

Brief to the
HOUSE OF COMMONS STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS
regarding
Bill C-14 on Medical Assistance in Dying

Helen Forsey

April 30, 2016

I am submitting this brief as a concerned Canadian and a friend of a person living with ALS. I urge Parliamentarians to amend Bill C-14 so as to fully respect the 2015 decision of the Supreme Court of Canada in the Carter case, and thus comply with the Charter of Rights and Freedoms.

I will focus on two major problematic aspects of the Bill as it stands: the omission of provision for an advance directive, and the requirement that the patient's natural death be "reasonably foreseeable".

1. Advance Directive: Bill C-14 must be amended to provide for advance requests, at least for patients whose worsening medical condition is expected to render them incapable of actually making the request at the time when they decide their suffering has become intolerable. With ALS, among other conditions, that time cannot be predicted. In the words of appellant Gloria Taylor, an ALS patient, quoted by the Court:

"There will come a point when I will know that enough is enough. I cannot say precisely when that time will be. It is not a question of 'when I can't walk' or 'when I can't talk.' There is no pre-set trigger moment..." (SCC, Par. 12.)

ALS patients lose their voluntary muscle control, and thus – at different stages for different individuals – their capability to speak or write. Combined with the restrictions under Section 241.2. (3), (4) and (5), this means that some patients will be unable to make the request in the prescribed manner at the point when they would want to. Moreover, 24-hour home care and appropriate palliative care are essentially non-existent for these patients, whose awareness and intelligence remain completely intact. C-14 thus condemns them to the continuing anguish that Taylor described: "What I fear is a death that negates, as opposed to concludes, my life. I do not want to die slowly, piece by piece..." (SCC, Par. 12.)

In Par. 66 of its ruling, the Court stated that "An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy." As it stood at the time, it said, the law:

"denies them the right to request a physician's assistance in dying. This interferes with their ability to make decisions concerning their bodily integrity and medical care and thus trenches on liberty. And, by leaving people like Ms. Taylor to endure intolerable suffering, it impinges on their security of the person."

By not allowing for advance requests Bill C-14 continues to deny ALS patients and others the right to request assistance in dying while they can still make that request. Noting the parallel situation Ms. Taylor faced, the Court stated:

"Ms. Taylor ... knew she would be unable to request a physician-assisted death when the time came ... This left her with what she described as the 'cruel choice' between killing herself while she was still physically capable of doing so, or giving up the ability to exercise any control over the manner and timing of her death." (SCC, Par. 13.)

This can indeed lead individuals facing this dilemma to commit suicide prematurely, while they still have a quality of life that they would otherwise choose to continue.

Bill C-14 as it stands thus impinges on the Charter's guarantee of security of the person, and fails to provide the remedy required by the Court. This failure can only lead to more legal challenges, and extend the suffering of patients awaiting the right due to them under the Court's ruling.

2. "Reasonably foreseeable" natural death: The amended Bill must also remove the requirement, in the proposed amended Section 241. 2 (2) (d) of the Criminal Code, that the patient's "natural death has become reasonably foreseeable". The Supreme Court's ruling did not restrict assistance in dying to terminal illness. On the contrary, it explicitly upheld that right for appellant Kay Carter, whose illness, spinal stenosis, condemned her to intolerable suffering, but would not, itself, kill her.

Moreover, the wording of this provision is fuzzy and open to differing interpretations, which could mean unequal application of the law, granting the right to some but not to others in an equivalent situation.

Here again, Bill C-14 fails to meet the requirements of the Supreme Court ruling. If passed without the amendments proposed above, it will betray the principles of the Charter, leading to further prolonged suffering for many of the people the legislation should be helping.

I ask our Parliamentarians to amend Bill C-14 to correct the serious failures outlined above.

Respectfully submitted,

Helen Forsey,