

## This bill does not respect the *Carter* decision and must be amended

**Required amendments:** Bill C-14 must be amended in order to ensure compliance with the *Carter* decision, and the *Charter of Rights and Freedoms*. We support the amendments proposed by Prof. Jocelyn Downie.

The BCCLA takes the position that prohibiting patients whose deaths are not “reasonably foreseeable” from having the choice of medical assistance in dying violates the *Charter*. The BCCLA adopts the written submissions of our legal counsel in the *Carter* case, Joseph Arvay, Q.C. Those submissions describe in detail how the Bill fails to meet the basic requirement of constitutionality, set out in *Carter*.

In summary, we argue:

- **The restriction of MAID to those whose deaths are “reasonably foreseeable” violates rights to life, liberty and security of the person:**
  - Bill C-14 prevents access to medical assistance in dying to people who are (a) suffering intolerably from a grievous and irremediable condition and (b) whose deaths are not “reasonably foreseeable.”
  - This violates:
    - *Charter* right to liberty: deprives patient of a fundamental choice related to their body – the court concluded that the *Criminal Code*, by its blanket prohibition on the right to request a physician’s assistance in dying, interfered with liberty by restricting the ability of qualifying patients to make decisions concerning their bodily integrity and medical care.
    - *Charter* right to security of the person: causes patient to continue to endure suffering
    - *Charter* right to life: by depriving individuals of the choice of an assisted death, patients who will lose physical capacity may take their own life prematurely to avoid suffering, while they remain physically able to do so.
- **The violation of these rights cannot be justified under the *Charter*:**
  - The government suggests that restricting access to MAID to those people whose deaths are “reasonably foreseeable” is justified in order to “protect the vulnerable”, to “further the objective of suicide prevention”, to “prioritize respect for human life” and to protect the “the equality of all people regardless of illness, disability or age”.

- This justification argument was used by Canada at court and failed. The court's decision is clear – Parliament may not rely on a blanket exclusion of a whole class of people to “protect the vulnerable” when other means are available to assess decisional capacity on an individual basis. Canada conceded, at the trial in *Carter*, that “It is recognised that not every person who wishes to commit suicide is vulnerable, and that there may be people with disabilities who have a considered, rational and persistent wish to end their own lives” (See *Carter*, SCC reasons, para 86). The courts found that an absolute prohibition did not meet the requirement of “minimally impairing” the right; the same applies in this bill on the absolute prohibition for patients whose deaths are not “reasonably foreseeable”.
- The blanket exclusion does not treat people equally – it discriminates against them based on the kind of illness that they have. The government acknowledges that “The right to equality could also be impacted if restricting access to end-of-life situations is viewed as treating people differently on the basis of their distinct disabilities, diseases or illnesses. For example, a person who is suffering intolerably from a particular disease that does not make death reasonably foreseeable, will be treated differently in terms of access from persons whose intolerable suffering derives from a different disease that does make death reasonably foreseeable.” It is absurd to suggest that treating people unequally can be justified by a claim that to do so advances equality.
- The justification that the exclusion prioritizes the protection of human life is unlikely to succeed. The government acknowledges that the Bill could compromise, rather than protect, the right to life protected under the *Charter* because patients who otherwise qualify but whose death is not reasonably foreseeable might end their lives earlier than they would wish, in order to avoid the risk of permanently losing access to MAID once they lose capacity. The Supreme Court ruled that the prohibition's effect of shortening the lives of some patients, by their taking their lives prematurely, was an unjustified violation of the right to life.

## Real world suffering will result from this Bill: illustrative scenarios

If Bill C-14 is not amended to eliminate the requirement that a condition be “incurable” (rather than irremediable), and that “natural death” must be “reasonably foreseeable”, there result will be terrible suffering for those Canadians who are barred from accessing MAID.

Similarly, the requirement that an individual be in an “advanced state of irreversible decline” could trap individuals in years of intolerable suffering. This is because their grievous and irremediable degenerative condition, like multiple sclerosis or ALS, has passed the threshold of intolerable suffering but may still be at an intermediate stage of its progression.

These exclusions are particularly shocking given that the people in the scenarios below are constitutionally entitled to access assistance in dying under the *Carter* ruling.

### **INCURABLE must be removed from the definition: Some patients may suffer unimaginably in death because Bill C-14 uses the word “incurable” instead of the SCC’s deliberate choice of “irremediable” by treatments “acceptable to the individual”**

Requirement of Bill C-14: *“they have a serious and incurable illness, disease or disability”*

*A patient with a condition that is potentially curable, but only by a treatment she finds unacceptable.* For example, Susan has stage IIIC anal cancer, squamous cell carcinoma. She has undergone multiple surgeries and three rounds of radiation therapy in an attempt to cure her cancer. Doctors say a fourth round radiation and chemotherapy would give a chance of survival, but with no guarantee of success. Susan finds the side effects of the therapies and the drugs needed to control her pain to be intolerable.

She has been told that radiation and chemotherapy will wipe out her red and white blood cells to dangerous levels, leaving her susceptible to infections, molds and severe fatigue. The radiation is likely to severely burn her skin, including burning of her vulva, anus, bowel, vaginal canal, and bladder. This cannot be avoided as she would be irradiated through her pelvis. If she survives, she may end up with permanent scarring of her bowel and anus, resulting in diarrhea and incontinence. Her vulva and vaginal canal will likely shrink and be scarred, making sexual intercourse painful in the future. Her bladder may be damaged and require, like her vagina, dilators to stretch out badly scarred tissue, and stents to hold open blood vessels and canals that have collapsed.

This treatment could save her life, but it is not certain and will result in a potentially significantly diminished quality of life. Susan tells her doctor that she does not want to go through another round of radiation therapy but rather wishes to end her life in peace through medical assistance in dying rather than continuing to endure the intolerable suffering until she dies, painfully, as a result of her cancer. Her oncologist says that her death from the cancer will be a death in agony, regardless of pain medications. Her legs will swell to gross proportion as poisons and toxins accumulate in her system. The tumour will grow to explosive proportions, blocking off the bowel that will begin to contort and twist under pressure. She has been told that she will ooze mucous, blood and fecal matter out of every orifice, and that no amount of drugs will deal with the “break through” pain.

Susan will not have access to medical assistance in dying under Bill C-14, because there is still a chance of cure. This means she will die a torturous death.

**“Reasonably foreseeable” “natural death” requirement must be removed: this will trap people in suffering for years and even decades**

Requirement of Bill C-14: *“their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.”*

*A patient with a degenerative condition causing enduring and intolerable suffering but who faces a very long trajectory to death.* For example, Roberto is in constant pain as the result of the series of strokes he’s endured over the past decade. The left side of his body is paralyzed, he can hardly talk, and he can’t eat, drink, bathe or go to the toilet without assistance. Unable to bear the thought of enduring another stroke and deteriorating still further, he wants to access medical assistance in dying. However, because he could live for many months if not years in his current state, he is not eligible for an assisted death. The only option he has to die at a time of his choosing is to starve himself to get himself close enough to death for his physician to believe his death is in the “not too distant future.” This involves a painful and tormented process that can take days and weeks, in which, in the process of starvation, individuals will suffer organ failure and severe dehydration.

*A patient with a degenerative condition causing enduring and intolerable suffering where death does not result from the illness or death from the condition is uncertain.*

For example, Susan is age 60 and has secondary progressive multiple sclerosis. Her condition has deteriorated rapidly in the last five years. Her limbs have weakened to the point they have become spastic and non-functional. She has a near total loss of bowel and bladder control. She requires the assistance of family, friends and a caregiver for almost every aspect of her life 24 hours a day, 7 days a week.

Her physical pain and suffering is acute and is the defining feature of her every waking moment. Her doctor has advised her that her chronic pain was likely neuropathic pain resulting from damaged, dysfunctional or injured nerve fibers. Despite taking large doses of some of the strongest pain medication available, the pain she lives with is horrific. She can only sleep for several hours at a time. Sometimes she wakes up screaming in the middle of the night from pain.

She feels like a prisoner in her own body, spending the rest of her life agony. She says she has lost all meaningful quality of life and wishes to be able to choose medical assistance in dying rather than being trapped in her suffering.