreychuk and Senator Tkachuk could testify to that. Let me read to you what the elected majority in the other place did with the popular mandate — Prime Minister Borden and Leader of the Opposition Wilfrid Laurier, somebody that Senator Pratte admires a lot. Listen to what they did. Even though there was never any evidence of disloyalty on their part, thousands of Ukrainians and other Europeans were imprisoned needlessly and forced to do heavy labour in 20 internment camps located in the country's frontier hinterland during the first national internment operations. Tens of thousands of others designated as enemy aliens were obliged to carry identity documents and report regularly to the police.

• (1000)

That's the elected majority. That's what an elected majority can do. An elected majority can do more. Many were subjected to other state-sanctioned indignities, including disenfranchisement, restrictions on their freedom of speech, movement and association, deportation and confiscation of what little wealth they had, some of which was never returned.

Men, women and children suffered not because of anything they had done, only because of who they were and where they had come from.

That's the elected majority. It was for very good reasons — to protect national unity in the face of an enemy. The country was at war. Is there a bigger justification to strip citizens of their rights than protecting the security of the country?

Then there was the War Measures Act. The War Measures Act was proposed by then-Minister of Justice Doherty. It removed even habeas corpus, Senator Baker. What happened? That bill came in the Senate. A senator, James Kerr, senator from Ontario, said, "Listen, guys, this is unacceptable. We can't strip habeas corpus from the rights of Canadians. In the British Empire, they have enjoyed habeas corpus since the Great Charter of 1215." Well, it is the war, the security of the country, a fair balance between the interests of the country and the interests of those citizens — well, no big deal. They're going to be interned, most of them up to 1920, no compensation. It was only in 2013 that the government of Prime Minister Harper did the right thing by recognizing the unacceptable deeds that the elected majority in the other place did.

The elected majority did other things in our history that I need to remind you of, honourable senators.

In World War II, who was the enemy? It was the Japanese, Japanese Canadians and their related countries. What did we do with the Japanese Canadians, invoking the War Measures Act, supported by the other elected majority? Well, we put them in camps, no problem. National security needs us to maintain the security of the country at the expense of the rights of the Japanese Canadians. Think about that — the elected majority.

Then the elected majority adopted an immigration act, Senator Frum, and you know very well about it. You know what happened with that immigration act. It was to strip the ability of all Jews who would be coming to Canada to have access to this country. You remember that famous sentence, "None is too many." When the ship tried to land in Canada with 950 passengers, Canada said no. The deputy minister of immigration at that time, Frederick Blair, the head of the immigration department, the former assistant deputy of immigration — I insist on that status. Well, he was implementing the legislation that was adopted by the elected majority. He was even happy to report the following in letter to the prime minister of the day, Mackenzie King:

Pressure on the part of the Jewish people to get into Canada has never been greater than it is now and I am glad to be able to add, after thirty-five years experience here, that it was never so well controlled.

That was under the elected majority. Honourable senators, when you enter this chamber, pay a second of attention to the bust of Senator Cairine Wilson. She was the senator to stand up against Mr. Blair and the government of the day to defend the capacity to access Canada for the Jews who were exterminated by the millions in Europe during the war.

That was the policy of the elected majority in Canada at that time, and one senator stood up against that. She is there in the entrance of this chamber. Look at her each day when you enter this chamber, honourable senators, because it will remind you of

your responsibility. Your responsibility is to stand for minorities. And if you don't stand for minorities, honourable senators, look at the way the demography of this country is evolving.

Who sits in the seat of former Senator James Kerr in this chamber? Who sits in the seat of Cairine Wilson? It is you, Senator Frum, who sits in the seat of Cairine Wilson. You defend the minority that is still being persecuted, and we know how. We are supposedly at war against the Islamic State, and they focus essentially, as we know, on the Jewish people.

We are a country of minorities. Look at us individually where we come from, and there will be more diversity in the years to come. If there is no chamber of Parliament in this Canada — not a democracy, a parliamentary democracy; there is a difference between the two. It means that the elected majority cannot do its will all the time at the expense of the minority. That's the essential feature of our chamber.

That's important in that debate, honourable senators, because today we are accused of expanding access to MAID. That's what has been said in the other place. We are expanding MAID.

Honourable senators, we are not expanding MAID. We are essentially recognizing those who have been granted the right to MAID by the Supreme Court; the terminally ill and the non-terminally ill who find themselves in the same unbearable physical suffering have the right to MAID. That's what the court has said.

The government accuses us of expanding. We're not expanding. This bill restricts access to MAID.

I was reading in the *National Post* of June 6 the case of Dr. Sutherland. Dr. Sutherland is a family doctor, and he has been living with ALS for eight years. While Dr. Sutherland said he's not ready to die, if he were to lose control of his eye muscles, which he uses to communicate through a computerized device, he says he would choose physician-assisted death. He said: "I find comfort in the fact that I can now choose a gentle and humane death." With what we're doing today, will Dr. Sutherland rush to decide what he wants to do? When this bill is adopted, it is over for you. You are not terminally ill. You have unbearable suffering but you are not terminally ill.

Don't ask me, honourable senators, if I want to vote for that bill. Yes, I want to vote for a bill. I want to vote for a bill that enshrines the safeguards that Bill C-14 contains. I want to vote for a bill that respects the rights of Canadians who have been recognized by the court to have access to MAID.

Of course, I know we are in a situation of debate and reflection between the two chambers. I don't like the word "Ping-Pong," honourable senators, because it trivializes our role. Our role is not to play ball with the other place. Our role is to do conscientious deep reflection on a bill.

Of course, now we have a situation whereby the House of Commons has refused the essential element that would make that bill constitutional in the eyes of many. I wrestle with this. I understood the argument that there is some kind of uncertainty in

the regime because it varies from one province to the other in terms of directives to prosecutors and in terms of guidelines. I recognize that.

I think there's a way for us to solve the impasse that we might have with the other place on the essential element of this bill, and the proposal I want to make to you, honourable senators, is the following. We would adopt the bill as it stands now, but we would do one thing. We would suspend the implementation of the section of the bill that is the object of dispute on the nature of its constitutionality and medical implementation up to the time that the government will have requested the Supreme Court's ruling on its constitutionality.

• (1010)

So we will get all of the bill tomorrow. Dr. Sutherland will have access, after the enactment of the legislation, after royal sanction. But in relation to the limit that the government put in the bill, we, the government, would ask the Supreme Court to rule on its constitutionality. Once the court rules, then that section would be proclaimed constitutional or remain suspended or deleted, if that is the court's conclusion.

Honourable senators, this is a fair compromise. It addresses the issue of uncertainty that has been mentioned in our discussion and often in the media by people who are interested in this issue. On the other hand, it would make the bill constitutional.

Honourable senators, let us not fool ourselves. This is not the last phase of this debate. On the contrary, it is just a step. Justice Perell, yesterday in a decision of the Superior Court of Ontario — yesterday, honourable senators, not two weeks ago or a month ago, like in the Court of Appeal of Alberta.

Can I request five more minutes, honourable senators?

Hon. Senators: Agreed.

Senator Joyal: Yesterday, Justice Perell, the same justice who ruled that a patient in Ontario could have access to MAID without being terminally ill, said the following:

The fourth phase will begin with the enactment of new legislation. That legislation is presently being debated in the House of Commons and in the Senate. It is likely that the fourth phase will not be the end of the saga and those subsequent phases will be demarcated by litigation and more legislation.

When a justice refers to the fact that the question is being debated in Parliament, there is pause to reflect. I would say this is an underlying message that more litigation and legislation might come.

Justice Perell concluded by stating the following:

Arguably, the medical establishment is far better situated to supervise this constitutionally protected right, but pending a constitutionally sound enactment —

— I repeat —

— pending a constitutionally sound enactment means the legislation has to be constitutionally sound. It falls on the court to protect the constitutional right and the rule of law.

There is a message there, honourable senators. If we adopt a bill that, at its first phase, is a bill that has a defect and the courts are aware that there is debate on that bill — and the Court of Appeal of Alberta stated this a month ago — we run the risk of not assuming our constitutional role to protect those who will be stripped of their right to access MAID.

The proposal is essentially to cure the uncertainty by adopting the bill but to reserve the section that is the object of so much question and uncertainty, legally and medically.

I insist that there is a problem of interpretation of this bill in relation to —

Senator Tardif: You need to read the amendment.

Senator Joyal: Honourable senators, I will first introduce my amendment.

There is a problem professionally interpreting the concept of natural death that is reasonably foreseeable.

MOTION IN AMENDMENT

Hon. Serge Joyal: Therefore, honourable senators, I move:

That the motion moved by the Honourable Senator Harder be not now adopted, but that it be amended by replacing the second paragraph with the following:

“That the Senate do not insist on its amendment 2(a);

That, in lieu of its amendments 2(b), 2(c)(ii) and 2(c)(iii), Bill C-14 be amended, on page 6, by adding after line 21 the following:

“(2.1) Subject to subsection (2.2), paragraph 241.2(2)(d) of the *Criminal Code*, as enacted by section 3 of *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, comes into force on a day to be fixed by order of the Governor in Council.

(2.2) No order may be made under subsection (2.1) unless the Supreme Court of Canada has rendered an opinion, pursuant to section 53 of the *Supreme Court Act*, stating that paragraph 241.2(2)(d) of the *Criminal Code*, as enacted by section 3 of *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, is consistent with the *Canadian Charter of Rights and Freedoms*.”; and”.

Thank you, honourable senators.

The Hon. the Speaker: It is moved by the Honourable Senator Joyal, seconded by the Honourable Senator Tardif, that the motion be not now adopted but it be amended by replacing the second paragraph by the following — may I dispense?

Hon. Senators: Agreed.

POINT OF ORDER

Hon. Peter Harder (Government Representative in the Senate): Your Honour, I rise on a point of order with respect to the amendment just tabled.

Honourable senators are well aware of the issues that are before us and the motion before this chamber. I would respectfully submit that the proposal from the Honourable Senator Joyal that there be no action on matters to which the government has agreed, the Senate could choose to disagree with proposed adjustments made with the Senate proposals or with the points where the house respectfully disagrees, but the Senate’s duty today is to respond strictly to the limits of these matters.

Any attempt to deal with any other aspect of the bill is procedurally out of order or out of bounds. It is up to the Senate to accept or not the House of Commons’ message. Any other matter is beyond the scope of our message and beyond the scope of the main motion before us. Therefore, I believe that the amendment moved by Senator Joyal is out of order.

The Hon. the Speaker: Debate?

Senator Joyal: I don’t agree with the conclusion of the Honourable Leader of the Government that we are bringing a new clause into the bill. My amendment deals essentially with paragraph (2) of 241.2, which is the subject of the message from the House of Commons. When we sent the message to the House of Commons, the House of Commons amended some of the sections that we had previously amended.

For us to return a message that would amend an element that has already been amended by the House of Commons is within our purview in relation to the bill.

We are not adding a new clause. The house has amended that clause, as we see on the report that has been signed by the Acting Clerk of the House of Commons. They amended 2(c)(i), 2(d), 2(e). The subject matter in front of is exactly the subject matter that I deal with in the amendment that I have tabled. I have absolutely no hesitation in concluding that this amendment is totally admissible.

• (1020)

Hon. George Baker: As I read the amendment, what it does is it takes the section that says “reasonably foreseeable” death, and it stands in abeyance in the bill with no force until a determination is made by the Supreme Court of Canada.

I would argue that that’s the whole purpose of this exchange with the House of Commons: “reasonably foreseeable” death. That has been the impugned section, as they say. This is the

section that has been under debate. This is the section that refers to the joint committee recommendation, to one of the motions of the Standing Senate Committee on Legal and Constitutional Affairs, to the entire debate. The government and the House of Commons have said — rejecting it by a vote of 240-52 — that “reasonably foreseeable” death shall not be removed from the legislation. I read out the vote a few moments ago.

Senator Fraser: It’s not on a point of order.

Senator Baker: That is on a point of order because if you are negating the principal portion of a motion, regardless of whether or not you are talking about the entire motion, if you are negating a segment of it, as the Government Representative has said, then I would submit that that is negating the major portion — “the” portion — of the debate we’re having.

It would be the same as rejecting the recommendation from the House of Commons, sending it back and saying that a decision of the Supreme Court of Canada must be made on those words, “reasonably foreseeable” death. That’s what it does.

Your Honour, you have to make the decision, but I would suggest that that principally negates the motion from the House of Commons.

The Hon. the Speaker: Senator Ringuette.

Hon. Pierrette Ringuette: I had a question for Senator Joyal. I thought that Senator Baker had a question for Senator Joyal, but it seems it was on debate.

May we revert to questions to Senator Joyal?

Senator Martin: It is on a point of order.

Senator Ringuette: He was on a point of order. Sorry.

[*Translation*]

Hon. Ghislain Maltais: I am a little surprised at Senator Baker’s reaction. Why would we have to comply with the Standing Orders of the House of Commons when debating a point of order in the Senate?

This is 2016, and we are members of a free and independent Senate. Senator Joyal suggested that we discuss an amendment, and I believe that when Senator Harder questioned the receivability of that request, he erred in fact and in law.

When a parliamentarian raises a question in a parliament, that question deserves the full consideration of all parliamentarians. If Senator Joyal’s request is rejected on a vote, he will have to accept that, but in the meantime, senators must have the opportunity to express their views on the receivability and content of the amendment proposed by Senator Joyal.

The courts do not recognize this principle, but parliaments do. If the honourable senators here are sovereign, we will see evidence of that this morning.

[Senator Baker]

[*English*]

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): It is not unusual for amendments to be brought, suggested, to a motion that change the direction of the original motion in some way. In fact, that is frequently the point of amendments, and they are receivable, debatable and voteable.

Senator Joyal’s proposed amendment to this motion does, as Senator Baker suggested, go to the heart of the biggest single dispute around this bill. It is, in my view, entirely appropriate, well within our practices and Rules, and I would urge you to rule rapidly that that is the case so that we may return to the debate that we’re all here for.

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): Honourable senators, this exchange of messages with the House of Commons has led the Senate down a rarely trodden path.

I will not express my position on the amendment or the quality thereof, but I will speak to the principle of messages exchanged between the two houses. I gather that the House of Commons has amended some of the Senate’s amendments. I believe that if the principle of exchanging messages between the houses is to be respected and understood, it would be impossible to dispatch messages of high quality if we had to place undue restrictions on the content. If that were the case, this whole exercise would be a dialogue of the deaf.

When we look at the content of the messages, rather than at any other aspects that they do not address, it seems entirely appropriate to me that the House keep its authority and discretion to respond by clarifying and adjusting the content. The House could even go so far as to add additional safeguards.

If we want to have a comprehensive discussion, we need to be able to talk about the things that are causing the conflict or difference of opinion between the two chambers. If we go with Senator Harder’s interpretation, we would end up getting caught in a completely inappropriate, ridiculous and fruitless discussion.

[*English*]

Hon. Anne C. Cools: Your honour, I would like to respond to this amendment.

An Hon. Senator: Point of order.

The Hon. the Speaker: Senator Cools, are you addressing the point of order?

Senator Cools: I am on the point of order.

I would like to remind senators that Bill C-14 is not before us in any form. What is before us is Senator Joyal’s motion respecting the message that we received from the House of Commons. Bill C-14 is not open or available to amendment by us in any way.

Looking at the motion of Senator Joyal, it says clearly:

That the motion moved by the Honourable Senator Harder be not now adopted, but that it be amended by replacing the second paragraph by the following:

But when we go to the word “following:” we see that that is a proposed amendment to the Bill C-14.

I shall read it so that we are crystal clear about what this motion of Senator Joyal is saying and doing. I read:

That the Senate do not insist on its amendment 2(a);

That is in order so far —

That, in lieu of its amendments 2(b), 2(c)(ii) and 2(c)(iii), Bill C-14 be amended, on page 6, by adding after line 21 the following:

“(2.1) Subject to subsection (2.2), paragraph 241.2(2)(d) of the *Criminal Code*, as enacted by section 3 of *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, comes into force on a day to be fixed by order of the Governor in Council.

(2.2) No order may be made under subsection (2.1) unless the Supreme Court of Canada has rendered an opinion, pursuant to section 53 of the *Supreme Court Act*, stating that paragraph 241.2(2)(d) of the *Criminal Code*, as enacted by section 3 of *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, is consistent with the *Canadian Charter of Rights and Freedoms*.”; and”.

• (1030)

Senator Joyal has proposed amendments to Bill C-14, which is not before us and not presently available or amendable by us. I am trying to make the point very clearly so that members and senators can understand. Senator Joyal’s motion is a new and additional amendment to Bill C-14 in lieu of the amendments 2(a), 2(b), 2(c)(ii) and 2(c)(iii) that were rejected by the House of Commons. Senator Joyal’s proposal motion is not in order because Bill C-14 is not before us for us and therefore not available to propose amendments as Senator Joyal has done.

I hope I have been clear. This is fast and off-the-cuff, but amendments to Senator Harder’s motion are all that we can receive, Your Honour. This house cannot receive additional or new or alternative amendments to Bill C-14 because it is not before us.

I thank my colleagues. If I had had a bit more time to prepare, I could perhaps have brought some weight of authority, but I have only just received this. Senator Joyal’s amendment is out of order. I made the point to my colleagues several days ago that the bill

does not move back and forth; the messages do. The bill is not before the Senate at all. Receiving any amendments whatsoever to it is extremely out of order.

Some Hon. Senators: Hear, hear.

Hon. Claudette Tardif: Your Honour, I would point out, as some of my colleagues have mentioned, that the message we have received from the House of Commons contains amendments to the bill.

The Hon. the Speaker: Do any other senators wish to speak to the point of order?

Senator Baker: There is one final point that I forgot to mention, Your Honour. There is a principle that you can’t do by the back door what you can’t do by the front door.

Hon. Wilfred P. Moore: It sounded to me from the point of order that it’s expected that the Senate would totally agree with the message we receive from the house. That’s what it sounded like to me, and I don’t think that’s right. That’s not our job. If that were the case, what’s the point? We’re not here being dictated to; we’re receiving messages to reflect on the issues at hand. The process is that we look at it, and it goes back and forth, according to our constitutional obligations and rights. We have had exchanges; we have had amendments both ways. Senator Tardif just spoke about that. So I don’t think the point of order is in order.

The Hon. the Speaker: I would like to thank all honourable senators for their input on this very important point of order and debate. I will require some time to review the comments of colleagues who participated in debate and to do some research of my own. Unfortunately, we can’t proceed with the debate on the proposed amendment of Senator Joyal until I deal with the point of order, so I would ask the house that we suspend for half an hour, with a 10-minute bell.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1140)

SPEAKER’S RULING

The Hon. the Speaker: Honourable senators, I am ready to rule on Senator Harder’s point of order respecting Senator Joyal’s motion in amendment. In brief, Senator Harder suggested that the amendment is beyond the scope of his motion and the amendments addressed by the message. I will preface my remarks by two points that shape my decision.

[Translation]

First, as indicated on page 220 of *Senate Procedure in Practice*, “In situations where the question raised is ambiguous, several Speakers have expressed a preference for presuming a matter to be in order, unless and until the contrary position is established.” Senator Maltais emphasized this important point. We should, esteemed colleagues, jealously guard our right to debate in this chamber.

[English]

Second, we must recognize that we are engaged in a dialogue between the two houses to reach an acceptable compromise on Bill C-14. We have agreed on most points, and the disagreement between the two houses has narrowed to limited aspects of the bill. As Senator Cools pointed out, it would be inappropriate to bring entirely new issues into play at this point. It is this legitimate concern that is at the heart of Senator Harder’s point of order.

However, as I understand it, the amendment that Senator Joyal has moved accepts most of what the House of Commons has proposed to us in relation to amendments 2(b), 2(c)(ii) and 2(c)(iii). The effect of his amendment, if accepted by the two houses, will be to delay the coming into force of a provision of the bill that is already included in the message. As such, the amendment can reasonably be seen as being relevant to the message. In situations such as this, however, where there is uncertainty, it is our longstanding practice to allow debate to continue.

Accordingly, debate on Senator Joyal’s amendment can proceed.

Some Hon. Senators: Hear, hear!

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

Senator Ringuette: Question.

The Hon. the Speaker: Question on the amendment, Senator Ringuette?

Senator Ringuette: Question on Senator Joyal’s proposal. Would Senator Joyal accept a question?

Senator Joyal: With concurrence of the —

The Hon. the Speaker: Senator Joyal would need to ask for five more minutes to answer any further questions.

Senator Plett: We had five minutes.

The Hon. the Speaker: I understand leave is not granted, so on debate, Senator Ogilvie.

[Hon. the Speaker]

Hon. Kelvin Kenneth Ogilvie: Honourable senators, you are all aware of my position with regard to this issue. I have made substantial arguments, and I am not going to repeat them.

What I am going to do in addressing this amendment is to point out what is at stake. We have seen and heard very clearly that the issues we are dealing with are the fundamental rights of Canadians under the Charter of Rights and Freedoms. That was the basis of the Supreme Court ruling. So I want to address the impact of the limitation on the *Carter* ruling that the government introduced in Bill C-14.

The government did not say that Canadians suffering terribly from an irremediable medical condition that is intolerable to them under the circumstances, they didn’t say that wouldn’t be allowed. In fact, they said if you are such a Canadian and your death is reasonably foreseeable — or, as the minister said, terminal. We also heard the ministers interpret that as meaning somewhere in the vicinity of perhaps a few weeks to a few months. That’s how we heard them interpret “reasonably foreseeable.” We heard other numbers up to as much as eight months.

What we have here is the following: If you are a Canadian suffering intolerably from an irremediable medical condition — that means there is no hope — and the suffering is intolerable to you under the circumstances and your death is foreseeable, under those terms you have the right to medical assistance in dying, as determined under our Charter of Rights and Freedoms.

I’ll use a real example, not a hypothetical one, of the lady in Alberta who has been suffering terribly for a long time. Everything known in the world that medical science could bring to her attention had been tried, and she still has perhaps four years to live. She is suffering intolerably from an irremediable medical condition, determined by every expert who has looked at her, but she has four years to live under these conditions.

What the Government of Canada has said is: “You have a right to medical assistance in dying if you’re suffering from those conditions and have up to a few months to live, but if you’re going to be suffering that way for a few years, we aren’t going to give you that right.”

I submit to you, for all of the arguments we have heard about the importance of the Charter of Rights protecting minorities and the vulnerable, that is the most vulnerable situation that any Canadian could find themselves in.

Some Hon. Senators: Hear, hear!

Senator Ogilvie: Honourable colleagues, I will support this amendment, and should the amendment fail, I will be voting against the motion that has come before us.

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

Some Hon. Senators: Question.

The Hon. the Speaker: I'm sorry. I see Senator Maltais and a couple of other senators rising.

[Translation]

Hon. Ghislain Maltais: Honourable senators, the situation that we, as parliamentarians, are facing is that the House of Commons is sending us a message by sending back Bill C-14. We are not Supreme Court judges. We are not here to do the work of the Supreme Court. We need to examine an inclusive amendment.

When I spoke to this bill at second and third reading, I said that I would vote in favour of an inclusive bill. It would make no sense, in a land of freedom like Canada, which was built by our ancestors, who gave us a true democracy, to draft a law that excludes people. Who are these people that we will be excluding? They are the most vulnerable, the people without a voice, the people who will never be able to challenge the law. Senator Joyal's amendment is an inclusive amendment.

• (1150)

I remind you, dear colleagues, that while we are here debating this law, which will be enforced for years, people are suffering. I have always said that we wanted a compassionate law. Compassion often requires putting oneself in the place of the person suffering. In each one of our families there are people who suffered. What gave them the greatest comfort was compassion, a bit like a kind hand on the shoulder. Today, we want to be compassionate towards Canadians living with extreme suffering. That is why I will be voting, with both hands if necessary, for Senator Joyal's amendment.

[English]

Hon. James S. Cowan: Honourable senators, like my friends Senator Ogilvie and Senator Maltais, I will support Senator Joyal's amendment because I believe that it represents a simple, reasonable and effective solution to the difficult problem we are now facing.

We have now received a message from the other place concerning our amendments on Bill C-14. The members of that chamber accepted a few of our proposals, amended several more and rejected the others. Most importantly, in my view, they voted to reject the first amendments we adopted here, namely those to bring the eligibility requirements of the bill in line with the constitutional parameters set out by the Supreme Court of Canada in the *Carter* decision.

Needless to say, I am disappointed. These amendments were the result of many hours of testimony from eminent Canadian witnesses, including some of the most prominent authorities in the country in their areas of expertise. I would have hoped that their views, if not ours, would warrant deeper reflection and more than a casual dismissal along the lines of, well, different people have expressed different views.

Peter Hogg is unquestionably the pre-eminent constitutional authority in the country. He literally wrote the book on constitutional law — *Constitutional Law of Canada* — a book

that has been cited more than 1,627 times in Canadian courts. Surely his opinion, that the bill without our amendment is unconstitutional, deserved more serious consideration by this government.

When I spoke in this chamber on Wednesday, I noted that we had been assured that our recommendations would be carefully and respectfully considered by the government. It's difficult to accept that this was indeed the case, particularly when the Minister of Justice was publicly recommending the rejection of these critical amendments even before we had completed our work or formally sent our amendments to the other place for their consideration.

Colleagues, I sincerely hope this is not indicative of the attitude of this government toward our work in other matters. It's not good enough to accept our views when they accord with those of the government, but reject them out of hand — even before they are received — should we disagree with either the government's interpretation of the Constitution or its policy decisions.

I should note that there were many thoughtful interventions made yesterday in the other place, in which some members sought to draw that chamber's attention to the evidence that was reflected in our amendments, in particular, in Senator Joyal's amendment on the eligibility criteria. Unfortunately, those arguments failed to have any impact on the government. Even more unfortunate, in my view, were some of the arguments made yesterday by the Minister of Justice during the debate. She suggested that if our amendment were accepted, this would open the door to a "young person who suffered a spinal cord injury in an accident" accessing medical assistance in dying.

Colleagues, that is simply false. The amendment we passed last week did not in any way expand the eligibility criteria to minors. The bill limits eligibility to persons who are at least 18 years old and nothing in any amendment passed in this chamber changed that. The *Carter* decision was clearly limited to adult persons, and our amendment did not go beyond the parameters set out in that decision.

Let me be very clear: The major amendment that we passed, and that was summarily rejected in the other place, was directed to bring Bill C-14 in line with the Supreme Court of Canada's unanimous decision in *Carter* and, with that, to bringing the bill up to the standard required by the Charter of Rights and Freedoms. It has been said by Senator Sinclair in this chamber, and then repeated by the Minister of Justice through the document she circulated last week — and these are the words of Senator Sinclair — that "The bill does not have to comply with *Carter*, but the bill does have to comply with the Charter."

Colleagues, with respect, this is a very dangerous approach to take to law making. The whole premise of the Charter is to set limits on the powers of government and of Parliament. Those limits are upheld and enforced by our courts. If we say we don't need to respect the courts' rulings, including those of the highest court in the land, we are distorting, we are turning on its head our constitutional democracy.

The Supreme Court of Canada has stated very clearly that there is a right under the Charter to medical assistance in dying. The court clearly described the class of persons who have dealt with it.

Since that decision, we have had a strong ruling by the Alberta Court of Appeal on the same matter. It is simply not for the government or the Parliament of Canada to overturn those decisions of the highest courts in the land, to decide that only certain people within that class could access that Charter right and that others should be denied that right. That is exactly what we will be doing if we pass Bill C-14 without the amendment we adopted in this chamber last week, when we modified the eligibility requirements in order to align them with the Supreme Court of Canada decision in *Carter*.

We heard extensive evidence from Canada's leading constitutional authorities that without our amendment, this bill fails to meet the threshold set by the Supreme Court of Canada and will likely be found unconstitutional. In the words of Professor Hogg, "The bill is not consistent with the constitutional parameters set out in the *Carter* reasons."

Colleagues, I will not vote for a bill that I believe is unconstitutional, particularly when it deliberately excludes an entire class of citizens who are suffering intolerably, as Senator Ogilvie just told us. Accordingly, I cannot vote in support of Senator Harder's motion as he introduced it and I will support Senator Joyal's motion in amendment.

Colleagues, as this will likely be the last time that I will speak on this topic in this chamber, I would like to conclude by reading from just two of the hundreds of e-mails I have received about Bill C-14. These e-mails are a reminder of what this bill is all about and of the very real impact of our actions on Canadians all across the country.

The first one I received yesterday is from a Canadian woman in southwestern Ontario. Here is part of what she wrote:

I want you to think about how, if this bill is passed without the "Joyal" amendment of removing "natural death is reasonably foreseeable," matters will look like in everyday living. I hope the following will bring to life what myself and others will be required to do to access MAID.

I have a degenerative muscle disease that is incurable and in time I will die by asphyxiation. My condition is hereditary and I have watched my brother succumb to this disease and my sister has been given 6-24 months left to endure this hideous disease. Some people may say she has 6-24 months to "LIVE". . . she is not living, she is existing, a prisoner in her own body.

• (1200)

The writer then described the difficulties she experienced dealing with her doctors and other health authorities, and concluded her email as follows:

So where does that leave me . . . I believe I have only one option. I will wait for the law to be passed in all likelihood with the reasonably foreseeable clause intact and then starve and dehydrate myself to the point of my death being reasonably foreseeable and then Doctor B "may"

decide to help me without a court order but by then I will be too weak to care. These are my realities and these will be the realities of so many Canadians if you allow the present bill to be passed without ALL of your thoughtful amendments kept intact.

I want to thank you for standing up for Canadians like me and for making our "minority" voices heard. . . . It means so very much to me and my family and to the thousands of Canadians like me.

Lastly, I struggled whether to sign my name to this letter, it is such a personal decision to seek MAID but then I thought of the courageous women before me, Sue Rodriguez, Kay Carter and Gloria Taylor and without them I would never have the opportunity to send this letter. They say if you want something done, send a woman to do it. Please think of them, myself and the thousands of Canadians who are counting on you to uphold our constitutional rights and to fight our fight, please don't let them win the war.

The second email I would like to read to you came this morning, from a woman in my home province of Nova Scotia. It was an email to the Minister of Justice and the Minister of Health, on which I was copied, and some of you may have been copied as well. Here is part of what she wrote:

I am contacting you to express my profound disgust at the decision of MP's to restrict access to assisted dying to those individuals whose end of life is reasonably foreseeable. . . .

I have a devastating disability that began in 1985 after my son was born. This illness has caused unimaginable havoc in my life. As a consequence of this disability I have been robbed of my freedom; dignity; independence; mobility and privacy. This is a progressive and incurable illness that has caused unbearable, relentless suffering in my life. There is not a sliver of hope that I will improve or that any eventual treatment will help me. I was told this by specialists at the National Institute of Health in Washington DC when I was a patient there a year and a half ago. They informed me that even if a treatment were found, my muscle damage is irreversible.

Now your government is telling Canadians facing devastating consequences of incurable disease to just suck it up. This contempt for the Supreme Court's decision is a slap in the face to Canadians who were asked to wait an additional several months to allow the government to "get it right". Because of this cowardly decision to refuse desperate people facing unbearable suffering the right to an assisted death, individuals will almost certainly take measures into their own hands by starving themselves or other steps. They will die horrible deaths alone by methods too terrible to contemplate, all because of this cowardly decision by government. Why is it that you do not trust competent adults to make decisions affecting their own destiny, instead condemning them to the ravages of incurable illness to the point where they are stripped of their quality of life?

[Senator Cowan]

Please respect the Supreme Court's decision and give consideration to the many people whose lives will end in solitary despair instead of the right to a peaceful, dignified death that is now the broken promise to Canadians for which this government is squarely to blame.

Colleagues, unfortunately these stories are not unique. They are the stories of countless other Canadians we would be abandoning if we agree to let Bill C-14 come into law with the provision limiting access to medically assisted death to those who are near death. You've heard their stories, and so have I. How can we turn away and ignore their pleas?

As I noted at the beginning of my remarks, I believe Senator Joyal's amendment to Senator Harder's motion provides a reasonable solution to a difficult dilemma we are all facing. This motion in amendment would pass into law virtually the entirety of Bill C-14, including all of its valuable safeguards, while guaranteeing that the provision limiting Canadians' access to medical assistance in dying would be held in abeyance until the Supreme Court of Canada has had an opportunity to pronounce on its constitutionality.

With the acceptance of this motion in amendment, the Charter rights of all Canadians would be respected, particularly those Canadians like the unfortunate women who wrote to me to describe the nightmares they are living. Theirs are voices we have no right to ignore.

The Hon. the Speaker: Senator Ringuette, on debate?

Hon. Pierrette Ringuette: Yes, on debate.

The Hon. the Speaker: Senator Ringuette.

Senator Ringuette: Finally, I get to have a few words. I wanted to ask a technical question of Senator Joyal, but instead I will provide my comments in a debate format.

I certainly appreciate Senator Joyal, his knowledge about the Constitution and the Charter. I supported the amendment that he put forth on C-14. However, I'm at a place right now, after 14 years of being in the Senate, and most of you will recall the discussions we had on the many bills in relation to Mr. Harper wanting to reform the Senate. And at every time when we reported on these bills on the floor of the Senate, we said we recommend the government send these questions for reference to the Supreme Court of Canada to see if these questions are constitutional.

In our debates at that time, we said why can the Senate itself not refer the question to the Supreme Court of Canada to see if it complies with the Constitution? And the answer was no. The Senate of Canada cannot refer a question to the Supreme Court of Canada. The Senate of Canada cannot order the Government of Canada to send an issue to the Supreme Court of Canada to see if it complies with the Constitution and the Charter.

Now it seems to me when I read the proposed amendment by Senator Joyal that we would in fact be ordering the Government of Canada, the House of Commons, to refer this particular

section to the Supreme Court of Canada. Emotionally and intellectually I would like to say that that would be the proper course. Unfortunately, because of past experience in this chamber, I don't think we can directly or indirectly order the Government of Canada or the House of Commons to refer this question to the Supreme Court of Canada to see if it's constitutional or not. I don't think it has been in our realm of options during the different bills that we have had in regard to looking at Senate reform.

This is kind of unfortunate. Maybe other options could be available. I know we're limited in time, it seems, but on a highly technical issue I don't think we can order the House of Commons or the Government of Canada to send an issue for a constitutional opinion from the Supreme Court of Canada. Because of that, I cannot support an issue that I had originally supported in amendment to Bill C-14.

• (1210)

Hon. Murray Sinclair: I have very few comments that I would like to make with regard to the amendment.

First of all, it has become clear to me that some are saying this is an opportunity to rehash some of the discussion we have already had with regard to the bill on third reading, and I'm a little concerned we're going to go back and decide it on the basis of the principles there. If so, I want to remind you of what we need to keep in mind in considering those issues.

I have heard many people in the course of this debate refer to the "natural death has become reasonably foreseeable" clause as meaning "terminally ill," as meaning "imminent death," as meaning someone who is going to die from the condition referred to in the legislation, when in fact that is not what it means at all.

From a legal perspective, "reasonably foreseeable" is a very definable provision and it does not mean "imminent." It does not mean "soon."

If you build a house today knowing that it's got a false foundation that's eventually going to cause the house to fall, from a legal perspective, you know that it is reasonably foreseeable that the house is going to fall. You don't know when it's going to fall, but you know that the falling of the house is reasonably foreseeable. This is lawyer talk, of course. But reasonable foreseeability does not mean somebody who is going to die in four years from some other cause than the condition referred to in the bill does not have a reasonably foreseeable natural death.

If someone is suffering from cancer but suffers another "grievous and irremediable condition that causes them . . . intolerable suffering" and they want medical assistance in dying, the combination of the two conditions I think would be able to justify a physician to exercise his right to assist in dying because the death is reasonably foreseeable from the other condition, but not from the grievous and irremediable condition.

I'm a little concerned that we're getting caught up in trying to work with legal terminology that is simply not accurately being utilized in this debate.

I want to point out that reasonable foreseeability does not mean “imminent.” It does not mean someone has to be dying within the next short period of time. Death can be far down the road. It doesn’t even have to be caused by the condition that is the subject of the application, but it is natural death that is reasonably foreseeable.

I want to encourage honourable senators to keep in mind as we go forward that reasonable foreseeability not as limiting a factor as some people may tend to see.

That’s not what the amendment is about. The amendment is about bringing back into the legislation that reasonable foreseeability provision and allowing it to become the guiding force, ultimately, if the Supreme Court rules that it is constitutional.

The question arises, then, that if that’s the case, what happens in the meantime? If we suspend the provision and allow access to people who are not facing a natural death that is reasonably foreseeable, what happens to them in the meantime until the court rules? Obviously, they would be able to get medical assistance in dying until the court rules otherwise. That’s the impact of this amendment if it goes through that way.

I had a discussion with our colleague Senator Joyal, and I think he concurs with my interpretation of that.

My view would be it would probably be better to do it the other way around, that is, limit access until the court otherwise rules. That’s likely going to happen anyway. We know there are people who may want to challenge the constitutionality of the government’s decision to pass legislation that provides for a more limited right of access to medical assistance in dying than section 7 has granted to them according to the *Carter* decision.

I don’t think we should deny the interpretation that Senator Joyal has given to that provision. This legislation does not comply with *Carter*. That is agreed. I have indicated my agreement with that.

The *Carter* decision recognizes a much broader right than this legislation grants to them. It is a matter of legislative policy as to whether or not the government, though, has to go as far as the Supreme Court requires them to.

I don’t think it is a legal requirement. The reason I say that is because section 1 of the Charter says:

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

The government has come here. The ministers were here, and they marshalled out for us the evidence that they believe allows them to make the argument that this limitation is demonstrably justified. I think it is their right as a government to make that argument.

[Senator Sinclair]

As the Senate, our responsibility is to ensure that they are cognizant of their obligation to do so and have the evidence to support that and to take it to court, if necessary, until a court determines otherwise.

But the argument that they’re doing something unconstitutional, as I said on third reading, means that we are precluding the government from making that argument at some point down the road.

It may be that on a reference, one way or the other, they will lose that argument and this provision will be changed by the court, but quite frankly I don’t think so. Now, anticipating what supreme courts anywhere in the world are going to do, as I have said to some of my colleagues, is like trying to read chicken entrails and predict the future. It is difficult.

But I can say this: If the Supreme Court had wanted to very clearly say that people had to be in a terminal condition or not be in a terminal condition at the time the application is made, they would have said so in *Carter*. They didn’t.

I’m aware that there were comments made in the course of the application to extend the deadline in which some of the members of the Supreme Court said terminal illness was something they weren’t prepared to do. But what justices say outside of a courtroom and what they say inside of a courtroom are almost always two different things.

In the *Askov* decision, for example, which is the decision that struck down a number of cases for unreasonable delay, I remember one Supreme Court justice said afterwards: If we had known that so many cases would get thrown out because of our decision, we wouldn’t have ruled that way. That was a comment made outside of the courtroom. Inside the courtroom, very clearly the court said what it said.

We just need to be aware that it was not an issue that was argued before them. They didn’t have evidence before them, and they were not asked to rule on it; therefore, we should take those comments with more than a grain of salt. Until the matter is argued before them with evidence, we don’t know what they’re likely to say about that particular point.

I do say, though, as a matter of policy, it is for the government to decide whether they want to move incrementally. In my early comments, I said then and I repeat now: When it comes to a nation, to a society, authorizing the state to assist people to die, I think we should move slowly, we should move carefully, and we should move incrementally. We should not be in such a haste to broaden this right too quickly without very clearly considering all of the safeguards, all of the conditions, all of the factors that need to be taken into account and protections put into place before we grant that right to everybody.

• (1220)

If we do that, what is it that we are saying about the sanctity of life? I am concerned that it took me a while to figure this whole process out that’s been happening here today, and I think I’m pretty smart.

I don't know what people in society are going to think of all of this at the end of the day. What is it that we have done? What are their rights? What are the rights of doctors and nurses in the meantime, for example? What are the obligations of pharmacists who are being asked to assist doctors who want to assist people who are not in that category of natural death that is reasonably foreseeable who want to die? Are pharmacists protected? Are doctors protected? Are we relying on provincial laws to protect them? Can they be prosecuted? I don't know the answers to those questions because it is not clear to me.

What is clear to me is that we are creating confusion about the law by pushing through an amendment that says in the meantime they can go ahead and get medical assistance in dying without ensuring that they have protections going forward. We shouldn't do that.

The government has put together a plan, and in the plan they have identified how they intend to protect the rights in the Charter and how they intend to defend their position if it is challenged constitutionally. By ensuring that they have done that, we have done our work with regard to that.

If it had been up to me, as with my colleague, Senator Pratte, I would have preferred they extend the right to everybody. I respect that they don't have to do what I want to do. I respect that they have the right to make that decision. As a government, they have made that decision, and I am prepared to respect that as well.

Thank you.

Hon. Anne C. Cools: Honourable senators, I will not support Senator Joyal's amendment to Senator Harder's motion because of the practice in this place that every clause of every bill must be read three times in both houses, both the Senate and the House of Commons.

The reason I will not support Senator Joyal's amendment is because it proposes two wholly new clauses to Bill C-14, which would not have been read here in the Senate three times. I believe that our Senate practices are too sacred and too ancient to be neglected or overlooked.

Parliamentary practice is that every clause of a bill is read three times before adoption. I repeat, the new clauses that Senator Joyal has proposed in Bill C-14 would not have had three readings in this place. I hope I have been clear.

Hon. Nancy Ruth: I want to say I'm supporting Senator Joyal's amendment, and I will not support Senator Harder's motion if it doesn't pass.

What I don't understand, given what Senator Sinclair has just finished saying, is why the government didn't take a reference itself yesterday to the Supreme Court of Canada.

Some Hon. Senators: Hear, hear.

Senator Nancy Ruth: This government promised Canadians it will reinstate the Court Challenges Program. It hasn't done so yet, to my knowledge. It has in that a commitment that citizens have a right to know and to challenge government decisions. This is a big one.

We have had four bills on this issue; we have had a lot of time to deal with it. Many women have suffered and have taken these cases through various levels of court. Why didn't the government have the courage to send a reference to the court yesterday?

Some Hon. Senators: Hear, hear.

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

Some Hon. Senators: Question.

Hon. A. Raynell Andreychuk: Honourable senators, I have not been here this week for debate, but I have certainly followed it. I took the opportunity to work on issues of citizens in other countries who don't have the right to life, where life is systemically taken away from them often by government interventions or non-state actors. I have dedicated my life to the sanctity of life, preserving life, and I find it very difficult, in the way the policy has been framed by the government, to support Bill C-14 or the motion that Senator Joyal has stated. Therefore, I will be abstaining from the vote on the motion of Senator Joyal.

It goes to broadening the questions that we have already debated, as it instructs, and I would have preferred that the government take the issue to court — somebody is being called.

The Hon. the Speaker: Senators, this is the third or fourth time this morning. Before you come in, check your devices to ensure we are not interrupting senators who are speaking.

Some Hon. Senators: Hear, hear.

Senator Andreychuk: I do appreciate there have been others. It wasn't just one. It is an admonition to all of us, and thank you for that.

The intent of what Senator Joyal wants to do is to get some clarity and have instruction. I would support that. Unfortunately, with the other issue of broadening what the government has proposed, I am not in favour of what the government is doing and certainly not extending it on a question of conscience.

I know Senator Seidman earlier said we shouldn't take our own question of conscience into account. If that's what she meant, I respectfully disagree.

I heard compelling stories of personal difficulties, and based on that and on evidence from other citizens, we have all come to a different conclusion, and we're not all of like mind. We're not a unanimous chamber. I think that's our strength that we are approaching it differently.

I trust that senators will respect that I will not be in favour of assisted dying at this time because of some of the comments that I want to make when we get to the final vote.

I respect that there is no mal-intent by the government in how it brought about this legislation; they're trying to do the best they can. I think it is really not in the best interests of citizens to have a bill come forward that talks about incrementally adhering to the court decision.

While that may have been a good strategy at the start, the debate here, and the debate in the public, shows that the public was not fully engaged. If you had asked me a year ago if I want to do myself in if I had a terminal illness, the answer would have been yes. No one wants to suffer. But you must give it some thought, and under what conditions? I have talked to so many citizens, and they say, "I think I know, but until I get to that point I won't know."

Now we are getting a thoughtful debate from the citizens, which wasn't the case at the start. So there is some debate on whether it is constitutional.

I respect Peter Hogg. I think he's an eminent source, but there are others. If I were in favour of assisted dying, I would probably yield and say it is unconstitutional, but I would not be so sure because I think the court should rule and rule more exactly.

• (1230)

The Supreme Court has reversed itself in the past. I have heard that the Supreme Court may give a lot of slack to this government and accept their approach. I'm not sure why they would do that. That hasn't been their habit, certainly not with the previous government.

A lot of questions need to be answered, and I think it is doing a disservice to the public, who we represent and the government should represent, in not taking a reference to the court and solving the issue very quickly rather than waiting. As Senator Sinclair has said, preserving sanctity of life but moving slowly, that's not equality. Some get it now; some get it later.

I understood from the Supreme Court that they intended to have some equality amongst certain groups. If we're not sure what that means, then I think we go back to the court. My appeal would be that the government exercise better processes in their public policy debate.

I also fear this incremental approach. The greatest difficulty I have with the bill is clause 9.1, where during this incremental approach, the other side added mature minors being afforded this right, advance requests, and whether mental illness is the sole underlying medical condition and that these people should be afforded access.

By putting this in this bill, it would seem to me that the government is already signalling that they are going to study it, and this bill is how to assist in dying. Therefore, I read clause 9.1 as saying, "We are going to look at methods and ways that we can include these citizens."

That may not have been the intention of the government, but it leads us to say we have opened the door to say that it's okay for mature minors. I, personally, cannot live with that.

We are, as adults, role models to young people. There are so many cases of suicide. Children, young people, see the world differently than we do. Infinity is usually two weeks to a 15-year-old. You have to live a considerable amount of time to begin to respect life. We are all bravado when we're 15 and 20. Therefore, as role models, we're saying that it's okay for assisted suicide, and we're going one step further in 9.1: "We'll see how it applies to you."

The issues that young people are facing are not the issues we're facing. We should be studying what is going on in the lives of young people where they don't value their own lives and suicide is so prevalent. And it has been for generations, in fact decades, but it is a phenomenon now that is critical. We put it in here as an afterthought.

We also do that with mental illness and advance requests. We put in advance requests, I believe, because there has been so much talk about Alzheimer's. Alzheimer's is not one condition, that you lose your mind. Alzheimer's is something of a declining, often aging and, in some cases, genetic issue. At what point is Alzheimer's a fact for assisted dying?

We seem to have marginalized these people in a way that we did before when we put in — again, governments with the best of intentions — eugenics laws. We found out later they were not in the best interest of the people who were caught by them.

We put in a welfare system. We put in child welfare. We found all the difficulties we have in those laws.

I think to put some valuable issues into clause 9.1 as an afterthought is not the way to approach children in our society, the mentally ill or advance directives that may cause us great problems.

I think there is a quality of life in a lot of our assisted living, home care and Alzheimer's facilities. There is some human care between two Alzheimer's patients that I rarely see in people, marginalized by income, in apartments where they are alone. I have seen human behaviour between two Alzheimer's patients that we could learn from.

I'm very concerned about the way we talked about assisted dying, which basically is for us, the adults. We put in others, in a very cavalier way, as a study. But the signals are wrong. I hope the actions will not be.

My final comment would be on palliative care. We should have addressed palliative care as the way we want our society to work, that we would be preventative; that we would be hopeful; that we would, in fact, put our resources into help and research.

Answers to many conditions today could be solved if there was a priority of health. Yet, we have now said we will take palliative care as one condition. It should be a precondition. We should

have come to assisted dying after we put our money, our thoughts and our policies into palliative care.

While I don't blame the government, *per se*, in haste they did the best they could. I do not believe that these are issues where we should move with haste. I hope that we hear the voices that aren't ready to even advance as far as the government. I trust the government will move very cautiously in opening up new areas for assisted dying, if they open them at all.

I think it was best left as a medical issue. We are assisting those who are dying today. It was between families, the person, the physicians and the health care system. It happens every day. I see it, and others do. There are cases that are difficult, and we should have put our attention to that. We should not be in this debate between two classes of people.

I would still encourage and urge the government to take this matter to the court for clarification if this is the direction you want to go and put barriers in for one class of person and not for others.

Therefore, my personal problem is with assisted dying, and my conscience says I will not vote for it. Intellectually, I understand why some people want to go this way. I have heard from many. I have heard from overwhelming numbers that they want clarification of what this bill will do to them. What are their rights, and what will the bill do to community values where Canadians, both internationally and nationally, say, "We value life and the respect for people in our society"?

Hon. Senators: Hear, hear.

Hon. Daniel Lang: Honourable senators, I'll be brief in respect to the amendment.

First of all, I want to commend His Honour for the ruling that he issued earlier. I think it's appropriate that we be able to debate this particular amendment.

I am sympathetic to the principle behind the amendment and the work that has gone into it, but I also want to say that I'm a pragmatist, and I understand the decision that was made in the other place, overwhelmingly bringing the message that we are to address.

I believe that if we were to pass this amendment and send it back to the other place, it would overwhelmingly be defeated and sent back for our consideration in a number of days following. From my perspective, the debate on this issue has gone on for a long time, and it's time to vote on the main motion.

• (1240)

Some Hon. Senators: Hear, hear.

Senator Lang: It would seem to me that we, as a Senate, will make a final decision on whether the *Carter* decision will be interpreted as many of us would like it to be, or the majority will

decide that they are going to agree with the incremental approach by the Government of Canada.

I will speak on third reading and put my position forward, which I don't think will be a surprise to anyone. However, I don't see the purpose of the amendment and going back to the other place, because we will be here Monday or Tuesday debating the same issue. I think we should get down to business and vote.

Senator Jaffer: Honourable senators, I will be speaking on the amendment, but before I do, I would like to clarify something that was said earlier by Senator Sinclair.

When the government requested an extension of time from the court for debate on assisted dying, the judges were Abella, Wagner, Gascon, Côté and Karakatsanis.

Judge Karakatsanis asked the government's lawyer:

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

Honourable senators, I point out to you that *Carter* rejected "terminally ill."

Honourable senators, I rise to support Senator Joyal's amendment, as I believe that we or the government will be able to immediately put in the safeguards to protect Canadians and provide another opportunity for Canadians to have the eligibility sections addressed by the courts. At the moment, if these eligibility sections are not addressed by the government, it will be individual Canadians, one case at a time, bringing these cases to court. Honourable senators, from all that we have heard, this would be a terrible burden for Canadians.

We have all had many people contact us; and as Senator Cowan did, I would also like to point out to you why it is so important that we listen. I'm not lecturing; don't think that. I genuinely feel that, with all the emails we have read, all the letters we have received, we must listen to Canadians.

The Phelps family wrote to many of us, saying they have had three terrible experiences of seeing their family members torture themselves because medically assisted dying was unavailable to them. Laura Phelps shared with us her story about the excruciating death of her grandmother, father and mother.

Laura's grandmother, Dayle Johnson, suffered from colon cancer and starved and dehydrated herself for 12 days before passing.

Laura's father, Ronald Phelps, who had amputated arms and legs, decided to starve and dehydrate himself. He did not want his last vestiges of dignity taken away. It took him 16 days to pass.

Dorothy Phelps, Laura's mother, suffered from vascular dementia as a result of a major stroke in 2013. Dorothy's neurologist had told her she would have more strokes. She also starved herself to death, and she survived for six days.

Honourable senators, let us look at what *Carter* said. *Carter* mentions individuals suffering from a grievous and irremediable condition, including an illness, disease or disability; the condition causes enduring suffering that is intolerable to the individual; and "irremediable" does not require the patient to take treatments that are not acceptable to the individual.

Now let us look at how restrictive the eligibility part of this bill is. The bill accepts, as in *Carter*, that the individual suffers from a grievous and irremediable condition, including an illness, disease or disability. However, it then goes on to restrict the rights of Canadians. It says you have to have a serious and incurable illness, disease or disability; that you are in an advanced state of irreversible decline in capability; that your natural death has become reasonably foreseeable; and that the illness, disease, disability or state of decline causes intolerable and enduring physical suffering.

Honourable senators, the two ministers and the House of Commons have asked us to accept the bill. Why? Because they say we need a national bill so that there is harmonization across the country. I accept that. The Joyal amendment accepts that.

The House of Commons and the ministers say we need certainty. I accept that. The Joyal amendment accepts that.

The House of Commons and the ministers say we need safeguards now. I accept that. The Joyal amendment accepts that.

Honourable senators, I stand before you and say let us heed the many Canadians — Canadians with multiple sclerosis, ALS and Huntington's disease.

I come from B.C. Sue Rodriguez is from my province. I'll never forget when she appeared on television and said, "Give me the chance to live longer with my son. I don't want to commit suicide now; I want to live longer. Then, when I'm ready, give me the chance to die with dignity. Give me that choice."

At that time, the Supreme Court denied her that chance. Since then, the Supreme Court of Canada has evolved, as have the wishes of Canadians. Today I stand here and say let us heed the cries of Canadians. Let us accept this bill. Let us have a national bill, but let us have the eligibility section returned to the Supreme Court of Canada so that each and every Canadian's voice is heard.

Hon. Dennis Glen Patterson: Colleagues, earlier in the debate on this bill, Senator Joyal strongly forecast that Bill C-14, with a limit on the class of persons who could avail themselves of medical assistance in dying, will be challenged in the Supreme Court. He pretty well guaranteed this would happen, if I recall his strong remarks.

[Senator Jaffer]

As I said earlier in the debate on this bill, I believe we're in this situation because of what I consider to be an activist Supreme Court. This amendment will pay homage to the Supreme Court and see Parliament deferring to the superior wisdom of the Supreme Court on a matter of vital public policy. Talk about unelected people making important decisions for Parliament!

Whether the bill is referred to the Supreme Court by the Government of Canada, as this amendment proposes, or whether it is referred to the Supreme Court by Dying With Dignity, an organization which received, some would say, undue consideration from the joint parliamentary committee, or whether it will be referred to the Supreme Court by the BC Civil Liberties Association, for example, the bill will be challenged. Senator Joyal has told us so.

Therefore, this amendment is not necessary. I believe that in our system Parliament is supreme, not the Supreme Court. Parliament, duly elected with a clear majority, has decided that, today, Canada should not go as far in determining what classes of people should be able to avail themselves of the right to assisted death, or assisted suicide, as some describe it. This will be reviewed by a provision in this legislature in the fullness of time. Aspects of this difficult issue will be studied by provisions of this legislation.

• (1250)

This amendment will return the bill to Parliament, and I would predict it will most likely be rejected by Parliament. The Attorney General of Canada has told us the government's opinion is that the bill is constitutional. I believe that statement was not made lightly and without careful legal advice from eminent and experienced lawyers.

I also think it's unfortunate this amendment is being submitted today at the eleventh hour. Parliament has spoken clearly. I would never say that the Senate should blindly accept all bills from the lower house, but we have given Parliament our thoughtful advice. We have debated these difficult issues intensely over almost two weeks, in more time — and some might say more depth — than the House of Commons was able to do with the closure motion that was imposed on debate there.

The Senate originally supported Senator Joyal's amendment to this bill. I did not support that motion, but I do believe our advice was respectfully considered by Parliament.

So rather than delay final passage of the bill by sending yet another amendment back to Parliament, which will probably require recalling Parliament's 338 members at great expense and encouraging further uncertainty, I am with Senator Lang: Let's finalize the bill now. I would never say in so doing that we should always defer to the lower house, but I think our advice has been given and considered. We should only challenge the other place in very exceptional circumstances.

With the greatest respect for Senator Joyal and Senator Cowan, but also considering the views of two of our colleagues who have also served on the bench — Senator Sinclair and Senator Andreychuk — I'm not certain that this bill is in

compliance with the Charter of Rights and Freedoms. Undoubtedly we will find out, but we don't need this amendment to have an activist Supreme Court once again become involved in this issue.

So for all these reasons, I will vote against the amendment. Thank you.

Hon. Lillian Eva Dyck: Honourable senators, I stand here as a woman. I stand here also as an Aboriginal woman. I have been in this chamber for 11 years. I have served as critic for a lot of bills that have affected First Nations people, and I have seen us trample on the rights of those people for a decade. We have ignored their constitutional rights. They have come before us, so I definitely see my role as standing up for minorities.

In this case, I think it's very clear that we're creating two classes of people with the same disease, and I feel we have a duty to protect the rights of those people. Even though the reality of the situation may be challenging, the House of Commons does not see it.

But, as pointed out by my learned colleague Senator Joyal, we are here to protect minorities. I wholeheartedly support Senator Joyal's amendment. I firmly believe that we have to stand up and fight for the rights of those people who will be denied this right. As pointed out by Senator Cowan and Senator Jaffer, those people who are not seen as being reasonably near a natural death will be forced to stop eating, stop drinking and make themselves so sick that they may then be seen as eligible for medical assistance in dying.

The reality for them is we have to stand up for them. We are the house that should be looking after their interests because their interests reflect a small group, and if we don't stand up for them, who the heck is going to? So I wholeheartedly support Senator Joyal's amendment.

Some Hon. Senators: Hear, hear!

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Two quick points, colleagues. First, with the greatest respect for Senator Patterson, a senator for whom I do have great respect, I would remind us all that the House of Commons is not Parliament. It is a turn of phrase that is often used to say "Parliament has done this" or "Parliament has done that" when what is meant is the House of Commons.

If it were just a turn of phrase, that would be one thing, but in fact, it speaks to an underlying attitude. And if there is any class of persons who ought to take seriously the fact that Parliament consists of the House of Commons, the Senate and the Queen, it is surely the people in this chamber.

The second point I wish to make is that there seems to be a very wide degree of agreement that, one way or another, the provisions in Bill C-14 concerning eligibility, if adopted as proposed by the government, will end up at the Supreme Court. The question before us, therefore, is not whether those provisions should go to the Supreme Court. It is: How should that be done?

Senator Joyal's amendment provides a clean and comparatively speedy way to solve that dilemma, and it would be done at public expense by the Government of Canada. If we do not accept Parliament's responsibility to get this issue decided, what are we doing? We are abdicating that responsibility to individual Canadians, many of whom are hard-pressed to pay any legal bills at all, let alone the cost of fighting a case all the way to the Supreme Court of Canada against the Government of Canada. That is a terrible abdication of our responsibility.

Perhaps in some provinces, if you are really poor, Legal Aid might cover this legal adventure, but not in all provinces and probably not in most. That would still not affect the class of people who have too much income to be eligible for Legal Aid but who are, by any other measure, hard-pressed when faced with the costs of these legal experiences.

I think we're failing in our duty to them in a grievous way if we refuse to adopt and face our responsibility.

Some Hon. Senators: Hear, hear!

Hon. Sandra Lovelace Nicholas: Honourable senators, I agree with the amendment because in order for me to protect my minority rights, I had to go to the Supreme Court of Canada. I don't think that's right. So we should vote for this amendment.

Some Hon. Senators: Hear, hear!

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 Joyal, seconded by the Honourable Senator Tardif:

That the motion moved by the Honourable Senator Harder be not now adopted, but that it be amended by replacing the second paragraph by the following —

Shall 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.

MacDonald
Marshall
Martin

Unger
Wallace
Watt—42

And two honourable senators having risen:

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

ABSTENTIONS
THE HONOURABLE SENATORS

Senator Plett: Thirty minutes.

The Hon. the Speaker: Thirty-minute bell? The vote will take place at 1:30. Call in the senators.

Andreychuk
Oh—3

McIntyre

• (1330)

Motion in amendment negated on the following division:

[*Translation*]

YEAS
THE HONOURABLE SENATORS

Black	Kenny
Boisvenu	Lovelace Nicholas
Carignan	Maltais
Cordy	Massicotte
Cowan	McInnis
Dagenais	Mercer
Day	Mockler
Downe	Moore
Dyck	Munson
Eggleton	Nancy Ruth
Fraser	Ngo
Greene	Ogilvie
Jaffer	Wallin
Joyal	White—28

NAYS
THE HONOURABLE SENATORS

Ataullahjan	McCoy
Baker	Merchant
Batters	Meredith
Bellemare	Mitchell
Beyak	Omidvar
Campbell	Patterson
Cools	Plett
Doyle	Poirier
Duffy	Pratte
Eaton	Raine
Enverga	Ringuette
Frum	Runciman
Gagné	Seidman
Harder	Sinclair
Housakos	Smith
Johnson	Stewart Olsen
Lang	Tannas
Lankin	Tkachuk

The Hon. the Speaker: Resuming debate on the motion of Senator Harder.

Hon. Claude Carignan (Leader of the Opposition): Honourable senators, I rise today to talk about the message from the House of Commons regarding the Senate’s amendments to Bill C-14.

We are all here today because we care about vulnerable people. On the one hand, the government accepted some of our amendments and toned down others. On the other hand, it rejected a significant amendment proposed by our chamber. I will talk about that later, but first I want to talk about the amendments it accepted.

Like many others in this chamber, I’m pleased that we received a bill that was amended to reflect the concerns that were at the heart of the debate. Take, for example, the tireless efforts of Senator Eaton, who worked non-stop for the just and noble cause of palliative care. This is where we are. What do we do now?

It is difficult to imagine that an issue as important as palliative care could be put on hold. Palliative care is central to this debate. Many witnesses couldn’t stop talking about it. On behalf of people who are ill, we urge the government to keep the promise it made in this regard. It is not right that, in 2016, charitable organizations and palliative care hospices should have to fundraise to cover the cost of their operations. That is completely unacceptable.

• (1340)

We also adopted well-thought-out amendments that made this a better bill. I am proud of my colleagues who proposed them. I am proud of all the senators who worked very hard to present amendments and subamendments that were meaningful and important to millions of Canadians. I would also like to recognize the tireless efforts of senators’ staff members who worked behind the scenes. I congratulate all those who took part in this process. Although we are not as close as we would like to be to having a law what would pass the test of a Supreme Court challenge, we will have to make do with what we have been given.

Colleagues, we are at the stage that presents the greatest challenge. We will have to live with our decision. I have thought a great deal about this issue, and I know you have as well. As I mentioned earlier, the government decided to reject a vital amendment, which would have corrected the fundamental

mistake in Bill C-14. The House of Commons voted more than six times against broadening the eligibility criteria. This is therefore the clear will of the House.

Reverting to a bill that contains the expression “reasonably foreseeable” is not only worrisome, but also ill-advised, and as we have already pointed out, this step backwards has unfortunate consequences.

If this bill passes, it will be this government’s most important bill, apart from budget bills, and the government will have gotten it wrong. Some people who would have been eligible for medical assistance in dying between February 7 and June 7, during the extension period granted by the Supreme Court, will no longer be eligible under this bill in its current form.

I assure you that this will not be the last time we rise one at a time in this chamber to debate the expression “reasonably foreseeable natural death.” I think that we’re very likely to see a good number of court challenges going forward. The government is forcing people who are suffering, but who are not at the end of life, to seek relief through inhumane means of the kind we heard about in reports of patients starving themselves to death, refusing to eat or drink, in order to become eligible. The only alternative for them will be to apply to the courts.

There is no doubt in my mind that this issue will continue to be the subject of key court decisions, which will mean more legal challenges, and more time and money wasted.

We all know how court cases can drag on. The government will impose the burden of years of court battles on the frail shoulders of patients who thought they had won their cause. If this bill passes, I will urge the government to refer it to the Supreme Court to seek an opinion on the constitutionality of a bill that prohibits access for people who are not at the end of life.

Fortunately, some people will find relief, those who are experiencing intolerable suffering and who are at the end of life. They will be able to access medical assistance in dying. I take some comfort in the knowledge that this group of people, at least, will have this right. Because of the government’s intransigence, as long as there is no federal legislation, access will not be guaranteed, in Ontario at least, because in that province, a judge decided Wednesday that permission of the court was still required for medical assistance in dying, even for people who are at the end of life.

This uncertainty is troubling, not only for the patients who are suffering, but also for the physicians who administer medical assistance in dying and don’t know whether, by doing so, they are exposing themselves to potential lawsuits. If a bill stipulates that a doctor who provides this assistance can do so without concern, then I must say that this bill will at least have that going for it. I fear that we otherwise risk causing more anguish to all those who are suffering.

I hope that when the government starts conducting its studies on issues including mature minors, advance requests, and mental illness, it will not forget to study the issues we addressed here that

concern the rights of people who are not at the end of life. I urge the Prime Minister not to turn his back on all the Canadians to whom he is denying medical assistance in dying today. This should be a top priority for his government. I will go over these reports with great interest, and the government can be sure that when this legislation evolves and comes back to the upper chamber, the Senate will be ready to again take up the fight for all those who are vulnerable and suffering and who feel as though they have not been heard.

Finally, I must thank all my colleagues for the quality of the debates to which they contributed in this chamber. The courtesy, respect and quality of the exchanges demonstrated once again that the Senate was up to the legislative challenges facing Canadians. History will remember that when an issue as fundamental as life itself was debated, the Senate rose to the challenge and spoke on behalf of all Canadians, regardless of their status or their position on such a heart-wrenching issue.

This debate illustrated the great diversity of ideas in this chamber and in the caucus that I represent. I am extremely proud of the diversity of the opinions that were expressed by my colleagues through a free vote. As a result of this diversity, we presented important amendments in this chamber that will be included in this bill. It is an honour to be part of such a dedicated team that is here to serve Canadians across the country. Thank you.

[English]

Hon. Michael Duffy: Honourable senators, it’s not my intention to repeat the many eloquent arguments we’ve hear on all sides in this important debate, but there are a couple of points we should put on the record for Canadians.

All the senators here have received hundreds of emails on C-14, including one from Dying With Dignity in the past hour, urging support for Senator Joyal’s amendment. Many if not most of the messages I’ve received from Prince Edward Islanders ask that we respect the sanctity of life and stop medical assistance in dying.

The short answer is we can’t. The Supreme Court has ruled that Canadians have a right to medical assistance in dying, and the most we as senators can do is manage access to this service.

At the 1982 constitutional conference, a number of premiers worried that our new Constitution with its Charter of Rights would take power out of the hands of our elected representatives and put it into the hands of the unelected judges of the Supreme Court. That concern was deeply held and crossed party lines. Respected provincial premiers, like New Democrat Allan Blakeney of Saskatchewan, sided with Conservative Sterling Lyon of Manitoba and Angus MacLean of Prince Edward Island, arguing passionately with Prime Minister Trudeau on this very point.

In the end, Mr. Trudeau agreed to accept the notwithstanding clause, and the constitutional logjam was broken — confrontation, conciliation and, finally, a Canadian compromise.

Now here we are, 34 years later. Whatever our views on medical assistance in dying, whatever we hear from the public, we as senators must do our constitutional duty. Parliamentarians must respect court rulings and respond to them in good faith, but I believe, in turn, courts should show deference to Parliament's judgments about the appropriate balance of fundamental interests and values.

After much consideration, and no small amount of soul-searching, I have come to the conclusion that Bill C-14 reflects a balanced approach to the criminal law dimensions of medical assistance in dying. It isn't everything opponents want, nor is it a carbon copy of the Supreme Court's *Carter* decision. It's a Canadian compromise.

• (1350)

As the Minister of Justice said:

It is a reasonable and responsible law that respects individual autonomy to choose one's manner of dying, and at the same time, like other free and democratic societies, it maintains respect for life, suicide prevention and the protection of vulnerable persons, and the equal inherent dignity of all Canadians.

For those reasons, honourable senators, I will support it.

Hon. Nancy Greene Raine: Honourable senators, the debate on Bill C-14 on medical assistance in dying has been serious and very difficult for us all.

It was good that Parliament did not rush to meet the Supreme Court's June 6 deadline and that we had time to debate the issues thoroughly, including many amendments. I am sure that the amendments we sent to the House of Commons were seriously considered. As we began our debates two weeks ago, we were encouraged as we heard the two ministers assure us they would welcome thoughtful amendments.

Today we are debating this bill as it was returned to us. I am very pleased that some of our amendments to improve the legislation have been accepted.

I was sorry that Senator Joyal's original amendment was not accepted. I found myself wavering as we debated whether the eligibility rights in Bill C-14 should be limited. In the end, I voted to expand the rights to those people who met all the other criteria but were facing years of unbearable suffering.

Honourable senators, now I believe that it is up to us to pass a message to the House of Commons that we accept their recommendations. This is not the time to go on about a debate between the House of Commons, the Senate and the Supreme Court. That will unfold in the future. I believe we should now pass the message to the House of Commons and support the legislation.

The challenge, as always, has been to balance the Charter rights of all Canadians with the need for safeguards for vulnerable people. We recognize that some people could be at risk of being influenced to end their lives. The medical assistance in dying

regimes that will be developed by federal and provincial regulation will need to be very careful because, as stated by one senator, this is a decision that cannot be reversed.

One of the subjects we debated at length was the right for people who work in the medical field to have their conscience rights be respected and to be free from any pressure to take part in the process of medical assistance in dying. Our amendment on this subject was not accepted here in the Senate. However, we have been assured that conscience rights are already clearly defined in our Charter of Rights. As the authorities move forward with regulations, I trust they will make this very clear.

During the debate on Bill C-14, we heard many different viewpoints, and many in this chamber shared personal experiences that shaped our views. It is obvious that all senators took their work on this bill very seriously.

Most of us have experienced being with loved ones at the end of their lives. There's no doubt that if we have seen people suffer in extreme pain, we understand that it does not have to be that way.

Palliative care is very important, which is why I'm pleased to see that most of Senator Eaton's amendment regarding palliative care has been included in the legislation.

I also understand and respect that many people's religious beliefs help them accept that suffering pain at the end of life is to be endured as part of their faith. I find that those who belong to religious organizations are very good at supporting each other during times of crisis. They are to be envied.

As many people have written, our legislation needs to ensure that no one puts pressure on the vulnerable to opt for medical assistance in dying so as not to be a burden for their families or caregivers. That is why Senator Plett's amendment restricting beneficiaries as signatories in the eligibility review process is so important. No one who might benefit from a person's death will be allowed to sign on their behalf.

Honourable senators, in Canada, we should find ways to ensure that all people feel their lives are valued, and we must continue to improve our social supports to help those in need. It will be very important to monitor the new end-of-life regimes and to be very clear that the safeguards for vulnerable people are being followed.

I have thought about what I would want at the end of my life should I become incapacitated, so I will follow with great interest to see how the study of advance requests will be done. It would be very good to clarify this issue, as it has been disturbing to see court cases where advance directives have been overruled.

No one can predict the future, of course, or how their final time will come. We can become incapacitated in an accident or with a stroke or heart attack. We can develop a terminal illness, some with extreme pain. Or we can develop dementia with the resulting loss of mental capacity.

I hope there will be a fulsome discussion of advance requests as it is a complex issue, and all different kinds of situations must be included.

[Senator Duffy]

I was happy to see Senator Marshall's amendment to put a two-year time limit on the initial consultation on further studies laid out in the legislation.

Honourable senators, in closing, I support a person's right to make their own decisions with regard to the end of their life. I want future laws to ensure that advance requests are respected. I know many in this chamber may not agree with me, but I trust we can respect our differences.

I have found this debate to be incredibly informing, to be respectful, and to be really inspirational to me about the value of this chamber in its role of sober second thought.

Canada's new legislation on medical assistance in dying is a good first step, but there is more work to be done. Thank you.

Hon. Frances Lankin: Thank you very much. I rise to indicate that I will be supporting the motion from Senator Harder. I support it not because I think that the government has struck the right balance in this legislation, but I respect their right to govern and to make this determination. I respect the position that the Minister of Justice and Justice officials have arrived at after due consideration that, in their view, this bill is constitutional.

I may hold a different perspective, but it is not because I am a legal expert. It is probably because I have a policy inclination toward the outcome of that legal interpretation.

In recognizing that, I think this is the appropriate time to respect the democratically elected House of Commons' decision and the message they have sent us.

In supporting this motion, I wish by way of these remarks to send a message and a request to the ministers and to the government.

There are two requests that I have. One is with respect to the reviews under clause 9.1 of the legislation. They are currently scoped to deal with three particular population groups, and I think they're very important: the issues of those who wish to request advance directives, those who have a sole diagnosis of mental illness and those who are mature minors. Those are all very important.

I believe, as the ministers have stated, that there is a group of people, and among those are persons with disabilities, some of whom find themselves to be vulnerable and who may be open to coercion and their requests under this legislation to not be voluntary.

I think the ministers have said that is the reason why they have narrowed the scope of eligibility to those persons for whom death is reasonably foreseeable. I would ask that they examine the protections that they think are required in order to expand the eligibility as has been expressed by the majority in this house as the desire for balance and by many Canadians as well.

Second, I would request they take under consideration the dialogue that has taken place and the sincere request for a reference to the Supreme Court on this legislation.

To me, it is intolerable to think of the Canadians who believed that they had rights asserted through the court decision, who believe they have the autonomy to make this decision for themselves, who are in conditions of intolerable suffering and will have to continue to suffer and/or make other drastic choices in their life, for that to go on for a long time and to wait for court challenges to weave their way through. To me, it is totally unacceptable to place the burden of the cost of that on individuals and families and even organizations.

I wish, for them, for the government to give consideration to that and to find a way to bring to the courts opportunity to deliberate this Bill C-14 as they are asking for it to be passed and to have that ruled on so that the question of dispute can be dealt with in a more timely fashion.

• (1400)

Lastly, I thank the ministers for the work that they have done on this. As a former minister in the province of Ontario, I know how difficult it was for all of us to be engaged in this debate, along with all of our fellow parliamentarians in the House of Commons.

This is a rare opportunity to participate in such historic and life-impacting legislation, and I am honoured to have played a role in it with all of you. I have great respect for all the views expressed in this house. I thank you for the opportunity to participate alongside of you.

Hon. Donald Neil Plett: Honourable senators, I truly will be very brief.

As I said the other night, I appreciate the respectful debate that has happened around this issue where all of us were able to express our opinions and they were accepted by each member of this chamber. I thank you all for that.

This debate has done something that no other debate has been able to in the 66 years of my life, and Senator Joyal is responsible for that. Senator Joyal presented an amendment that would have asked me, and even still asks me, to support a Liberal government. Nobody has ever been able to do that before. Thank you, Senator Joyal, for that. I am now a non-partisan and would have supported the Liberals in rejecting your amendment.

The other thing that I found very interesting and entertaining this morning, even though it was very brief, was the debate between Senator Joyal and Senator Baker. I have never seen them on opposite sides of an issue. That was enlightening as well.

Senator Baker mentioned some numbers of the votes in the other place, and I want to elaborate on that. The final vote on Bill C-14 on the amendments and the motion that was presented to us today was: Liberals, 168 yeas, 2 nays; NDP and Bloc, all nay; Conservatives, 28 yeas, 58 nays. Who do you think voted their conscience? I would say the Conservatives were again allowed to vote their conscience, as they always have been. The Prime Minister, of course, said that he would also allow that, and I do not see that as being the case. I personally know a number of Liberal MPs who did not vote the way they would have liked to have voted on this particular bill. They voted this way because they were asked, told and whipped to vote a certain way.

The other thing I want to mention is we heard a lot of comments yesterday about the independents, and some people were upset that they were not called independent. In all the votes and amendments that were brought forward on this debate, there wasn't one amendment where the entire Conservative side of the chamber voted the same way. We truly voted our conscience, honourable senators, and I thank all of you for that.

I very briefly want to talk about my amendment. I was tremendously disappointed with what the government did on my amendment. I thought it was truly an amendment that added a safeguard that I, quite frankly, thought they had forgotten about. I believed that it was inadvertent and a mistake, because it was logical that this amendment should be in there, considering the rest of their bill and the two independent people that needed to be witnesses. I thought it made absolute sense to have this in there, and I was disappointed.

Every member of the Legal and Constitutional Affairs Committee, including the sponsor and the critic, voted in favour of that amendment at committee, yet it was dismissed out of hand. This disappoints me; it really does. I think they made a grave error, as Senator Joyal thinks they did on his. I think mine was a logical, necessary amendment.

However, having said that, I will go home and I will cry about that for a while. I will come back on Monday refreshed, invigorated and hopefully talking about something other than Bill C-14. I'll start with Bill C-10. That will be more fun than this was.

Honourable senators, I ask us all to be as brief as I was in my remarks because I do think we owe it to the Canadian public to bring this to a close today. I believe that this needs to be addressed, and we need to have a vote today.

I ask you all, as I will, not with a great deal of joy, to vote for Senator Harder's motion and vote for the bill as it has been sent back to us today.

Thank you very much.

Hon. Art Eggleton: Honourable colleagues, it has been said many times already in this chamber, and I said it previously when I spoke on third reading of the bill, that it is the responsibility and duty of this institution to uphold the constitution of this country.

I think that's also what the Supreme Court is doing. That's their job as well. They are not creating law by doing this. They are looking at the Constitution, defending the Constitution and determining how the laws passed by this Parliament reflect in the Constitution. So they came to a conclusion after a very thorough examination that led to the *Carter* decision, and the *Carter* decision was the basis on which we passed the first amendment in this chamber.

The other chamber does not agree with that. The government has decided that its interpretation of the Constitution is the correct direction to go. I just don't happen to agree. I think that the very substantial weight of evidence would indicate that this is unconstitutional. If it's our duty to uphold the Constitution, then

I believe it's our duty to turn down this amendment when it comes back from the House of Commons, and I intend to vote against it.

I think it would have been wise for the government to go to the Supreme Court to get an opinion. It has done this before. It could do this in a few short months, as it did in the case of the previous government and the Senate itself in terms of what constitutional framework the government needed to operate within. It came back in fairly quick time.

I think it would happen again in this case, because they already have the information and they could very quickly deal with it, rather than putting citizens or citizen organizations, as appears to be where we're headed now, through the long, drawn-out process of proceeding with this and leaving a state of uncertainty for a lot of people in this country. So I reluctantly come to the position that I will vote against this amendment from the House of Commons.

Hon. David Tkachuk: Honourable senators, I spoke at second reading about what a difficult subject we had before us and my misgivings about this bill, and nothing in the hours of debate we have had since in this place or in the bill that has been returned to us from the other place has alleviated my concerns.

I was reading yesterday about the situation in the Netherlands, the laws which supposedly serve as a model for assisted-dying legislation everywhere. Yet the increase in the number of people who have sought assisted dying for psychiatric disorders in that country is causing concern about the choice to eliminate people from the population as an alternative to providing them with the medical care and social support they need.

Here is an interesting statistic from the study of that very issue in the Netherlands: Data collected between 2011 and 2014 demonstrates that one in five patients cited as having a psychiatric disorder and who sought out a doctor's help to die had never been hospitalized for a mental disorder. The author of that study warns of mission creep and that the legislation intended to allow the sickest patients to truncate their final suffering is being used as a permanent end to a problem that can wax and wane. That I find worrying.

• (1410)

You have probably all seen the letter to the minister from the young medical student who wrote that psychiatric illnesses, including depression, bipolar disorder and schizophrenia, are considered manageable with medications and behavioural therapies, but serious and incurable without treatment. She argues in her letter, as I have, that resources should be placed to address the shortcomings of treatment for those afflicted, rather than opening the gates of assisted death to this vulnerable population.

She, like me, also prefers the route of better palliative care options and, in fact, argues for a mandatory palliative care consult as part of this legislation.

This young student embodies my worry that somewhere down the road she will be faced with a choice of whether or not to assist someone in dying. I can only hope that if and when she does, the

regime we have put in place includes the best safeguards possible to avoid mission creep in any and all areas and, at the same time, allow her the choice of whether to participate or not without fear of retribution.

Many of us are facing a dilemma. I'm opposed to the very idea of assisted death, yet the Supreme Court of Canada made a decision that as of January 9 made the procedure a benign word for suicide. We have been made partners in this action and have to protect it by law. Those judges have taken away my right to choose.

Bill C-14 delineates who may qualify for assisted dying, creates a framework for medical action and provides a road map to future action backed by research and consultation. If we are to defeat this bill, it means that the Supreme Court decision will guide the actions of the medical and legal community and we would have failed our duty.

The House of Commons voted on an almost identical motion as the one proposed by independent Liberal Senator Joyal and defeated it soundly. They have sent us a message, and we should heed it.

I have been enriched by the debate on this bill, and I thank all senators for that. We are, after all, an appointed body, and this is a government bill of major consequence. We cannot — and I will not — thwart the will of the elected members of Parliament. We have done our job, and although it breaks my heart, I am going to continue to do my duty by voting for this bill in the form that it has been sent back to us by the peoples' representatives.

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Honourable senators, I will not support the motion. I believe so strongly that it is the duty of this chamber to uphold the Constitution as best we can that I cannot support a motion that accedes to what I believe to be a breach of the Constitution.

I would like to note that if we defeat this motion, we are not defeating the bill. The bill will still be in exactly the same state it has been all along. We will be defeating one version of the response that we must ultimately give to the House of Commons message to us. If we don't accept the response proposed by Senator Harder, then we find another response.

It would be my earnest hope that this chamber would stand for what the great bulk of the evidence tells us is a better interpretation of the Constitution than that put forward by the government. But like everyone in this debate, I respect the opinions of my colleagues, perhaps even more the opinions of those with whom I disagree than the opinions of those with whom I agree, because I think it has taken some of them great courage to take the position that they have taken. I absolutely respect that, but I can do no other than vote as I plan to vote.

Hon. Bob Runciman: Honourable senators, I, too, will have a few brief comments.

At the outset, I want to indicate that I will be supporting Senator Harder's motion.

Honourable senators, as a supporter of an elected Senate — and I may be in a diminishing minority in this chamber — to me, it boils down to accountability.

In my view, this chamber should respect the decision of those 338 members who were sent to Ottawa by the electorate, and there shouldn't be a question in anyone's mind about whether or not we are doing our job. We are and we have.

This body carefully studied this complex issue and provided substantive recommendations both in our pre-study and our amendments to the bill, some of which the other place, with some tweaking, has accepted.

A great deal of the debate on Bill C-14 has centred on the question of whether or not the bill is constitutional. We've heard more of those arguments today.

At least three respected legal minds in this chamber have made strong arguments that it doesn't pass muster, that it's unconstitutional and will ultimately be overturned by the courts. But I should point out that the Legal and Constitutional Affairs Committee heard from several respected legal and constitutional scholars who say this bill is constitutional.

Senator Joyal has led the charge for a more permissive approach both in committee and with his very passionate speeches, especially his speech during third reading debate. That speech was nothing less than outstanding, one of the best I've heard in this chamber, and not surprising, coming from a senator for whom we all have the utmost respect.

But, even though I joined in the standing ovation for his speech, he failed to persuade me that the eligibility threshold should be lowered. Honourable senators, that's because I believe the government's cautious approach to this subject is the right one. This is an area that cries out for careful and cautious implementation.

In closing, I want to make a few brief comments about the role of the Supreme Court of Canada in all of this.

As Senator Plett said the other evening, "It's not Parliament that legalized assisted suicide, it's the Supreme Court."

I think it's safe to describe myself as no fan of the judicial activism of today's court. In my view, the court, all too frequently, goes well beyond interpreting a law or even determining a Charter right. In the *Carter* case, for example, the court chose to take it upon itself to not just rule on constitutionality, but to identify relevant policy considerations and then develop a policy framework to define the law that will apply to Canadians. Those actions, honourable senators, I would argue are the traditional responsibilities of our legislators who are elected and held accountable by Canadians.

In this place, we have an advisory and review role, but we are part of the democratic process, not above it.

From my perspective, in all too many quarters there appears to be an unhesitating deference to a Supreme Court that increasingly ignores Canada's cultural and social traditions; a court that is

seemingly prepared to see our country leap into unknown territory with legislation that is literally a matter of life and death; a court that has demonstrated a lack of consideration for Parliament's role by not granting adequate time for legislators to deal with this complex and divisive issue.

Well, I for one say no. If the court, at some point in the not too distant future, agrees with Senator Joyal and finds the bill unconstitutional, that is when, finally, Parliament should push back.

By "pushing back," I mean invoking the "notwithstanding" clause, not to abridge anyone's rights, but to assert the sovereign authority of Parliament and allow the time it needs to do its work.

Some Hon. Senators: Hear, hear!

• (1420)

Senator Runciman: And that work is to carefully consider the consequences of broadening the criteria, to conduct the statutory review of the legislation, and to carry out the studies on outstanding issues listed in the preamble.

Senators, the time is long overdue to remind the court that Parliament, and not the court, is supreme.

Some Hon. Senators: Hear, hear.

Hon. Victor Oh: Honourable senators, during the past two weeks we have come together to examine the issue of medical assistance in dying. It has been an absolute privilege to sit alongside such a hard-working group of individuals.

Some of you have demonstrated tremendous knowledge and leadership while engaging in a substantive debate. Others have shown a great deal of courage and strength while sharing stories about how this issue affects them and people in their communities.

These exchanges have touched me profoundly. More than once, I have found myself listening closely and considering questions that I had yet to ask myself. I am deeply thankful for what each of you has taught me.

Medical assistance in dying is a complex and deeply personal issue. In fact, many Canadians have contacted our offices to express their concerns and opinions. Given the public interest in this issue, it is likely that we will continue to discuss it in the months and years to come.

At this time, it is clear that this legislation needs improvement. However, I think we have reached a pragmatic balance. We have done our best to provide sober second thought and advance the interests of Canadians and, specifically, of minorities and the vulnerable.

I want to echo the comments made earlier about the role of the Senate in protecting minorities and the vulnerable. I personally think that we need to respect Canadians' ability to make decisions on how they wish to end their life. However, since our colleagues

[Senator Runciman]

in the House of Commons have refused to change the eligibility criteria, it will be up to the Supreme Court to determine whether it is constitutional to exclude an entire group of Canadians.

As this conversation continues, I hope that we take a broader look at the issue of palliative and end-of-life care. It is unacceptable that these types of services vary across Canada.

Once we have a national framework of medically assisted dying, we need to ask the federal government to work with the provinces and territories to develop a national palliative and end-of-life care strategy.

Colleagues, there needs to be a fine balance between allowing Canadians suffering from intolerable medical conditions to end their lives, and providing the necessary care to those who wish to relieve their suffering and improve their quality of life. Let us get on to the vote and support Bill C-14.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, like many of you, I was torn by this debate and disappointed that our colleagues in the other place refused to pass Bill C-14 with the amendments we proposed, which would have provided for fairness among those who are suffering and those who are dying.

I am also sad that the other chamber and the Minister of Justice showed a lack of openness and empathy in recognizing this fundamental right claimed by those who are suffering. Lastly, I am puzzled by the other chamber's confidence that Bill C-14 is constitutional.

I want to quote a statement by the minister:

[*English*]

[Minister] Wilson-Raybould said she is confident the bill is "constitutional" but agreed that it "is likely going to be challenged."

[*Translation*]

On a few occasions, you heard me strongly and passionately defend the principles of equality between people who are suffering and people who are dying. A number of experts and fellow senators showed beyond any doubt that if we fail to include this equality in the bill, the bill will not withstand legal challenges. It was our duty to make this clear to the other place. Unfortunately, as you know, the House of Commons rejected our amendment.

I was prepared to be as open as possible and go along with an agreement or compromise. Nevertheless, on behalf of hundreds of Canadians who are suffering and who want their right to be recognized, I cannot vote in favour of this bill. Voting in favour of this bill would be akin to telling the people and families who are in such tragic circumstances that they should simply wait until they are close enough to dying and then, maybe, we will allow them to die. Bill C-14 will soon confirm that these Canadians have the right to suffer.

Honourable senators, I know that a number of you feel torn by the current situation. You hoped for a different outcome that would have met Canadians' expectations. Please know that I have the utmost respect for whatever decision you choose to make about the bill before us. Most of us voted in favour of this bill and hoped that the other place would share the decision we made about the right to die with dignity. Now, we are back at square one and we need to decide whether to pass or reject this imperfect bill.

Before we hold the final vote on this bill that was sent back to us by the other place, I will humbly share my thoughts with you in order to provide you with some food for thought as you make your decision.

Honourable senators, I would like to commend you for all of the hard work that went into examining Bill C-14 in the Senate. In order to complete this essential task, you had to draw on your deepest and most authentic values. You had to hear about the suffering endured by people at the end of their lives, people who are held prisoner by their pain, which, in most cases, has taken away what was most precious to them: their awareness of being alive.

We worked hard here, we had some very frank discussions, and we did it together, regardless of our political, linguistic, religious or cultural differences. I believe that Senate debates will never be the same after this bill is passed.

Today, I am asking myself some questions. Did we take this journey under the impression that we were going somewhere? Did we improve this bill under the impression that it would reflect the Supreme Court's interpretation? Did we play our role as legislators conscientiously and to the best of our abilities, as the Canadian Constitution requires?

Honourable senators, my convictions have not changed; if anything, they have been strengthened by the thoughtful arguments many of you made. For that reason, I must vote against the bill on behalf of the hundreds or perhaps thousands of people who are suffering in Canada.

[English]

Hon. Denise Batters: Honourable senators, I rise today to speak to Bill C-14. As you know, I have had serious reservations about the Liberal government's approach to the issue of assisted suicide since before this bill was introduced. When the joint parliamentary committee tabled its report, which advocated expanding assisted suicide to those under 18 and to the mentally ill, my Conservative MP colleagues and I fought hard to ensure that those recommendations would not be reflected in legislation. Honourable senators, we fought that fight because Canadians do not want assisted suicide extended to these most vulnerable people. The risk for error is simply too great when the stakes are as high as life and death.

We have all witnessed the groundswell of public opinion and involvement in the issue of assisted suicide. Thousands of Canadians have contacted my office over the last several

months, as I'm sure they have yours, honourable colleagues, to express their opinions on this issue. It was this pressure from Canadians and the Conservative opposition that forced the Trudeau government to climb down from its original plan to whip Liberal votes on the assisted suicide legislation in the other place. I want to thank Canadians for the considerable pressure they brought on the government to narrow the reach of assisted suicide legislation to try and protect Canada's most vulnerable citizens.

• (1430)

At the time Bill C-14 was introduced, I was cautiously optimistic. If we could add some additional safeguards, the bill would have a chance of navigating that delicate balance between personal autonomy and protecting the vulnerable.

We agreed at our Senate Legal Committee to pre-study the bill in order to meet the tight time frame set out by the Supreme Court of Canada. We met for more than 20 hours, listened to testimony from 66 witnesses and made several thoughtful and informed recommendations for amendments, half of which were agreed to unanimously by our committee's Conservative, Liberal and independent members.

Then, the Trudeau government stopped listening. How many of those Senate Legal Committee recommendations did the government implement? Exactly none, honourable senators.

I found it especially disheartening that the government refused to implement our committee's recommendation — passed by a majority of senators on that committee — which would have required terminal illness and end of life to access assisted suicide. That is what Canadians want and it is what Canadians expect of assisted suicide legislation.

Even while outright rejecting our committee's recommendations, Minister of Justice Jody Wilson-Raybould continued to say that she would "consider all thoughtful amendments" from the Senate on Bill C-14. After hearing over 20 hours of testimony from 66 witnesses, I do not understand how our Legal Committee recommendations weren't considered "thoughtful" enough.

So once the House of Commons passed Bill C-14 to us, our Legal Committee heard from more witnesses, studied this issue further and passed it to the Senate Chamber for full deliberation.

Our debate on this bill has truly been outstanding, honourable senators. It has been reasoned and measured and extremely personal for many. The Senate as a whole passed three excellent amendments that I was proud to support: that of Senator Eaton, who proposed a mandatory palliative care consultation for patients seeking assisted suicide; from Senator Plett, one that would have removed beneficiaries from being able to administer or assist in the actual assisted suicide; and from Senator Marshall, which would require the government to make regulations regarding the use and disposal of information on assisted suicide.

The justice minister had promised to consider all thoughtful amendments that the Senate proposed, yet that didn't happen. When the justice minister introduced the C-14 motion back into

the House of Commons, those thoughtful amendments I just listed had all been substantially curtailed.

The Trudeau government rejected the crucial part of Senator Plett's amendment, which would have prevented beneficiaries from assisting with an assisted death, an important safeguard against abuse of the vulnerable and a recommendation passed unanimously by our Senate Legal Committee. Instead, the government chose to pass only a portion of Senator Plett's amendment. It is highly disappointing that the government failed to implement the full measure.

The justice minister also diminished Senator Eaton's amendment. Instead of requiring a mandatory palliative care consultation for anyone requesting assisted suicide, the Liberal government altered it so that patients need only be "informed of the means that are available to relieve their suffering, including palliative care." Once again, the government walked back on a measure that passed in this chamber, rendering it mostly ineffective.

Senator Marshall's amendment received a similar treatment. Whereas the original amendment stated that the minister "must make regulations," the motion introduced in the House of Commons reads that the minister "must make regulations that he or she considers necessary." This addition, honourable senators, completely alters the original intent of Senator Marshall's amendment, which was to make the regulations mandatory.

To be honest, I am disappointed and frustrated with the Liberal government effectively rejecting additional meaningful safeguards in Bill C-14. I really wish the Liberal government had chosen substance over optics.

Canadians do not want to see their loved ones suffer, but they have also voiced loudly and clearly that they are not prepared to open the floodgates wide on assisted dying. Time and time again, Canadians have expressed a view that strict safeguards must be in place before establishing any assisted suicide regime.

Bill C-14 makes a start in that direction. It requires approval by two medical practitioners and imposes a waiting period, albeit too brief, between the time of request for assisted suicide and the actual act. I acknowledge that these safeguards would disappear if Bill C-14 failed to become law, and that is why I am pleased to see the Senate deal with this bill in such an expeditious way. We need a national framework to guide Canada on this issue and not a patchwork of provincial regulations, some of which have already opened the door to possibly extending assisted suicide to children.

Though it has flaws, Bill C-14 is a vast improvement over the original recommendations made by the joint parliamentary committee's report.

And yet, bearing all of this in mind, I am still compelled to vote against this motion today. In good conscience, I cannot stand here in this place and vote for assisted dying legislation that lacks what I submit are necessary safeguards to protect the vulnerable, specifically the mentally ill. This bill does not require psychiatric assessments for individuals struggling with mental illness, and it has an inadequate waiting period to address the unique realities of people in that situation.

Bill C-14 does not expressly disallow people with mental illness as a sole basis for access to assisted suicide. In fact, the bill fails to even require terminal illness and being at the end of life, two things Canadians expect.

On an issue of such great import to the social and moral fabric of Canada, I do believe it is only right that the Senate must ultimately defer to the will of the elected House of Commons. Therefore, I have chosen not to bring further motions or amendments on this, but I will simply vote against it.

There is much for each of us to do in making this decision today, honourable senators. We have heard and exchanged the most personal of stories, but ultimately, we cannot let our individual experiences determine what is best for all Canadians, especially vulnerable Canadians. There are no easy answers on the issue of assisted suicide, but I ask you to keep vulnerable Canadians in the forefront of your thoughts as you cast your vote on this issue. I know I will.

Hon. Pamela Wallin: Honourable senators, I have just a few comments. I have shared my views in this chamber throughout this debate. I think people know that I believe this legislation, particularly in the form in which it has been sent back, is far too restrictive and discriminatory. Too many people in need will be denied the choice because of the nature of their illness, their age or perhaps even where they live.

So I add my voice to those who implore the government to refer their legislation to the Supreme Court at the earliest opportunity to clarify just who has access and under what circumstances.

I will in the next few days also propose a Senate inquiry so that we might continue our debate and our discussion, an inquiry into the validity, the precedence and the need for advance directives, something that I so strongly believe in. I hope, too, that we might explore and examine the provincial and territorial guidelines that will exist and begin to morph to ensure equal access, limited though it may be.

So as we consider this vote today and our responsibilities going forward, I would ask my colleagues to support me when I put that motion forward to continue our debate.

Hon. Daniel Lang: Colleagues, I will be brief, like so many of the other speakers. I want to rise to put my position clearly on the record.

Like all other members, I have had endless correspondence from all across the country. I have received numerous phone calls and correspondence from the region I represent, the Yukon.

Also, I want to say I very much appreciate the reasoned debates over the last number of weeks. It has been one of the proudest times of my tenure here in the Senate, to be part of this body and listen to the quality of the debate that has been presented.

I want to say at the outset that when I spoke at the initiation of second reading on Bill C-14, I welcomed the opportunity to debate the question of medical assistance in dying. I felt it was long overdue. I felt that Canadians deserved the right to have a

full debate in both the House of Commons and the Senate. It was the Supreme Court that caused this to happen, upon hearing a case that we all know was very tragic.

• (1440)

I'm guided by that decision of the Supreme Court in the *Carter* decision and, like so many others here, about the plight of Canadians who live with serious illness and are suffering intolerable pain and are seeking medical assistance in dying and, in some cases, leaving the country to avail themselves of that service.

You will recall that during the course of this debate I continuously raised the constitutional responsibility of the provinces and the territories for health care and for their responsibilities to manage the day-to-day needs of those seeking medical assistance in all and every manner on behalf of their citizens. Specifically in this case, they are responsible for the directives and protocols for medical assistance in dying, as you know, within their authority.

I want to put on the record, colleagues, that the provinces and the territories, including Yukon, which I represent, have established responsible frameworks in the spirit of the *Carter* decision. In Yukon, this includes two doctors, the decision-making capacity of the patient, a waiting period of 14 days, no advance requests, two witnesses and, in cases of mental health concerns, an assessment by a psychologist.

Colleagues, many provinces and territories have similar measures which ensure patients have adequate consultations and adequate protection, and I want to assure you that the vulnerable are fully protected and taken into account. Our provinces and territories have already moved to increase accountability for those involved with medical assistance in dying and to assure Canadians who are suffering that their rights will be respected. When the Senate considered the bill as presented, I supported Senator Joyal's amendment as in keeping with the *Carter* decision. Now that the House of Commons has removed that amendment, I believe Canadians are more vulnerable, and Canadians who are enduring intolerable pain will not be able to have their rights respected.

As one Yukoner who wrote to me stated about the law that we are presently debating in its present form, this "will deprive many Canadians in grievous and irremediable conditions of their basic rights."

The irony of the amended House of Commons bill that we will vote on later today is that it would still require Ms. Carter to go to Switzerland to seek medical assistance in dying. How ironic that this bill does not take into account the very real and tragic ending of Ms. Carter.

Rather than having a flawed law which usurps the provincial and territorial frameworks already in place and takes away the rights of those who are suffering intolerable pain, it is my view that it is better to have no federal legislation in place.

Provinces and territories are clearly within their jurisdiction to implement the *Carter* decision, and they have taken the leadership in this case.

I'm also comfortable with the legal opinions that were given to the various committees of the House of Commons, as well as the Senate, that those administering medical assistance in dying are adequately protected from needless and unwanted criminal prosecution.

Therefore, colleagues, I will be voting against this bill, in recognition of the authority of the provincial and territorial jurisdictions and to recognize the decision of the Supreme Court in *Carter*.

In conclusion, colleagues, I feel strongly that the people who seek to have this right as far as medical assistance in dying is concerned have the right to die in dignity.

Hon. Tobias C. Enverga, Jr.: Honourable senators, from the very start of our debate on assisted dying I have stated that I am intrinsically and profoundly against any form of killing, legally or illegally.

My general views represent the views shared by most of the people in my community with me. However, I also acknowledge the reality of the Supreme Court of Canada's ruling on assisted dying. We did not win every battle. However, we were able to put in a key amendment like palliative care for which I have advocated passionately.

Honourable senators, as I mentioned in my second reading statement, my belief is that if we show our patients compassion and love, and offer the right treatment option or palliative care, chances are we will not see anyone asking for death. I have even relayed my views to the Minister of Health. I stated that with a new law allowing physician-assisted death, palliative care is immensely essential and extremely critical as an option for those thinking about ending their lives. She agreed with me on this.

I want to remind my friends, who share similar views, and my colleagues in this chamber that our battle has just begun on a different battleground. We should share our views with the provincial governments, who have the jurisdiction over health care. We should ensure that palliative care is given the due consideration and funding it deserves.

Honourable senators, we heard the House of Commons' and the Senate's passionate pleas to give rights to minorities, to those people in the Far North or in remote areas to give them every facility and every availability for physician-assisted dying so that they can die. I would plead with them to have the same passion to represent their own respective provinces and territories, and to ensure the same equal opportunity to everyone, from the cities to the Far North to the most remote areas to be able to receive the best palliative care possible when they need it, so that they can live and not seek death for lack of other options.

Honourable senators, I would have wanted to see conscience protection for health care practitioners and a judicial review process put in this bill, but now I can only hope that conscience

protection and judicial review will be put in place in the province's health care policies and assisted-death guidelines where they belong.

On this dark day, I will end with a quote from Pope Benedict, who said:

The true answer cannot be putting someone to death, however "kindly," but to bear witness to the love that helps us to face pain and agony in a human way.

And from a great humanitarian, the current Pope, Pope Francis, who said:

The belief that . . . euthanasia is "an act of dignity," . . . are all part of conventional wisdom that offers a false sense of compassion . . .

. . . the Gospel provides a true image of compassion in the figure of the Good Samaritan, who sees a man suffering, has mercy on him, goes close and offers concrete help.

With today's rapid scientific and technological advancements the possibility of physical healing has drastically increased However, the ability to truly care for the person has almost gone in the opposite direction. . . .

No human life exists that is more sacred than the other, just like there is no human life qualitatively more significant than another solely in virtue of resources, rights, economic opportunities and higher social status.

• (1450)

Honourable senators, I dread having to make a decision between a greater or lesser evil. But if we as legislators are to select one, please do decide on the lesser evil before us. I maintain, by allowing for this to take place, we are giving up on our vulnerable, no matter how many well-intended yet non-committal statements we make about working towards better palliative care in our great country.

Let us remember what I have mentioned before: What a waste of human life if we kill today and we find the cure tomorrow.

God bless us all and thank you.

[*Translation*]

Senator Maltais: Honourable senators, the first thing I would like to do is congratulate all honourable senators who so earnestly took part in this endeavour.

We did nothing extraordinary, we only did our jobs. We did so with respect for the House of Commons, our Rules and our personal convictions.

However, I am asking myself some questions. What will I say this weekend to the 20-year-old woman who is confined to her hospital bed because she suffers from multiple sclerosis? How will I tell her that she is excluded?

[Senator Enverga]

"You are excluded."

"How is it possible that I am excluded, Senator?"

"You are excluded. The charter no longer protects you, and you will have to die in pain, perhaps in 10 or 15 years."

It is terrible for one human being to say such a thing to another. You should know that thousands of people in Canada are presently in the situation I just described.

Of course, as Senator Lankin was saying, there are the courts. But how can you expect people coping with such a difficult situation to go before the Supreme Court? Can they afford it? No. Do they have the strength? No. Who will look after these persons?

These are questions that will have to be answered one day. In so-called democratic parliaments, legislation that excludes classes of citizens cannot be passed. It would be like me trying to introduce a bill that would exempt me from paying federal tax. I think that all my Senate colleagues would want to shoot me, and rightly so.

A law must not be exclusionary, particularly when it affects Canadians in need. A law must be inclusive.

I have a message for the leader of the government, Senator Peter Harder. This evening, when you give your boss the good news, don't forget to mention that thousands of Canadians are being left out of this bill and are suffering terribly. Think of them as you sit down to enjoy your dinner.

The laws we make must be for all Canadians. As a parliamentarian, I have never voted in favour of an exclusionary law, particularly not a law like this one that affects people who are defenceless and have no one but us to speak on their behalf.

Bill C-14 might satisfy the Supreme Court or the government, but it in no way satisfies that segment of the population. Think of the future and rest assured that I will remind you of this very often on behalf of all those people.

[*English*]

Hon. Jim Munson: Honourable senators, can we start all over again? I thought I'd lighten it up a little bit.

Honourable senators, I think I'm one of the last speakers here, but this has been so hard. This has been so hard for many of us who are not constitutional lawyers to understand the particular arguments as well as we should.

I come at this with a lot of emotion. Like many senators here, in my heart I wanted Senator Joyal's amendment to pass, I really did, because it was an amendment that just made sense.

But isn't this what independence is all about — this new Senate? I've been here 12 years and I have never seen such independent debate in my life. As a whip, I have witnessed people having to vote not the way they wanted to vote because they had to vote with a party. The independence here today is admirable.

I have also heard the statements on behalf of different sides of the issue and I find it ironic that people are going to vote against this bill for opposing reasons, at the end of the day.

At the end of the day, for me, and the soul-searching I've gone through, I voted for certain things, I abstained on one, I voted against certain ideas and amendments, but it is truly all about choice and independence.

And so, at the end of the day I have come to the conclusion that it is better to have a bill than no bill at all. I think it's a federal responsibility. I do not, with all due respect to the provinces, want to give them the latitude to have individual provincial ideas on how to go about doing this.

The directive was very important to me. I agree with some of the arguments that we're going to get there eventually, somehow. But this is an important beginning in our country. So better a bill than no bill and I will support the bill.

Thank you very much.

Senator Andreychuk: Honourable senators, I don't intend to speak fully on the issue. I just want to put on the record, as one of the senators that has been here in the chamber longest, that every bill we deal with has a question of conscience and I believe that senators, not just now but have throughout the years that I've been here, weighed the various interests of the people in their constituencies and I saw nothing different in this debate except that it has been designated by various leaders to be a vote on a question of conscience.

I see that as different because normally I would weigh what I believe against what other people are saying to me, but once in a lifetime, perhaps once in a decade, perhaps more often than that we come to an issue where we simply have to do what we think is right, even though we get conflicting messages from our constituents.

That is the basis on which I will be voting against the bill, as I am fundamentally against the taking of life with any government involvement, however benign and however benevolent the government may be.

I want to say to the government and to my colleagues that our work is just starting. If this bill has any meaning, if this study, this debate has any meaning, it will come through implementation. Too often fine thoughts disintegrate, safeguards get lost, they become impediments, and then we're worse off.

I'm asking my colleagues to join with me. I think Senator Wallin has made a similar point. This is the beginning of our study, and our commitment to the people that we take care of palliative care and that we look at all issues that affect people with illness and in the last stages or otherwise in dying.

Thank you.

Hon. Terry M. Mercer: Honourable senators, I wasn't going to speak on this but I can't let it go by without reminding everyone what we did earlier today when we voted down Senator Joyal's amendment.

Some place in this country there's a family — I don't know who they are or what their status is right now — about to go through something awful. They're going to have to go to court and they're going to have to proceed through the court and eventually end up at the Supreme Court. And in that process that family is going to go broke, unless they're an extremely rich family.

Today, instead of putting the government before the court, we have put some Canadian citizen before the court. And he or she and their family will go through hell. To be in this situation, they are going through hell anyway because of the illness of one of their own. We have done that to them today by voting down Senator Joyal's proposal.

• (1500)

On that note, I am going to vote against it, because I am very disappointed in what the members of the House of Commons did.

I have been a member of the Liberal Party since 1968. I have done a few jobs in the Liberal Party — knocking on doors and stuffing envelopes. I was the executive director of the party in Nova Scotia. I was the national director of fundraising for the party. I was the national director who ran the party for a good number of the Chrétien years. So I think I've got some skin in the game for the Liberal Party.

However, I am disappointed that they didn't take an independent stand in their caucus and say, "This is wrong; we need to put this before the court and get it done."

I was walking off the Hill the other day, and a Liberal member of Parliament asked me how it was going. I said, "Well, if I was still a member of the caucus, you would know how it was going." Because unlike some people today, I and my colleagues who served in the national caucus with me would know that we were never shy about standing up and telling the leader what we thought was right and what was wrong, whether he was the prime minister or just the leader of the opposition.

Today I'm going to vote against Senator Harder's motion because I know we're going to have a bill, but I just can't put my name to it.

Is that fine with you, Senator Ogilvie? Thank you.

Senator Plett: Question.

The Hon. the Speaker: Senator Omidvar.

Hon. Ratna Omidvar: Thank you. I will brief.

I will be supporting Senator Harder's amendment, not because I believe that the bill is the bill that we argued for and we wanted. I would have so much preferred to have a bill where access was broadened to those who were not terminally ill. Because I have worked my whole life ensuring access, this has been a battle of my head over my heart. My heart is with Senator Jaffer, Senator Joyal and Senator Cowan, but my head tells me something else.

I have listened to all the lawyers. I'm not a lawyer, but I am taking advice from the wise senator who has my back, I hope, both literally and figuratively. I know this: The bill will be

challenged. Its constitutionality may well be determined at a later time.

We have given our advice to the House of Commons four times: in the joint committee headed up by Senator Ogilvie; through the pre-study at the Legal and Constitutional Affairs Committee; when the two ministers were here; and when we sent the amended bill back to the house.

I'm more confident today that with the amendments, especially around reporting back and some flexibility that I have heard from the Minister of Justice on what she interprets as being "reasonably foreseeable," and with the interventions of the Supreme Court and the government, we will hopefully, over time, get the bill that we aspired to and that we fought for here, and we should take great pride in that. Thank you very much.

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

Hon. Senators: Question.

The Hon. the Speaker: It has been some time since we heard the motion, so with your indulgence I'll read the whole thing.

It was moved by the Honourable Senator Harder, P.C., seconded by the Honourable Senator Baker:

That the Senate concur in the amendments made by the House of Commons to its amendments 2(c)(i) and 3 to Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying);

That the Senate do not insist on its amendments 2(a), 2(b), 2(c)(ii) and 2(c)(iii), to which the House of Commons has disagreed; and

That a message be sent to the House of Commons to acquaint that house accordingly.

All those in favour of the motion 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.

And two honourable senators having risen:

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

Senator Plett: Fifteen minutes.

Senator Mitchell: Fifteen minutes.

The Hon. the Speaker: The vote will take place at 3:20.

Call in the senators.

• (1520)

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

That the Senate concur in the amendments made by the House of Commons —

Shall I dispense?

Some Hon. Senators: Dispense.

Senator Cools: Please read the motion.

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

That the Senate concur in the amendments made by the House of Commons to its amendments 2(c)(i) and 3 to Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying);

That the Senate do not insist on its amendments 2(a), 2(b), 2(c)(ii) and 2(c)(iii), to which the House of Commons has disagreed; and

That a message be sent to the House of Commons to acquaint that house accordingly.

All those in favour of the motion will please rise.

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Atullahjan
Baker
Bellemare
Beyak
Black
Campbell
Cools
Cordy
Day
Duffy
Eaton
Enverga

Martin
McCoy
Merchant
Mitchell
Mockler
Munson
Oh
Omidvar
Patterson
Plett
Pratte
Raine

Frum
Furey
Gagné
Greene
Harder
Housakos
Johnson
Lankin
MacDonald
Marshall

Ringuette
Runciman
Seidman
Sinclair
Smith
Stewart Olsen
Tannas
Tkachuk
Wallace
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postponed until immediately after the conclusion of Question Period;

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

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

NAYS
THE HONOURABLE SENATORS

Andreychuk
Batters
Boisvenu
Carignan
Cowan
Dagenais
Downe
Doyle
Dyck
Eggleton
Fraser
Jaffer
Joyal
Kenny

Lang
Lovelace Nicholas
Maltais
McInnis
McIntyre
Mercer
Meredith
Moore
Nancy Ruth
Ogilvie
Poirier
Unger
Wallin
White—28

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1530)

[*English*]

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, with respect to Government Notice of Motion No. 31 which appears on today's Order Paper and Notice Paper, I wish to advise the chamber that a clerical error was made in the publication process and that the time for the sitting on Monday, June 20, 2016, should read as "6 p.m." and not "5 p.m."

Senator Bellemare do you wish to move this motion now?

ADJOURNMENT

MOTION ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of June 16, 2016, moved:

That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, June 20, 2016 at 6 p.m.; and

That rule 3-3(1) be suspended on that day.

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

Hon. Senators: Agreed.

(Motion agreed to.)

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

[*Translation*]

THE SENATE

MOTION TO AFFECT QUESTION PERIOD
ON JUNE 21, 2016, ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of June 16, 2016, moved:

That, in order to allow the Senate to receive a Minister of the Crown during Question Period as authorized by the Senate on December 10, 2015, and notwithstanding rule 4-7, when the Senate sits on Tuesday, June 21, 2016, Question Period shall begin at 3:30 p.m., with any proceedings then before the Senate being interrupted until the end of Question Period, which shall last a maximum of 40 minutes;

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

HUMAN RIGHTS

COMMITTEE AUTHORIZED TO DEPOSIT REPORT ON STUDY OF INTERNATIONAL AND NATIONAL HUMAN RIGHTS OBLIGATIONS WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. Jim Munson, pursuant to notice of June 15, 2016, moved:

That the Standing Senate Committee on Human Rights be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate a report relating to its study on matters pertaining to human rights and, inter alia, to review the machinery of government dealing with Canada's international and national human rights obligations on Monday, June 20, 2016, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

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—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence).

Hon. Donald Neil Plett: Honourable senators, I'm sorry that I need to do this at this late hour of this late time of the week, but unfortunately, I am at day 15. I do want to speak to this, which I was hoping I would never again have to do, and hopefully this will be my last time, but I will speak to it, and I will be brief.

Honourable senators, I do not agree with much of what Prime Minister Pierre Elliot Trudeau ever said. However, I do agree with this comment that he made: "There's no place for the state in the bedrooms of the nation." I also believe that there is no place for the state in the homes of loving parents raising their children in a responsible and caring manner.

I rise today to speak, hopefully for the last time, to Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence). While I have spoken on this legislation more times than I care to count, as we have now dealt with legislation that quite literally concerns life and death, it really puts this bill into perspective.

Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence), seeks to repeal section 43 of the Criminal Code. Section 43 of the Criminal Code reads as follows:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

To summarize, section 43 provides a defence to parents, caregivers and teachers against a charge of assault when they use reasonable physical force to correct a child's behaviour.

"Assault" is broadly defined in the Canadian Criminal Code to include any non-consensual use of force against another person. This can include non-consensual touching, threats and forcible confinement. Section 43 of the Criminal Code provides important protection for parents from criminal liability and flows from the parental duty to protect and educate their children. It is a limited defence to the non-consensual application of force to a child.

In 2004, the wording of section 43 was interpreted and significantly narrowed by the Supreme Court of Canada. This decision narrowed the situations in which the defence in section 43 of the Criminal Code can apply, setting out limitations that are consistent with both the Charter of Rights and Freedoms and the United Nations Convention on the Rights of the Child.

As a result, the defence is now open only to parents who can show they used reasonable force within the circumstances and that the force was minor, resulting in nothing more than trivial and trifling effects on the child. As a result of the 2004 ruling, in Canada, the defence has not been available to parents where there are any marks on the child, where an object has been used, where force is used on the child's head or where the child is incapable of learning from the correction.

Furthermore, teachers, the ruling stipulated, may not use corporal punishment under any circumstances. The Supreme Court of Canada held that educators may only use reasonable corrective physical force to maintain order or enforce school rules such as removing a child from a classroom.

It is my view that the current law, which has been upheld by the Supreme Court of Canada, represents the best balance to protect children from abusive parents, while also allowing responsible parents the decision in how they choose to raise their children. An outright repeal of the defence for parents in section 43 will result in a better balance than that already achieved by the Supreme Court of Canada.

This bill has been called "the anti-spanking bill" by many, but, colleagues, this goes well beyond taking away reasonable, responsible parents' ability to spank. It takes away their ability to parent. By repealing section 43, the general assault provision of the Criminal Code would be applied to any parent, teacher or guardian who chooses to use force against a child without their consent.

Any person who has raised small children will understand how many times in one day, in the course of normal parenting, there is non-consensual touching or the threat of it. Ordinary everyday activities: dressing a child, feeding a child, getting them into the car, to school, back home, and bathed and put to bed. Just think about the situation where a young child refuses to go to school. How is a reasonable parent to get a child to school without picking up their child, against their will, and carrying them? Honourable senators, this is not child abuse; this is normal, everyday parenting.

• (1540)

In one of her speeches in the chamber, Senator Hervieux-Payette had this to say:

Parents do not own their children. Children are individuals. Their protection should therefore take precedence over the protection of adults and over the imaginary risk of legal action against them . . .

The honourable senator is correct in that, yes, children are individuals, but they are underage individuals and not yet capable of independent existence or making adult choices. In our society, until a child turns 18 and becomes an adult, parents are responsible for the well-being and protection of that child. While parents are responsible for their children, they should have the choice in how to parent that child. Repealing section 43 of the Criminal Code goes beyond taking away a reasonable, responsible parent's ability to spank; it takes away their ability to parent.

In proposing this bill, the honourable senator has unfortunately lumped child discipline and child abuse into the same category. Many of the studies cited by the senator also lump spanking or minor corrective physical discipline with child abuse, and confuse correlation and causation, skewing any conclusions.

There is not a senator in this chamber who condones parental "violence"; however, I would assume that most of us have been the recipient of some physical discipline and I do not believe any of us endured psychological harm as a result.

I have spoken to many Canadians about this issue, and not only do they believe that this bill is a tremendous waste of time, but they think it is harmful, and they agree that a parent should be free to decide how to discipline their child as long as it is reasonable and not abusive.

Among those Canadians is Ms. Julia Stickel of Calgary. In April of this year, Ms. Stickel wrote a letter to me stating her opposition to Bill S-206 that was endorsed by 1,264 other Canadians. The letter is broken down into several points that summarize Ms. Stickel's opinion.

First, Ms. Stickel emphasizes the fact that this law would criminalize a majority of Canadian parents. She points out that according to a 2005 study, 70 per cent of mothers of preschool children in Ontario and in my home province of Manitoba said that they have spanked their child.

Ms. Stickel raises another question: If we are to repeal section 43, where will the legislation of parental action end?

Sweden was one of the first countries to impose a ban on spanking. Today, with the absence of any parental protections within their Criminal Code, it is now illegal for parents to send a child to their room, since this is considered "using force."

Ms. Stickel also references the fact that Senator Hervieux-Payette stated that eliminating spanking will eliminate violence since, she claims, spanking causes children to learn violence.

Dr. Robert Larzelere reviewed the effects of Sweden's spanking ban in 1979. He found that physical child abuse by relatives against children under age 7 increased 489 per cent between 1981 and 1984. He also found that criminal assaults by children under age 15 — born after the law — increased 519 per cent, compared to a 219 per cent increase by 15- to 19-year-olds — who were 0 to 4 when the law was passed — a 133 per cent increase by 20- to 24-year-olds, and only a 53 per cent increase by 25- to 29-year-olds.

Senator Hervieux-Payette's statements before this chamber in regard to Bill S-206 have been riddled with logical fallacies. For instance, the honourable senator claimed that "repealing section 43 will not criminalize parents, as I have often heard. Instead, repealing section 43 will protect parents."

As hard as I have tried to wrap my head around this statement, it seems that common sense would dictate that holding parents criminally accountable for disciplining their children would be punishing them, not protecting them.

Colleagues, child abuse of any kind is the most abhorrent behaviour that takes place in this country. It is also illegal. Those who perpetrate violence against children should feel the full force of the law, and in Canada they do. If we want to consider measures that would help prevent child abuse or increase penalties for perpetrators who take advantage of children, I would be happy to explore those. This bill does not do that.

Colleagues, it is time to put this issue to bed once and for all. I encourage you to keep section 43 of the Criminal Code intact — to protect reasonable, loving parents from the risk of criminalization. I urge all colleagues to vote against Bill S-206.

(On motion of Senator Fraser, debate adjourned.)

THE SENATE

ORDERED THAT RULE 3-4 BE SUSPENDED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I ask that rule 3-4 be suspended today.

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

Hon. Senators: Agreed.

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 16-1(8), I wish to advise the Senate that a message from the Crown concerning Royal Assent is expected later today.

The Hon. the Speaker: Honourable senators, rule 16-1(8) provides that after the Leader or Deputy Leader of the Government has made such an announcement:

. . . no motion to adjourn the Senate shall be received and the rules regarding the ordinary time of adjournment or suspension, or any prior order regarding adjournment shall be suspended until the message has been received or either the Leader or Deputy Leader of the Government indicates the message is no longer expected. If the Senate completes the business for the day before the message is received, the sitting shall be suspended to the call of the Speaker with the bells to ring for five minutes before the sitting resumes.

These provisions shall therefore govern proceedings today.

Honourable senators, pursuant to rule 16-1(8), the sitting is suspended, to resume after a five-minute bell.

(The sitting of the Senate was suspended.)

(The sitting was resumed.)

• (1700)

[Translation]

ROYAL ASSENT

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

June 17th, 2016

Mr. Speaker:

I have the honour to inform you that the Right Honourable David Johnston, Governor General of Canada, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 17th day of June, 2016, at 4:21 p.m.

Yours sincerely,

Stephen Wallace

Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bills Assented To Friday, June 17, 2016:

An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) (*Bill C-14, Chapter 3, 2016*)

An Act to authorize La Capitale Financial Security Insurance Company to apply to be continued as a body corporate under the laws of the Province of Quebec (*Bill S-1001*)

[English]

BILL TO AMEND THE CITIZENSHIP ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO ANOTHER ACT

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-6, An Act to amend the Citizenship Act and to make consequential amendments to another Act.

(Bill read first time.)

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

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

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before moving to the adjournment, I would like take to a minute to thank all senators who have participated in this extraordinary debate. The level of debate and the courtesy extended all around was quite remarkable.

I would also like to take a moment to thank all of our support staff, who have done an outstanding job during these very difficult days.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, I would like to take a moment to read their names into the record.

From the Chamber Operations and Procedure Office and the Committees Directorate: Katy Quinn, Vanessa Moss-Norbury, Céline Ethier, Blair Armitage, Shaila Anwar, Dan Charbonneau, Mark Palmer, Till Heyde, Heather Lank, Gérald Lafrenière, Colette Verjans and Charles Walker.

• (1710)

Debates and Publications: Michelle Anderson, Minori Arai, Vicky Aucoin, Josée Boisvert, Erika Carroll, Christopher Chase, Manon Cordeau, Angélique Derigny, Nicole Desjardins, Doug Fowler, Marni Friesen, Nancy Grindley, Carole Hubbard, Ayanleh Ismael, Marjorie Jones, Kate Larson, Jean Lartigau, Kim Laughren, Marie-Claude Lavoie, Andrew Leathem, Janet Lovelady, David Mackay, Genevieve MacKenzie, Isabelle Marquis, D'Arcy McPherson, Sheila Moini, Karola Murphy, Lori Oxley, Julie Poirier, Brian Potvin, Diane Quinn, Angela Renwick, Christian Rey-Coquais, Natalie Rhéaume, Patrick Riegert, Elaine Sarters, Rachel Sauvé, Guylaine Savignac, Marianne Schmid, Mary Shewchuk, Eva Smith, Ian Sutherland and Ron Tremaine.

Office of the Law Clerk: Michel Patrice, Suzie Seo, Michel Bédard, Janice Tokar, Ginette Fortuné, Caroline Martin, Shaun Bugyra.

I would like to thank the Clerk as well, Charles Robert and, as always, our ever attentive, hard-working pages. Thank you very much.

Hon. Senators: Hear, hear!

Hon. Elaine McCoy: Honourable senators and Your Honour, on behalf of all senators, present and not, I wish to take a moment to thank you. If the debates went well, in large measure I think that was because of the gracious way you moderated them on our behalf. You were generous. You kept your good humour, and you made sure that everyone had a moment to speak, and even another moment to speak, and even another moment to speak, so that we really and truly did get the matter thoughtfully and expeditiously handled. So to you, sir.

Hon. Senators: Hear, hear!

Hon. Peter Harder (Government Representative in the Senate): I move the adjournment of the house.

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

Hon. Senators: Agreed.

(The Senate adjourned until Monday, June 20, 2016, at 6 p.m.)

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