Bill C-14 Brief from Susan Desjardins

The Attorney General of Canada has already appeared before the Supreme Court of Canada (SCC), and lost in the Carter case. I implore the Justice Department, its Minister and bureaucrats to revisit their position on the implementation of Medical Assistance in Dying (Bill C-14) to respect the word and the intent of the Carter decision. Respect the decision of the highest court of the land, and use the language of the decision – that

Section 241 (b) and s.14 of the Criminal Code ***unjustifiably*** *infringe on s.7 of the Charter and are of no force or effect to the extent that they prohibit physician-assisted death for a 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****.(emphasis added);*

and the recommendations of the Joint Parliamentary Committee, rather than accepting the minority report, which represents the views of a small but vocal minority. I request that the Canadian government respect the views of the majority of Canadians (80% or more), who have made it clear in survey after survey that they support both the Carter decision and the recommendations of the Joint Parliamentary Committee, and the **evidence**, which makes clear that in permissive jurisdictions, individuals exercise their choice, without the vulnerable being a risk.

Eligibility for medical assistance in dying (MAID)

241.2 (2)
Recommended that item (d) be removed from the definition of 'grievous and irremediable condition'. The court decision states (p.6) that

The right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Here, the prohibition deprives some individuals of life, as it has the effect of ***forcing some individuals to take their own lives prematurely, for fear that they would be incapable of doing so when they reached the point where suffering was intolerable****. The rights to liberty and security of the person, which deal with concerns about autonomy and quality of life are also engaged.* ***An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy****. The prohibition denies people in this situation the right to make decisions concerning their bodily integrity and medical care and thus trenches on their liberty. And* ***by leaving them to endure intolerable suffering, it impinges on their security of the person****.* (emphasis added)

Imagine that you are an MS patient whose only remaining capacity is to voice your wishes with 2 fingers of one hand, and that this capability will be shortly lost as well – you will be 'locked' in your body. You have requested medical assistance in dying. Your physician supports your

wishes, but the second physician feels that your death is not ‘reasonably foreseeable’ and thus refuses to support the request. Based on the types of illnesses faced by the applicants in Carter, this is exactly the type of situation to which the SCC addressed itself. There is NO requirement in Carter for the medical condition to be terminal; rather, the Court took a patient-centred approached which would permit the individual to determine when their enduring suffering becomes intolerable. Québec is already faced with these types of issues, given that medical assistance in dying is only available to those defined as terminally ill. I ask you to consult with **Me Jean-Pierre Ménard** to develop a clearer understanding of the issues which arise when the law does not allow MAID for those who are not terminally ill or whose natural death if ‘reasonably foreseeable’. Would Canadian society chose to force these individuals to make the ‘cruel choice’ referred to in the introduction to the SCC’s decision (I.1, p.6)

A person facing this prospect has two options: she can take her own life prematurely, often by violent or dangerous means, or she can suffer until she dies from natural causes. The choice is cruel.

We have already seen one case in Québec where an individual with a grievous and irremediable condition, suffering unendurable pain, undertook to starve themselves in order to quality for MAID. Would Canadian society accept that a new law drive a person to these extremes?

Consistent with the changes to 241.2.3h below, that the criteria for access to MAID be modified to include item (f)

Those individuals who have been diagnosed with a grievous and irremediable condition that will lead to a loss of competence in the future, eg. Dementia, Alzheimer’s and other similar illnesses, have the option to prepare an advance request for MAID, specifying certain conditions that would be met in order for the procedure to be implemented.

The Government has indicated concerns that additional public consultation is required to effectively implement this provision. In this event, that the law be revised to specify that consultation and a revision to the law to provide access to this class of individuals will be completed no later than 6 months prior to the end of the Government’s current mandate.

Does Canadian society accept that individuals diagnosed with dementia or Alzheimer’s would have to take the path followed by Gillian Bennett, or others who have travelled to Switzerland, rather than allow them to choose the moment of their death in the comforting embrace of their family members?

241.2 (3b.ii)
That this criterion be revised, for all of the above reasons, to state

Signed and dated after the person was informed by a medical practitioner or nurse practitioner of their diagnosis of a grievous and irremediable condition expected to lead to enduring and unbearable suffering and/or to incompetence.

241.2 (3h)

To ensure that a person who has already consented to MAID is not refused this assistance due to a sudden loss of capacity or consciousness, that this criterion be revised to state

Where the competent adult has consented to MAID, meeting all criteria and, within the waiting period suddenly loses competence due to loss of capacity, consciousness, or other medical condition, that the medical practitioner may proceed with MAID as if the second request had been given.

The current draft of Bill C-14 expresses concern for safeguarding the vulnerable and speaks to anecdotal examples in Belgium raised by Professor Montero. The Court stated the following:

The resolution of the issue before us falls to be resolved not by competing anecdotes, but by the evidence. The trial judge, after an exhaustive review of the evidence, rejected the argument that adoption of a regulatory regime would initiate a descent down the slippery slope into homicide. We should not lightly assume that the regulatory regime will function defectively, nor should we assume that other criminal sanctions against the taking of lives will prove impotent against abuse. (Par 120, p.58)

Further, surveys within the past 12-18 months have clearly indicated that those often identified as 'vulnerable', such as the disabled, have voiced their support of both the Carter decision and the recommendations of the Joint Parliamentary Committee. Individuals such as the Honorable Steven Fletcher, and Mrs. Linda Jarrett have voiced the support to the Committee. Notably Mrs. Jarrett, who suffers from MS and could, under the draft bill C-14, be denied MAID, commented

Please do not allow us to be represented as opposing the compassionate and humane choice. Again, I emphasize that it is a choice. No one is asking for people to be put to death against their will, but please allow us, of the disabled community, the right to access our choice for physician-assisted dying.

Thank you for the opportunity to submit this brief.

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One of the 80% of Canadians in support of medical assistance in dying