

## **Bill C-14 (Assisted Suicide) – Second Reading**

**Senator Denise Batters, Q.C.**  
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Honourable senators, I rise today to speak to the second reading of Bill C-14, the Trudeau government's assisted suicide legislation. As many of you know, I have raised serious concerns around this issue in the past, particularly as it intersects with mental illness. As a suicide loss survivor, this is a matter which is of great personal importance to me. And as a senator, I am compelled to do whatever I can to ensure that this legislation contains the necessary safeguards expected by Canadians.

The Senate Legal and Constitutional Affairs Committee, of which I am a member, recently completed a comprehensive pre-study on this assisted suicide bill. Our study heard from 66 witnesses in more than 20 hours of meetings as we wrestled with the complexities of assisted suicide legislation. We proposed a robust set of recommended amendments at the conclusion of our pre-study on Bill C-14. These would require, among other safeguards, that "terminal illness" be included in order to receive access to assisted suicide. However, I must admit a certain disappointment that the Liberal government has essentially rejected those suggestions, and the House of Commons has given us Bill C-14 without any of those amendments.

It is most important in this debate for us to remember that the issue of assisted suicide is first and foremost about people's lives and, more specifically, about allowing them to be put to death. We must never lose sight of that as we debate this law in this chamber. Bill C-14 is not about the withdrawal of services such as life support. Rather, it requires the state to intervene to terminate a person's life. That is a staggering responsibility. As parliamentarians, we are obligated to not only debate this matter with our heads, theoretically and philosophically, but also with our hearts as we ensure safeguards are in place to protect the most vulnerable Canadians.

Polls have indicated that the vast majority of Canadians favour assisted suicide but only when strict safeguards are in place. Others are morally opposed to any form of assisted dying.

Regardless of where one stands on the question, the Supreme Court of Canada has established in the *Carter* ruling that decriminalizing assisted dying will now be part of our Canadian reality. As senators, it is therefore up

to us to make the process as safe as possible through the implementation of strict safeguards.

Let us start, then, by looking at the eligibility criteria for physician-assisted suicide as set out by the Supreme Court in its *Carter* ruling. At paragraph 127, the court declared that physician-assisted suicide should be available to any:

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

The court went on to say:

The scope of this declaration is intended to respond to the factual circumstances in this case. We make no pronouncement on other situations where physician- assisted dying may be sought.

The facts of the *Carter* case, of course, revolved around the situations of two women: Gloria Taylor and Kay Carter. Taylor lived with a fatal neurodegenerative disorder, while Carter suffered from spinal stenosis. Both women were competent adults and both suffered from physical rather than psychological issues.

At paragraph 111, the court dismissed arguments about euthanasia for minors or people with psychiatric disorders, stating that these circumstances "would not fall within the parameters suggested in these reasons."

It is curious, then, that in Bill C-14 — legislation which Justice Minister Wilson-Raybould says is in response to the *Carter* decision — the Liberal government commits to further study the issues of mature minors, advance directives and psychiatric illness as a sole basis for suffering under this legislation. None of those scenarios were relevant to the *Carter* case and, I submit, should not be addressed in the legislation before us.

Over the past year, I have discussed the issue of assisted suicide with hundreds of Canadians. So many of those people are aghast to discover that the Trudeau government's proposed bill does not require terminal illness but opens the door to particularly children and the mentally ill to access assisted suicide.

Honourable colleagues, the vast majority of Canadians don't want those doors opened. Canadians who support assisted suicide want it to be available to those who are terminally ill, to help ease their passage through what is or may be a long, protracted and difficult death. They do not want this devastatingly final solution of assisted suicide to be made available to those patients with mental illness, whose symptoms may fluctuate and impair their ability to properly and fully consent to medical aid in dying. Canadians also overwhelmingly reject physician-assisted suicide being extended to children under 18.

Only nine jurisdictions in the entire world have some sort of assisted dying. Six of those require terminal illness as a prerequisite to obtaining physician-assisted dying. Some jurisdictions that have allowed for non-terminal patients to access physician-assisted suicide have now begun to question whether that move has been the right one.

Law professor Margaret Sommerville testified before our Legal Committee that if the regime of the Netherlands and Belgium were here, we could anticipate approximately 9,000 deaths each year in Canada. That is more than the entire population of small cities in my home province of Saskatchewan, honourable senators! Physician-assisted suicide should not become the "norm" in Canada; it should be a last resort.

The Supreme Court ruled in *Carter* that a blanket prohibition on physician-assisted suicide was not constitutional and that those whose assisted death that meets the *Carter* criteria should not be prosecuted under the Criminal Code. The court did not determine that the state must assist in deaths of this nature or that it had an obligation to make physician-assisted suicide widely accessible.

I do worry about the permissive direction of Bill C-14. What is the objective? Is it to permit widespread access to assisted suicide or to protect the vulnerable? Clearly, there's an essential need to balance both. Professors Diane Pothier and Trudo Lemmens told us it was necessary to place a limit on the so-called "right to die" in order to protect the vulnerable. At our Legal Committee, Professor Pothier stated:

If there's not such a limiting condition, it means the chances of getting it wrong increase substantially. If the risk of error and abuse is low, *Carter* says autonomy trumps. If the risk of error and abuse is high, the protection of the vulnerable should trump.

As federal legislators crafting a bill that amends the Criminal Code of Canada, honourable senators, I would submit our responsibility must

primarily be to protect the vulnerable. I maintain, and the vast majority of Canadians agree with this, that requiring terminal illness in this bill would best meet that objective. The risks otherwise are simply too high.

Our Legal Committee heard from a number of legal and constitutional experts that it would be constitutional for Parliament to narrow the criteria for eligibility for assisted suicide, as in Bill C-14. Professor Dwight Newman stated:

The *Carter* judgment is not legislative in character. That's simply not the role of the Supreme Court, and it's not the role of Parliament to abdicate to the Supreme Court as if it were a legislative body. So the specific wording of the Supreme Court of Canada judgment needn't be entirely determinative.

He went on to say:

The court's declaration is not a statute, and it's ultimately Parliament's responsibility to craft a statutory regime that meets the objectives that Parliament determines to be most appropriate.

Professor Hamish Stewart testified that the current wording in Bill C-14 establishes "constitutionally permissible safeguards to ensure that people who are, as the court said, tempted to commit suicide at a moment of weakness are not tempted to do so." In Professor Stewart's view, the Supreme Court rejected a blanket ban on physician-assisted suicide as overly broad, but the limitations in Bill C-14 could be found to be justified under section 1 of the Charter — if the government can satisfy the court that "it's the best that can be done to separate the vulnerable from the non-vulnerable who want to access the assisted suicide regime." Professor Stewart maintains that the provisions of Bill C-14 would survive a Charter challenge in this regard.

We can best protect the vulnerable from physician-assisted suicide in this legislation by establishing stringent safeguards around the process. While Bill C-14 makes an attempt at this, we need to go further in order to provide Canadians with adequate protection.

As I mentioned earlier, I have particular concerns regarding the lack of safeguards in this bill for individuals with mental health issues who seek access to physician-assisted suicide. First and foremost, individuals whose sole basis for requesting assisted death is psychological suffering should not be eligible for this regime. Period. While I appreciate there is some wording

in the preamble of Bill C-14 along these lines, it is insufficient if it is not reiterated in the operative provisions of the legislation.

Law Professor Randal Graham testified before our Legal Committee as follows:

Bill C-14 is an amending act rather than stand-alone proposed legislation. If Bill C-14 is passed, it will not operate as a stand-alone law but will instead change the content of other laws, including the Criminal Code. Once the amendments created by an amending act are implemented, the amending act is considered spent, meaning that for practical purposes, the amending act has no further legal operation. . . . The preamble itself will not be incorporated into any continuing legislation and will exist only in the spent amending act.

It is crucial, therefore, to strengthen the prohibition against mental illness as a sole basis for accessing physician-assisted suicide by reiterating this intention in the operative provisions of the bill.

Why is that so important? Because there are many characteristics of mental illness that call into question one's ability to give informed consent for the very final choice of physician-assisted dying. There are no "do-overs" in assisted suicide, honourable senators, and that is why we must ensure that vulnerable Canadians are adequately protected under this law.

Many psychiatrists and mental health professionals testified before our committee, and all except one agreed that mental illness requires special consideration and safeguards under a physician-assisted suicide regime.

Honourable senators, there is no standard within the mental health care field to determine what qualifies as "irremediable." Mental illness is often treatable and it is not terminal. In many cases, the symptoms can fluctuate, with one's perspective being clearer at certain times than others. Even what is termed as "treatment-resistant depression" would not necessarily qualify as irremediable. Shockingly, this term means that the symptoms of depression have not adequately abated after only two rounds of treatment. Often it can take multiple treatments or medications in order to see improvement; hence, treatment for mental illness can require a great deal of patience and time.

Certain therapies rely on the establishment of trust between patient and caregiver — a relationship that may require significant time to build. Furthermore, assessment and treatment of mental illness is often more

complex, requiring consideration of not only biomedical systems but psychosocial factors as well. Certainly, these social factors can influence the severity and potential for relapse of mental illness. The distorted thinking present in many mental illnesses raises the risk of suicidal tendencies. We also heard testimony that some medications used to treat psychiatric illnesses may increase that suicide risk as well — as sadly, a side effect can be suicidal thoughts! Mental illness is exceedingly complex, particularly with the life and death finality of physician-assisted suicide.

As I have already mentioned, I believe psychological suffering should be excluded as a sole basis for accessing physician-assisted suicide, and that should be placed in the operative provisions of the bill. Given the complexity of mental illness, I also think there should be additional safeguards in this legislation where a patient with intolerable physical suffering is also found to be suffering with a mental health conditional. Chief among these should be a requirement that a psychiatrist should assess a patient's capacity for informed consent to physician-assisted suicide where mental illness is present.

The President of the Canadian Psychiatric Association told our committee he supported this safeguard for those with mental illness because "some of the cognitive changes [in mental illness] can be quite subtle and they can be missed unless you're an expert in this area." Where the stakes are so high in making an assessment mistake, we have a responsibility to ensure competency is properly evaluated in these situations. Unfortunately, significant gaps exist in Canada's mental health care system. While it is not the criminal law's responsibility to address those gaps, we need to be realistic about how those gaps could affect someone suffering with mental illness who is requesting assisted suicide. Namely, wait times to see a mental health professional in Canada can be as long as months or even years, depending on your geographic region. Bill C-14 established a 15-day waiting period for physician-assisted suicide. The Liberal majority House of Commons committee amended that period down to 10 days. This is wholly inadequate in cases where mental illness is present. The Mental Health Commission of Canada suggested a three-month waiting period for patients requesting physician-assisted suicide who have a mental illness. I agree with this expert body.

Some allege that requiring these additional safeguards for patients who have mental illness would be discriminatory. As someone who fought for those with mental illness for several years, I believe nothing could be further from the truth. Dr. K. Sonu Gaiind, the President of the Canadian Psychiatric Association, had this to say on the matter:

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

Given the complexities of psychological illness, additional safeguards are required. The Supreme Court found that the blanket prohibition on physician-assisted suicide was over-broad, but agreed with the trial judge that a "stringently limited, carefully monitored system of exceptions" would achieve Parliament's objective of protecting the vulnerable. A psychiatric assessment and a longer waiting period for patients with mental illness are two precautions we must include in this bill to avoid the risk of allowing vulnerable Canadians to be mistakenly put to death under this legislation.

Of course there are other vulnerable Canadians that must also be protected under an assisted-suicide regime. There is a push afoot to see that children, so-called "mature minors" under 18 years of age, should also have access to assisted suicide. Bill C-14 states that the government should further study extending physician-assisted suicide to minors. I do not agree with this, nor do most Canadians. Even a representative of the pro- euthanasia group Dying with Dignity stated in committee that he felt physician-assisted suicide should apply to minors only if they have a terminal illness or are at the end of life.

When considering this issue, we should reflect on the gravity of exactly what we would be condoning by allowing for further contemplation of extending physician-assisted suicide to mature minors. As my colleague Senator White pointed out, when he was a police officer, he was not even allowed to question a person under 18 without a parent present. A mature minor is not allowed to vote, and yet if Bill C-14 is not amended, we will instead be entertaining the idea of allowing that child to decide whether he or she should be killed by a medical practitioner.

We have all been 12, 14, 16 years old, honourable colleagues, and I'm sure we can remember how difficult it seemed to envision our circumstances ever being any different when we were that age. This is the reason why the "It Gets Better" anti-bullying campaign was targeted at teenagers, to encourage a longer perspective which is not always easily accessible at that age.

Children are among the most vulnerable of our citizens. We should not consider the extension of physician-assisted suicide to children, honourable

senators, and I cannot support the provision in this bill that would refer the matter for further study. The *Carter* judgment clearly referred only to a competent adult being able to access assisted dying. It was clearly not the court's intent to extend that access to children.

Similarly, I think the Trudeau government has taken liberties in Bill C-14 by expanding the category of medical professionals who have the ability to assess competency and approve patients for assisted suicide, and to administer and prescribe medication to bring about death. In Bill C-14, for the first time, nurse practitioners are given the same powers as doctors in this regard.

The justices of the Supreme Court did not intend that anyone other than physicians would be responsible for providing physician-assisted suicide. In fact the term "physician" appears in the *Carter* judgment over 100 times. The word "nurse"? Not a single mention.

The Trudeau government said it broadened this category of medical practitioners to include nurse practitioners to increase access to assisted suicide in rural and remote areas. However, no such geographic limitation is indicated in the legislation. Patients may not only shop around for doctors until they find one or two under this legislation who will agree to put them to death, but now they can shop around to find two nurse practitioners without a sign-off from a physician whatsoever.

Let me state for the record that I'm not aiming to undermine the role or competence of nurse practitioners. I recognize the important work they do, especially in rural and remote communities; they may well be the medical provider that has the most intimate knowledge of a patient. However, we must acknowledge that although they are skilled and educated, a nurse practitioner is not a physician. Two of Canada's most populous provinces, Ontario and B.C., do not permit nurse practitioners to prescribe narcotics. I question why the federal government would be comfortable expanding their scope of practice to allow nurse practitioners to assess competency and approve patients' requests for assisted suicide in addition to administering it. There is no more serious assessment than one required to approve a patient's death. I submit that an evaluation should only be conducted by a person with a physician's licence and that level of education and expertise.

Our Legal Committee heard from the Canadian Nurses Association that, even in rural and remote communities, a nurse practitioner would have time to call in the assistance of a physician in the event a doctor's opinion was required to approve an assisted suicide.

The expansion of the medical provider category to include nurse practitioners is emblematic of what I find wrong, in a larger sense, with Bill C-14. This bill opens doors that don't need to be opened and for no particular, good reason. It expands medical providers of assisted suicide from doctors to nurse practitioners; it forecasts movement towards expanding assisted suicide to our most vulnerable citizens, those who suffer from mental illness and even children. In trying to appease everyone, this legislation pleases no one.

I implore you, honourable senators, to consider the gravity of the life and death decisions we face with this bill today. We may have only one chance to get this right, and our decisions in this chamber on this bill could have profound implications for generations.

Throughout the debate on this issue, the Liberal government has been very focused on helping people die. I think we should be more focused on helping people live. We must use our sober second thought to strengthen the safeguards on assisted suicide in this bill to protect our most vulnerable Canadians.

Thank you.