

Submission to the Standing Committee on Justice and Human Rights

Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)

May 2, 2016

Dear Members of the Committee,

Thank you for the opportunity to make this submission.

It is inherently dangerous to legalize assisted suicide and euthanasia (AS/E) – what Bill C-14 refers to as “medical assistance in dying” (“MAID”). Given that the Government has decided to go down this path, Bill C-14 must be drafted in such a way as to protect, as far as possible, all Canadians from abuse of the law and from pressure to be killed or to kill.

As such, I believe C-14 needs to contain the following provisions:

1. A requirement that palliative care/ pain management/ appropriate counselling be made available to any and all persons requesting AS/E (“MAID”) before they would qualify for AS/E. In other words, if such alternatives are not accessible to that person, then “MAID” should not be allowed.
2. A prior judicial review to ensure that all the requirements of the law are met.
3. Only allowed for competent adults who clearly give contemporaneous consent, are terminally ill, and have a physical medical condition that causes intolerable physical suffering that cannot be relieved any other way. “MAID” should be used very rarely and only as a last resort. Those who are suffering psychologically/mentally need to be offered counselling and other support services in order to alleviate that type of suffering; they should not be killed or receive help to kill themselves.
4. No one should be compelled to participate in any way with AS/E (“MAID”) against their conscience. This means they should not have to make any referral, directly or indirectly, and should not be disqualified from entering the health care professions because of their conscientious objection to “MAID.” Criminal law falls within federal jurisdiction and so Bill-14 needs provisions to make it a criminal offence to compel/coerce/intimidate anyone to participate in AS/E (“MAID”) or to discriminate against them in any way (for example, not admitting them to medical school) for their conscientious beliefs. Parliament does not have to legalize “MAID”—it could invoke the *Charter’s* “notwithstanding clause” but the Government is choosing not to. If Parliament refused to legalize AS/E, physicians’ and other health care workers’ consciences would not be in danger of being violated. So in choosing to legalize it, Parliament now has a duty to use the criminal law to protect the consciences and rights of those who are morally opposed to being involved in killing; otherwise provincial Colleges (like the

College of Physicians and Surgeons of Ontario) will require “effective referrals” and punish conscientious objectors.

5. I understand that some of the above recommendations may not be compliant with the *Carter* decision. If so, then Bill C-14 should also include (i.e. in addition to the above provisions) a provision invoking the *Charter’s* “notwithstanding” clause.

The approach described above – invoking the “notwithstanding” clause *and* legalizing AS/E for the “hard cases” only, with strict safeguards – would ensure that Bill C-14 is as protective as possible while being constitutional. There would then be no need for anyone to launch a *Charter* challenge against the law because it would be, by definition, constitutional.

This approach is a reasonable compromise. It legalizes AS/E for the “hard cases” only (the ones that probably most Canadians are thinking of when they say they support AS/E), but it does so in a way that prevents the law and the practice from becoming more permissive (and hence, more dangerous) over time, which would happen if *Charter* challenges are launched and the restrictions are struck down by the courts in future.

Such a law would send a strong message that this is as far as Canada will go – that Parliament is allowing an exemption to criminal prosecution for the “hard cases” only; that Parliament does not view this sort of extreme measure as a “right” that anyone should be able to access; that it should be used rarely; and that it is not a form of medical/health care. It is a way to protect Canadians, as far as possible, and to allow the medical profession to stay focused on healing and caring.

Respectfully submitted,

Barbara Maloney