

To: The Clerk of the Standing Committee on Justice and Human Rights

Re: Submission to the Committee regarding Bill C-14 [Medical Assisted Dying]

From: Hamilton, Burlington and Oakville Chapter of the Congress of Union Retirees of Canada [HBO CURC]

Date: April 26, 2016

STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

SUBMISSION RE: BILL C-14 -MEDICAL ASSISTED IN DYING

The Hamilton, Burlington and Oakville Chapter of the Congress of Union Retirees of Canada [HBO CURC] represents retirees from numerous unions including: CUPE, UNIFOR, USWA, OPSEU, PSAC, and OSSTF. CURC acts as an advocacy organization to ensure that the concerns of senior citizens are heard and addressed. Specifically, CURC's mission is to petition legislators for the introduction and support of legislative measures to improve the health and welfare of all retired persons; and to fight for the rights of retired persons to have an equitable standard of living.

HBO CURC has long advocated for "Death with Dignity" legislation and has supported the advocacy of Dying With Dignity Canada. HBO CURC forwarded a submission to the Special Joint Committee on Physician-Assisted Dying.

Given HBO CURC's interest and involvement in the struggle to have "Death with Dignity" legislation in place at both the national and provincial levels we are taking the opportunity to submit our reaction and concerns regarding Bill C-14 *An Act to amend the Criminal Code and to make related amendments to other Acts [medical assistance in dying]*.

Background.

On February 6, 2015, in *Carter v. Canada [Attorney General]* the Supreme Court of Canada declared section 14 and section 241[b] of the *Criminal Code* void

insofar as 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. "Irremediable", it should be added, does not require the patient to undertake treatments that are not acceptable to the individual.

The Supreme Court found that the prohibition infringed the claimants' rights under section 7 of the *Canadian Charter of Rights and Freedoms*.

Eligibility Criteria for Physician-Assisted Dying

The Supreme Court decision outlined clear parameters as to who would qualify for physician-assisted death: A competent adult, clearly consenting, who 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."*

Bill C-14 does not comply with the Supreme Courts decision since it defines a patients *"grievous and irremediable"* medical condition as a serious and incurable illness, disease or disability, in an *"advanced state of irreversible decline,"* and adding that *"natural death has become reasonably foreseeable"*. See Section 241.2 {2}{d}.

Bill C-14's eligibility criteria is far more restrictive than what the top court stated in its February 6, 2015, ruling when it overturned the existing prohibition on doctor assisted suicide. The clause *"natural death has become reasonably foreseeable"* means that only people with terminal illnesses will be allowed an assisted death. This contradicts the wording of the Supreme Court ruling, which made no distinction between fatal and non-fatal ailments, and did not limit the new right to die to the terminally ill.

The Supreme Court ruling emphasized the following: People who are *"grievously and irremediably ill"* face *"a cruel choice,"* they must either kill themselves prematurely, *"often by violent or dangerous means,"* or they must endure *"severe and intolerable suffering"* until they eventually die of natural causes. The Carter decision was based on suffering and the autonomy rights of patients to determine the point at which life had become intolerable for them.

Bill C-14 goes in the opposite direction of the Supreme Courts ruling. It has moved the decision-making powers away from patients and putting it squarely back in the hands of physicians by introducing *"reasonably foreseeable"* death as an additional qualification to *"a grievous and irremediable medical condition"* that is *"intolerable to the individual."*

The inclusion of "foreseeable death" in Bill C-14 means that patients will suffer longer if they are not deemed by doctors to be close enough to death to qualify, or if they deteriorate to the point where they cannot consent to ending their lives. This is far too vague and will be subject to interpretation by health care providers as to who will qualify for a physician-assisted death. Subsection [d] of Section 241.2[2] should be deleted.

Given the wording in Section 241.2 [2][d], Kay Carter, a significant figure before the Supreme Court, who had crippling spinal stenosis, a degenerative condition, would not qualify for physician-assisted dying. Kay Carter's medical condition and intolerable suffering was instrumental in the Supreme Courts decision. Bill C-14 does not address Kay Carters medical situation nor does it address other illness such as multiple sclerosis and Parkinson's and Huntington's and even ALS [amyotrophic lateral sclerosis]. Nor does it address the suffering of the extremely disabled and advanced dementia patients. These injustices must be corrected.

Medical Assistance in Dying

The Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying [November 30, 2015] recommended that "nurse practitioners, registered nurses and pharmacists will need to be involved in the process of physician-assisted dying". Bill C-14 does recognize the role that both nurse practitioners and pharmacists will play in providing medical assisted dying. This is commendable.

Advance Directives

Bill C-14 sets out specific criteria for adults over age 18 with "*grievous and irremediable*" medical conditions to be eligible for doctor -assisted death but it puts off key recommendations made by the Special Joint Committee on Physician-Assisted Dying to include advance requests for dementia patients and mature minors who are suffering and want to end their lives. The issue of advance requests should be addressed now not at some undefined future time.

The Supreme Court ruling did not address whether an individual who is not competent at the time of death could identify the circumstances in which he or she would choose medical assisted death. The rights of dementia patients must be recognized and respected in that they must be able to avail themselves the option of requesting physician-assisted dying. Individuals and patients should have the right to use advance requests for medical assistance in dying any time after being diagnosed with a condition that is reasonably likely to cause loss of competence or after a diagnosis of a grievous or irremediable condition but before suffering becomes intolerable. The advance request would be subject to the same procedural safeguards as those in place for the vulnerable.

Bill C-14 must be amended to include a mechanism for advance consent for physician-assisted death for patients suffering from dementia. The Special Joint Committee on Physician-Assisted Dying contains some useful proposals that parliamentarians should consider.

Safeguards

Bill C-14 calls for a 15-day cooling-off period between a formal request, [which requires two doctors or nurse practitioner to sign off independently] and a lethal injection. If the patient is suffering intolerably how can a cruel wait of an additional two weeks be justified? This is torture.

Parliamentarians should be reminded of the words from a suffering Doctor Low who was dying from a malignant brain tumour pleading for physician-assisted dying : "*I wish they [medical practitioners] could live in my body for 24 hours, and I think they would change that opinion*".

The Report of the Special Joint Committee on Physician-Assisted Dying recommends that any waiting[cooling-off] period be flexible that must take into account the patients medial condition and any circumstances that may be unique to that patient. The patient themselves should have the ultimate say and no-one else.

Section 241.2 [3] Safeguards [g] should be amended to reflect the wording of recommendation 14 of the Report of the Special Joint Committee on Physician-Assisted Dying regarding the "cooling-off" issue with special emphasis on the patients ultimate request for medical assistance in dying. Compassion must be the major consideration.

Bill C-14 extends legal protection beyond physicians to nurse practitioners and pharmacists involved in medical assisted dying. This is commendable.

Conscientious Objection to Participating in Medical Assistance in Dying

Bill C-14 is silent on the issue of conscientious objection by medical practitioners to provide and participate in medical assisted dying services. The Bill is also silent as to the role of publicly funded health care institutions will play in providing medical assistance dying services.

Bill C-14 and other appropriate Acts should be amended to ensure that medical practitioners who have objections to providing medical-assisted dying services be required by law to refer patients requesting medical-assisted dying to medical practitioners who are willing to provide that service.

Bill C-14 and other appropriate Acts should be amended to ensure that all publicly funded health care institutions provide medical assistance in dying services.

Recommendations

1. Preamble

That the sixth paragraph be deleted and reworded to read:

Whereas medical assistance in dying shall be available to individuals with terminal and non-terminal grievous and irremediable medical conditions that cause enduring suffering that is intolerable to the individual in the circumstances of his or her condition. That the capacity of an individual requesting medical assistance in dying to provide informed consent should be assessed using existing medical practices, emphasizing the need to pay particular attention to vulnerabilities in end-of-life circumstances.

2. Preamble

That an additional paragraph be added to the Preamble to read:

Whereas the Government of Canada will work with the provinces and territories and their medical regulatory bodies to establish a clear process that respects a health care practitioner's freedom of conscience while at the same time respecting the needs of a patient who seeks medical assistance in dying. The objecting medical practitioner shall at a minimum provide an effective referral for the patient.

3. Preamble

That an additional paragraph be added to the Preamble to read:

Whereas the Government of Canada will work with the provinces and territories to ensure that all publicly funded health care institutions provide medical assistance in dying.

4. Eligibility for medical assistance in dying

That Section 241.2 [2] Grievous and irremediable medical condition, subsection [d] be deleted.

5. Advance Directives

That an additional subsection be added to Section 241.2[1] Eligibility for medical assistance in dying that reads as follows:

[f] they provide a written notarized advance request for medical assisted death any time after one is diagnosed with a condition that is reasonably likely to cause loss of competence or after a diagnosis of a grievous or irremediable condition but before the suffering becomes intolerable. The advance request is subject to the same procedural safeguards as those in place for contemporaneous requests.

6. Safeguards

That Section 241.2 Safeguards, subsection[g] be amended as follows:

That "at least 15 clear days" be deleted to read "at least 2 clear days".

Or

Delete the whole of subsection [g] and replace with wording that reflects the intent of recommendation 14 of the Report of the Special Joint Committee on Physician-Assisted Dying which reads:ensure that any period of reflection for medical assistance in dying that is contained in legislation or guidelines is flexible, and based, in part, on the rapidity of the progression and nature of the patient's medical condition as determined by the patient's attending physician.

Conclusion

The preamble to Bill C-14 states that the approach ".....strikes the most appropriate balance between the autonomy of persons who seek medical assistance in dying, on one hand, and the interests of vulnerable in need of protection and those of society, on the other". This is not true.

Bill C-14 has little compassion. It is not patient friendly. It is too narrow and cautious. The drafters of the legislation have not followed the Supreme Courts ruling and abandoned the work of the Report of the Special Joint Committee on Physician-Assisted Dying.

Former Conservative MP Steven Fletcher, who is a quadriplegic, addressed medical opposition to physician-assisted dying before the Special Joint Committee on Physician-Assisted Dying stating: " To the doctors and the medical profession, be professional, be tough". Assisted dying is "not about you", he said. "It's not about the medical profession. It's about the individual and his or her choices".

Malcolm Buchanan

President Hamilton, Burlington and Oakville Chapter of the Congress of Union Retirees of Canada
[HBO CURC]

Hamilton, Ontario.