

Third Reading, Bill C-14

Debate on Joyal Amendment

June 8, 2016

Hon. Denise Batters:

Honourable senators, I want to make a brief intervention on this particular issue to let honourable senators know that haven't had the benefit of sitting in the Legal and Constitutional Affairs Committee, as I am honoured to do, that we have heard from learned constitutional scholars, from law professors and from lawyers on both sides of the issue of constitutionality of Bill C-14.

During the Senate Legal Committee's comprehensive pre-study of this bill, and during this week's committee hearing, we heard from several learned constitutional experts who adamantly believe that this bill is constitutional and is Charter compliant.

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.

This week we also heard similar testimony from Professor McMorrow and constitutional lawyer Chipeur. And of course, honourable senators, the Minister of Justice and the federal Department of Justice officials have defended the constitutionality of this bill in front of our Legal Committee twice, and in front of our Committee of the Whole in this chamber.

Last week we also heard new Senator Sinclair, formerly Justice Sinclair, tell us that he believes this bill to be constitutionally compliant.

Honourable senators, the significant paragraph of Bill C-14 that Senator Joyal would strike out and then with just small portions put back in in other places, I want to read it to you so that you realize what this particular amendment does.

It takes out the entire subsection called "Grievous and irremediable medical condition," which reads:

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

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

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

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

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

Honourable senators, on the issue of constitutionality, I do think that the federal government here has struck a delicate balance in an appropriate way. I oppose Senator Joyal's amendment because it is my contention that Bill C-14 is constitutionally sound, as it is Charter compliant and *Carter* compliant.