

Brief on Bill C-14 for the Standing Committee on Justice and Human Rights

Identification

Jonathan Reggler MB BChir FCFP

Family physician in the Comox Valley, BC

Qualified in 1984

45% of my practice is aged over 64

Admitting privileges to the only local hospital

Hospital Board-appointed member of the hospital's Ethics Committee

Palliative care

Fellow of the College of Family Physicians of Canada

Preamble

My intention to provide Medical Assistance In Dying (MAID) has been reported in local and national news media. Many elderly patients have commented and I always respond that I hope my patient was not upset. The reply is inevitably a variation on "I agree with your position". This is not surprising. 84% of Canadians and 87% of British Columbians supported MAID in an Ipsos-Reid poll in 2014. 80% of people support advance directives for MAID. Many senior nurses at our Catholic hospital and the attached hospice have thanked me for my support for MAID.

Rectifying Bill C-14

The Bill is deficient in a number of ways. I will address three of them.

1. The Bill should not be for terminal illnesses only

The SCC stated simply that the patient's condition should be grievous and irremediable and required no further qualification. The Bill introduces additional qualifiers. Many people with grievous and irremediable illnesses which are either non-fatal or fatal but not yet in an "advanced state of decline" and whose natural death is not yet "reasonably foreseeable" - both C-14 qualifiers - will nonetheless wish to control the timing and manner of their death in order that it is as far removed as possible from the symptom-ridden deaths so common now that people are living longer and drawn-out deaths are ever more frequent, due to cancer and chronic diseases of the elderly that sap strength, will and comfort. It was the central tenet of the SCC's ruling in Carter that such persons should be permitted MAID. Bill C-14 denies MAID to them. Had the SCC intended MAID to be only for people with terminal illness it would have said so. It did not. Kay Carter herself did not have a fatal illness.

2. Advanced Directives should be allowed

Advanced directives for MAID should be allowed for people with dementia. Health Representatives (or Powers of Attorney depending on the province) of incompetent patients may already withhold permission for active treatment that might prolong a person's life if the representative deems treatment inappropriate. Furthermore a physician may override the representative's decision if they believe that the representative is not acting in the patient's best interests or is acting against the incompetent patient's expressed wishes when competent. The Bill should permit a person to give an advance directive that MAID be provided if they have become incompetent and their quality of life has deteriorated to a point where their representative deems it intolerable. This directive should be notarized like a Power of Attorney. There are concerns surrounding the provision of MAID to persons with dementia who have given an advance directive but these are surmountable. The main issue is whether the incompetent person can reasonably be regarded as the same person who gave an advance directive when competent. They may have been fearful of the effects of dementia and sought to avoid the "indignity" of advanced dementia yet be undistressed when that state arrives. Simple progression of dementia should not in itself be an adequate reason for providing MAID once competence has been lost (in contrast to when competence persists, when it should be sufficient cause if requested). The representative should be required to convince two physicians that the incompetent person, who provided an advance directive for MAID when competent, has a poor quality of life, as they feared, and that MAID should be provided.

3. All publicly funded hospitals and hospices should be required to allow MAID on site

It is the duty of the Federal government to ensure fairness in the provision of Charter rights. Our local hospital is Catholic. The next nearest hospital is an hour's drive away. Our hospital has a draft policy ready which, if not required to allow MAID on site, will prohibit MAID and force physicians to send patients home for MAID, however sick, or to transfer them to another facility in a community where their own physician will not have admitting privileges and their family does not live. Only 12% of our community of 60,000 is Catholic and most Catholics support MAID. However, the Catholic Church's over-powerful hierarchy does not. It is wrong for the owners of the bricks and mortar of publicly funded facilities to restrict access to MAID for patients who qualify for this Charter right, or to make it necessary for them to endure additional suffering by being moved. The Bill already makes eligibility for publicly funded care a qualifying criterion. Bill C-14 should require MAID to be available in all publicly funded hospitals and hospices.