

Brief to the Standing Committee on Justice and Human Rights

My purpose in this brief is to propose the following amendments to Bill C-14:

1. S. 241.2(2)(d) should be deleted.

This section imposes a restriction on the *Carter* criterion of “a grievous and irremediable medical condition”. It is objectionable for three reasons:

(a) It is fatally vague. At what point has a person's natural death become “reasonably foreseeable”? In the broadest sense it is “reasonably foreseeable” that each one of us will die (sometime, of something). How much closer does death have to be for medical assistance in dying to be an option? Some illnesses, including ALS and Alzheimer's, are invariably fatal but death may occur years after initial diagnosis. Is death “reasonably foreseeable” at the time of diagnosis? Or must a patient wait until the end is much nearer? Some degree of vagueness, leaving room for medical judgement, is inevitable in this context. The *Carter* criterion itself requires interpretation and judgement, but of a sort that health care providers are already called upon to make. Providers who are willing to provide MAID need “fair notice” as to whether their actions will comply with the law. Oversight bodies responsible for case-by case review will likewise need to decide when providers have complied with the legislative criteria. This degree of vagueness will make their tasks impossible. It will also make it much more difficult to ensure a uniform application of the law across the country.

(b) The section may disqualify persons who are experiencing enduring and intolerable suffering from grievous and irremediable medical conditions that are not themselves fatal, including many cases of multiple sclerosis (as well as other motor neuron diseases) and of full-body paralysis (quadriplegia, “locked-in” syndrome, etc.). What is to be gained by forcing patients in these conditions, who would otherwise request MAID, to simply endure their suffering? Their condition is actually worse for their deaths not being “reasonably foreseeable” since they will therefore suffer longer.

(c) The section is inconsistent with *Carter*. The Court nowhere imposed any version of a terminal illness or imminent death restriction. Furthermore, it had before it the case of one plaintiff (Kay Carter) for whom MAID would have been excluded by this restriction. The section simply invites a completely needless and time-consuming Charter challenge.

2. S. 241.2(2)(a) should be amended to read: “they have a serious illness, disease or disability which is not curable by any means acceptable to the person”.

As the Court did, the bill should explicitly acknowledge that persons are not required to undertake treatments for their medical condition that are not acceptable to them..

3. S. 241.2(3)(h) should be amended by deleting “and ensure that the person gives express consent to receive medical assistance in dying”.

This section rules out advance requests for MAID, made when the person is still competent but carried out after competence has been lost. It will have two serious adverse effects:

(a) MAID will be disallowed for persons diagnosed with a grievous and irremediable medical condition who are competent at the time of the request but subsequently lose competence (perhaps due to stroke) during the 15-day waiting period before the procedure can be carried out. Presumably they must then continue to suffer. The Special Joint Committee on Physician-Assisted Dying considered this issue and recommended that advance requests be recognized when they are made after initial diagnosis of a condition that meets the *Carter* criteria. Anyone diagnosed with a condition such as Alzheimer's will know with certainty that their condition will be fatal, that it will eventually rob them of competence, and that in the later stages of it they will in no way resemble their current self. It is difficult to see what we gain by denying them the right to a dignified end once they have reached that point.

(b) The section is likely to have the perverse effect of forcing persons to take their lives much sooner than they would wish while they are still able to do so. This result is not merely speculative: we have already seen this happen both in this country (Gillian Bennett) and in the UK (the eminent feminist psychologist Sandra Bem). This was one of the major impediments in the old laws in virtue of which they were found by the Court to offend the s. 7 right to life. It would be worse than ironic to replicate this defect in the new law. And it would once again invite a Charter challenge.

4. S. 241.2(1)(b) should be amended to delete “at least 18 years of age and”.

This section excludes so-called “mature minors”. Yet we can forecast with certainty that there will be adolescents who otherwise satisfy the criteria, and are fully decisionally capable, but have not yet reached that age. They may already be legally able to refuse life-sustaining treatment for

their condition. Why deny them the right instead to request MAID? There may be good reason to impose additional safeguards in the case of mature minors (including at least parental consultation and possibly also parental consent) but there seems no good reason to exclude them entirely. Doing so just compels needless suffering. And it invites a s. 15 challenge.

Wayne Sumner
University Professor Emeritus
Department of Philosophy
University of Toronto
sumner@chass.utoronto.ca

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