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Committee Clerk
Standing Committee on Justice and Human Rights
Parliament of Canada

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

Justice for Children and Youth (JFCY) is a child and youth rights organization, and a specialty legal clinic funded primarily by Legal Aid Ontario. For more than thirty-five years, JFCY has focused exclusively on the rights and legal issues facing children and young people in Canada. We provide direct legal services to children and youth across Ontario in a variety of legal areas, including health, mental health, education, youth criminal justice, child welfare, and immigration law matters. We regularly intervene, or are appointed as a friend to the court, in cases engaging the rights of young people. Additionally, we engage in law reform initiatives, and provide public legal education and continuing professional development education on child and youth rights issues.

Our submissions are directed to our concern over the exclusion of capable people under the age of 18, "competent minors" from the protections and benefits provided for other capable people under Bill C-14. While we applaud the comprehensive safe guards provided for in Bill C-14, safeguards that in our submission will serve to protect potentially vulnerable patients in seeking to act with agency and personal autonomy in end of life care, it is our submission that Bill C-14, as drafted, violates young people's rights and constitutes a cruelty to children that is not allowed for adults.

The exclusion of capable minors is contrary to the *Charter* Rights of young people and the Supreme Court of Canada's decision in *A.C. v. Manitoba*; runs contrary to the generally applicable law regarding consent to health care across Canada; is in violation of Canada's obligations as a signatory to the United Nations *Convention on the Rights of the Child* (UNCRC), and; directly contradicts the recommendation in the Final Report of the Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying issued 30 November 2015.

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Capable minors who are facing the possibility of assisted dying have a lived experience to which few of us can relate or imagine. A young person facing a "grievous irremediable medical condition", with "enduring an intolerable suffering", facing "reasonably foreseeable death" is no less deserving or entitled to "affirmation of the inherent and equal value of their life" and dignity than any other patient in such a circumstance. The capable minor in these circumstances will be connected with hospital care and deep in the progress of their illness; likely having had substantial medical interventions to date. To exclude these capable minors inflicts a cruelty on capable young people; is highly discriminatory; and is unjust and intolerable. This is not consistent with Canadian values.

Excluding capable minors from access to physician assisted dying, where they meet all of the other required conditions for access is a violation of their *Charter* rights under s. 15 rights to equality, s. 7 rights to life liberty and security of the person, and s. 12 rights to be free from cruel and inhuman treatment. Indeed, the Supreme Court in *Carter* made clear that prohibiting a person from pursuing physician assisted death is a violation of s. 7.[1] Excluding capable minors from Bill C-14 is age based discrimination in its clearest form and confuses our grief at the tragedy of the end of life of a young person with a desire to provide protections for children. In *A.C. v. Manitoba,* [2] the Supreme Court recognized the mature minor doctrine in health care consent, concluding that "If, after a careful and sophisticated analysis of the young person's ability to exercise mature, independent judgement, … the necessary level of maturity exists, … the adolescent's views ought to be respected".[3]

The Court in *A.C.* concludes - consistent with most provincial legislation across Canada - that health care consent decisions can and are made by capable people under the age of majority on a daily basis. Capable patients under the age of 18 can and do accept or refuse treatment, including refusing life sustaining treatment, and yet under Bill C-14 as currently drafted these same young people would be prohibited from accessing physician assisted death, even where they meet all of the other criteria required by proposed legislation.

Consistent with the s.12 analysis in the Federal Court's decision in *Canadian Doctors for Refugee Care v. Canada* it may be argued that "intentionally" withholding access to physician assisted death from capable minors "inflict[s] predictable and preventable physical and psychological suffering"[4].

Minimum standards for understanding children's rights in the UNCRC require a respect for the evolving capacity of children and a respect for their expression of their views. Article 12 reads as follows:

> States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

[1] *Carter v. Canada (Attorney General)*, 2015 SCC 5, at para. 66
[2] *A.C. v. Manitoba (Director of Child and Family Services),* 2009 SCC 30, [2009] 2 S.C.R. 181
[3] *Ibid* para 87
[4] *Canadian Doctors for Refugee Care v. Canada (Attorney General)*, 2014 FC 651 (CanLII) at para 587

The United Nations Committee on the Rights of the Child, in General Comment 15[5], paragraph 21, states:

> The Committee recognizes that children's evolving capacities have a bearing on their independent decision-making on their health issues. It also notes that there are often serious discrepancies regarding such autonomous decision-making, with children who are particularly vulnerable to discrimination often less able to exercise this autonomy. It is therefore essential that supportive policies are in place and that children, parents and health workers have adequate rights-based guidance on consent, assent and confidentiality.

Bill C-14 has inexplicably rejected the recommendation related to competent children described in the Final Report of the Provincial-Territorial Expert Advisory Group on Physician- Assisted Dying, of 30 November 2016. This group of experts engaged in a thorough National review and at Recommendation 17 stated:

> Access to physician assisted dying should not be impeded by the imposition of arbitrary age limits. Provinces and Territories should recommend that the federal government make it clear in its changes to the *Criminal Code* that eligibility for physician-assisted dying is to be based on competence rather than age.

It is essential that Bill C-14 be amended to include access to physician assisted dying for capable minors who meet all of the other requirements in the proposed legislation. To fail to protect the rights and dignity of capable children is to fail to respect the role of children as individual rights holders in Canadian society, and leaves the legislation open to challenge – a reality that will only serve to inflict suffering on children in the most tragic circumstances.

Thank you for your consideration of our submissions.

JUSTICE FOR CHILDREN AND YOUTH

[5] Committee on the Rights of the Child, *General Comment No 6 (2005): On the right of child to enjoyment of the highest attainable standard of health*, UNCRCOR,
66th Sess, UN Doc CRC/C/GC/15.