Doctor's Perspective on Bill C-14, Canadian House of Parliament

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

On April 14th, 2016 Bill C-14 was introduced by the federal government to respond to last year's Supreme Court case of Kay Carter, who went to Switzerland to be euthanized. It would make it legal to assist the suicide or inflict death on a competent adult who meets certain rather loose criteria.

Unfortunately, Bill C-14 is framed in terms that are too vague or undefined to create more than an illusion of safeguards against abuse or poor care options for the vulnerable. The purported "safeguards" are vacuous: two independent physicians or nurses would agree whether a patient meets criteria, but only one has to claim to have established that the patient actually does (the other can simply believe the first). Another criterion is that death is 'foreseeable'- which it already is for *anyone*.

Two witnesses 'where possible' with no *claimed* interest would verify a supposed *request* and later *consent* of the patient, yet retention of these or doctor's reports for verification is not required (vague federal Health regulations pin nothing because the minister can dispense with requiring anything). Thus whether consent was informed and free from coercion may not be possible to determine, and the star witness will be gone, vitiating even the requirement that suicide not be counseled.

Bill C-14 provides cover for acts of complicity or direct commission of what is now manslaughter, with legal impunity extending even to anyone "**who does anything for the purpose of aiding a medical practitioner or nurse practitioner to provide a person with medical assistance in dying**" and also to health practitioners **even if they are *mistaken*** about the patient fitting the criteria.

The worst government special committee recommendations to go further and expose to assisted death minors and the mentally ill, are not directly present in the bill, although the safeguards are so weak the mentally infirm could be deemed to be 'in decline' and unable psychologically to bear their demise. Moreover, the preamble to the Bill states the government's intent to indeed extend the 'service' to such people, a scope not even countenanced by the Supreme Court in the *Carter* case.

It may not take much time for that travesty to develop, and in the meanwhile we will soon slip into the illusion that Bill C-14 was a safe and responsible compromise between respect for life and the burden of living with suffering. When the law *does* allow minors, psychiatric patients and those who are simply tired of life to end it with state approval and assistance, most Canadians will have been lulled into an uncritical acceptance of what will be a monstrous ruin of fundamental justice and basic respect for life.

The bill (and some case argument in *Carter*) promotes the idea of lives that at some stage may not be worth living. The decision to die is construed as autonomous and private, but when several have opted for death little will stop hospital supervisory staff insinuating that the next person may be selfishly using up precious medical and support resources. **A 'quality of life' view of the section 7 *Charter* rights is a regression** to the eugenic ideas predating World War II. This is where vulnerable persons have insight to the human condition: where they encounter disregard for adequate caring and compassion.

We have seen it already in Quebec which began legalized euthanasia on December 10, 2015. Within three months their Ministry of Health had to remind health care practitioners that they **must deliver medical care** to the patients hanging on. This policy was necessary when it came to the attention of the

Ministry that there were a substantial number of persons who had survived attempted suicide, were brought in for medical care, but succumbed when they did not receive the care. Callousness begets neglect.

Another worry is that **protection for conscience rights** of conscientious health care practitioners and their facilities is **excluded from the legislation**. Still worse, the soft prohibition on having death inflicted is so poorly worded; it is open to interpretations (as in provinces) of providing enforceable entitlement to unnatural and premature death being inflicted by another. **This goes beyond the call of *Carter*, and if not amended to more closely correspond to the ruling that called C-14 into being, the law may be taken as obligating a physician, nurse, pharmacist to precipitate or inflict death, contrary to conscience rights**.

Some read the lack of conscience protection as the government intending to leave decisions about conscience up to each province. But if C-14 carries as worded, it may be possible to interpret the bill as providing **enforceable entitlement to have death inflicted,** as does Michael Cooper, sitting member of the joint special committee, who stated that he thought the Supreme Court had established "that physician-assisted dying was a charter right for certain Canadians". If, as many have been saying, that is indeed what bill C-14 does, then the provinces have much room to shirk their responsibility to uphold conscience rights of anyone in the causal chain of a demanded death, and they are provided strong motive where the entitlements mean the federal government has to transfer funds for procedures in a whole new category, **really making C-14 a money bill**.

By fundamental justice in a free country, there can be no "right to have death inflicted"; even if there might be limited permission (as in decriminalized suicide). But by contriving to introduce an entitlement to be killed, bill C-14 adopts the astonishing premise that the state can require people to become parties to inflicted death and suicide and allow provinces or colleges to punish them if they refuse. It is contrary to liberal democracy, a first duty of which is to serve and protect life and conscience.

I am not sure I would want to rescue a Bill that should die, but Bill C-14, **as awful as it is**, and as likely to be rammed through **can at least be corrected** of the false entitlement language by an amendment to s. 14 and ss. 227 (4) of the *Criminal Code* as introduced by the bill.

The gist of the amendment would look like this:

"s. 14(1) No person is entitled to have death inflicted on them.

(2) Consent or request by a person to have death inflicted on them does not affect the criminal responsibility of any other person who precipitates or inflicts death on the person who requested or consented to have death inflicted on them." And ..

" s. 227(4) Subsection 14(2) does not apply to persons who precipitate or inflict death on a person in accordance with s. 241." .

This is the personal opinion of Dr. Barbara Powell MD, CCFP, FCFP and it does not reflect the opinion of another organization or association. I acknowledge and thank Gary D. Knight for editorial assistance.

Amendment to Bill C-14 ('Medical assistance in dying')

Whereas: pursuant to the ruling of *Carter*, 1995, bill C-14 presents the object of creating exculpations from criminal liability for health practitioners who are willing to inflict or precipitate a patient-requested death in defined circumstances; and

Whereas: it is sufficient, for the same object as stated in the Summary of bill C-14, to limit the scope of bill C-14 to create the exculpations rather than appear to additionally create obligations upon unwilling material participants in a death; and

Whereas: bill C-14 with the same object proposes an addition to the *Criminal Code* [CC] of s. 227 that, in subsection (4) thereof, purports to negate the criminal liability of said practitioners in defined circumstances; and

Whereas: consent of the patient on whom death is precipitated or inflicted is an essential circumstance defined by new CC section 241 in bill C-14, while consent also plays a critical role in the second phrase of CC s. 14 but not in the first phrase (since a person entitled to *request or to consent* to infliction of death is necessarily a person entitled to the infliction of death); and

Whereas: bill C-14 by negating in ss. 227(4) all of s.14 rather than the second phrase thereof, runs unacceptable risk of being wrongfully and harmfully interpreted to create a patient entitlement that entails obligations on practitioners to comply or refer whether they are willing or not to assist or be party to the patient-requested death;

Therefore, **bill C-14 is amended at clause 1 thereof in relation to the *Criminal Code* by replacing s. 14 thereof with:**

"s. 14(1) No person is entitled to have death inflicted on them.

(2) Consent or request by a person to have death inflicted on them does not affect the criminal responsibility of any other person who precipitates or inflicts death on the person who requested or consented to have death inflicted on them."

and at clause 2 thereof in relation to the Criminal Code by replacing ss. 227(4) thereof with:

" (4) s. 14(2) does not apply to persons who precipitate or inflict death on a person in accordance with s. 241." .

Summary

This proposed amendment will split s. 14 in two subsections and have the existing s. 227 of bill C-14 relieve the criminal liability of practitioners who follow its proposed or amended s. 241 requirements.

This amendment avoids the harmful interpretation of the bill if enacted, to the effect that some persons nearing death in accordance with s. 241 are positively *entitled* to have death inflicted upon them. The impossibility of obligating other persons, who may be unwilling to participate in accordance with their Charter rights of conscience and religion, could seem to be impugned if s. 227(4) remains as it is worded in bill C-14 (as the bill was tabled at first reading) in relation to an unchanged s. 14.

Idem. The first phrase of s. 14 as reworded in bill C-14 is unchanged from its former meaning and states that "No person is entitled to consent to have death inflicted on them". This merely particularizes a principle of fundamental law reiterated by the fundamental rights and freedoms established in the Canadian *Charter*, namely that no person has a right (is entitled) to have death inflicted on them. It particularizes by saying in effect 'whether they consent or not' – to head off putative defenses of manslaughter where the assailant obtained supposed consent of the victim.

The meaning of this phrase is not lost by removing this 'in passing' term "consent to", because it is logically entailed by not having entitlement to death inflicted. In the second phrase however, of s. 14, 'consent' is germane and not superfluous; and this is where room is to be created by bill C-14 for rendering exculpatory provisions and requirements that do include express *consent* (and indeed *request*, among other conditions).