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Brief to the Standing Committee on Justice and Human Rights concerning Bill C-14.

Bill C-14 as presented by the Minister of Justice and Minister of Health affirms in its Preamble several crucial principles that should inform the Parliamentary response to the Supreme Court's Carter decision. We welcome the fact that C-14 affirms the "inherent and equal value of every person's life" and the need to protect "vulnerable persons from being induced, in moments of weakness, to end their lives." We are glad that the Bill acknowledges the need for "robust safeguards" to prevent "errors and abuses" in a matter as "irrevocable" as death. We are glad that the Government is committed to "respect the personal convictions of health care providers." We think C-14 is right to restrict access to assisted dying to those whose death is "reasonably foreseeable" and the ruling out of Advance Directives. Because we are not confident that C-14 adequately meets the criteria set out in the Bill's Preamble we recommend the following:

1. **C-14 should be amended to declare the Charter rights of medical practitioners – physicians, nurses and nurse -- practitioners, and pharmacists whose conscientious beliefs oppose assisting another in suicide to decline furnishing such assistance**. To compel "conscientious objectors" to perform this service– or refer to someone who will perform it– in violation of their own understanding of their ethical and professional obligations to their patients would be a violation of that "freedom of conscience and religion" declared "Fundamental" in *The Canadian Charter of Rights and Freedoms*. To claim that allowing assisted suicide in some instances implies an ethical obligation binding on all medical practitioners to participate directly or indirectly in the practice contradicts the very idea of the Charter itself. This would depart from the practice of other jurisdictions that permit assisted suicide. And it would undermine the welfare of patients so far as their care-givers might be understood by their patients to have suppressed their own conscientious and ethical beliefs. We note that one leading advocate of "Effective Referral" has said that "conscientious objectors" should consider a change in profession, and we hope that members of the Justice and Human Rights Committee find that remark as repugnant as we do. We note that the Court itself said "nothing in [its] decision would compel physicians to provide assistance in dying." And, further, we would observe that the same principle that justified the Government in allowing members of Parliament to obey their conscience in voting as they choose on Bill C-14 entails the importance of recognizing the role of conscience for medical practitioners under our law. We would add, finally, that it seems appropriate that our federal Parliament should affirm the Charter rights of medical practitioners rather than leave the "rights of conscience" to be affirmed or ignored, as may be, by professional associations.

2. We recommend that Bill C-14 be strengthened to insure that vulnerable persons are not being induced at times of weakness to opt for assisted suicide. Though C-14 emphasizes the need for

this, there is little or nothing in the specific provisions of the bill proposed to accomplish this aim. The closest to anything like this is the remark in 241.2(1) (d) that the request for assisted suicide "was not made as a result of external pressure." When one adds this qualification to the narrow explanation of what is meant in calling a condition "irremediable" in 241.2 (2), that the patients' suffering "cannot be relieved under conditions that they consider acceptable" we note the glaring absence of what has been rightly urged by the supporters of the Vulnerable Persons Standard: **a specific examination of how far psycho-social factors and the real or apparent absence of palliative care options may enter into the request for death**. Because the medical practitioners approving and executing the request are required only "to be of the opinion that the person meets all the criteria" set out 241.2 (1) what is missing at 241.2 (1) (d) and/or 241.2(2) (c) constitutes a fundamental failing of C-14. Accordingly, we recommend the substitution for 241.2 (1) of these words: "that they have made a voluntary request for medical assistance in dying that in particular, was not made **as a result of psycho-social conditions rendering the person making the request vulnerable or** as a result of external pressure" (addition in bold); and the addition to 241.2(2) of what might become 241.2(2)(d), **"that a rigorous effort has been made to explore palliative care options for the person making the request."**

3. C-14 recognizes the need for "robust safeguards" in light of the "irrevocable nature of ending a life" and attempts to satisfy this need by requiring that a second and independent physician or nurse practitioner concur as to the eligibility of the one requesting assisted suicide, that the request be made in writing before two witnesses with no interest in the death requested, and that there be a fifteen day period for reflection between a request and its execution. But those "safeguards" become less than robust when it is noted that the waiting period may be shortened when the medical practitioners agree to this and any adult may sign for the one presumed to want or need assisted suicide if that person is unable to do so – and indeed the independence required of witnesses to the signing is not required of the substitute signer of the certificate. Especially in light of these weaknesses and of those set out in our second recommendation we recommend **that all requests for medical assistance intended to hasten death be subject to an arms-length expedited prior review and be authorized by some independent body with expertise in health care, ethics and law**.

Respectfully submitted,

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