BRIEF OF
THE ALLIANCE OF PEOPLE WITH DISABILITIES
WHO ARE SUPPORTIVE OF LEGAL ASSISTED DYING SOCIETY
ON BILL C-14, AN ACT TO AMEND THE CRIMINAL CODE AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS (MEDICAL ASSISTANCE IN DYING)

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Brief of the Alliance of People with Disabilities
Who Are Supportive of Legal Assisted Dying Society
to the House of Commons Standing Committee on Justice and Human Rights
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1. Introduction

- The Alliance's members are leading advocates for disability rights.
- The Alliance sought and obtained intervener status at all three levels of court in the *Carter* litigation to advocate for the right that was ultimately recognized in the Supreme Court of Canada.
- It also gave evidence before the Special Joint Committee on Physician-Assisted Dying.

2. Restore the Efficacy of Advance Directives

- Bill C-14 does not take up the Special Joint Committee's recommendation that the use of advance requests be permitted
- The *Charter* rights of those who suffer from dementia are not less deserving of protection just because their enduring and intolerable suffering results from an illness that also robs them of decision-making capacity.
- The government has provided two rationales for excluding advance directives, neither of which withstands scrutiny.
- The first is that advance directives "generally do not provide reliable evidence of a person's consent at the time that medical assistance in dying would be provided."[1]
    - Advance directives provide highly reliable evidence of a person's consent while the capacity to give consent is intact. Dementia ultimately destroys the capacity to give consent. To insist on such consent at the time of medical-assisted dying is to require the impossible.
    - Are there really individuals who decide that they would rather die than weather the storm of Alzheimer's, but then later change their mind because Alzheimer's isn't so bad after all?
    - Even if these people exist, why should their vulnerability trump that of the thousands of individuals whose wishes have not changed but whose illness robs them of the ability to confirm that fact? Why is the blanket ban that the Supreme Court of Canada rejected for sufferers of ALS acceptable for suffers of dementia?
    - Excluding advance directives will cause needless suffering for thousands of Canadians and will condemn us to protracted *Charter* litigation simply to define the perimeter of *Carter*'s "cruel choice."
- The second rationale offered by the government is that disallowing advance directives "guards against the effects of inaccurate assumptions about the quality and value of life in certain circumstances."[2]

[1] Government of Canada, *Legislative Background: Medical Assistance In Dying (Bill C-14)* at page 20.
[2] Government of Canada, *Legislative Background: Medical Assistance In Dying (Bill C-14)* at page 21.

- But the reality, for example, of late-stage Alzheimer's Disease is not a matter of assumption.
- If a competent individual makes an informed decision that at a certain stage of decline, the quality and value of life will have degraded to a point where medical-assisted dying is desired, why isn't that decision entitled to respect?
- Who is the state to discard that decision as reflecting "inaccurate assumptions"?

- The Alliance urges the Committee to restore the efficacy of advance directives in relation to medical-assisted dying.

3. Remove the Requirement that Death Be Reasonably Foreseeable

- Bill C-14 rations the availability of medical-assisted dying upon an individual's natural death being "reasonably foreseeable".
- Nowhere is this requirement visible in *Carter*, and to the contrary Kay Carter suffered from the non-life-limiting, non-terminal disease of spinal stenosis.
- The government suggests that to permit medical-assisted dying for those not approaching natural death could undermine suicide prevention initiatives,[3] could normalize death as a solution to many forms of suffering,[4] or could de-prioritize respect for human life and equality of all people regardless of illness, disability, or age.[5]
- But these objectives are already served by other elements of the *Carter* test – including the need for a grievous and irremediable medical condition, the need for enduring and intolerable physical or psychological suffering, the requirement that the suffering be incapable of relief, the need for a medical or nurse practitioner opinion, and the 15-day waiting period.
- The controversy over whether Ms. Carter could have won in *Carter* but be ineligible under Bill C-14 illustrates the problem with this provision.
  - Canadian criminal law adheres to the principle of certainty: prohibited conduct must be fixed and knowable in advance.[6]
  - It offends this principle for conduct to be criminalized (or not) based on a "case-by-case" application of ambiguous concepts such as "reasonably foreseeable" and "not too remote".[7]
  - Canadians who experience intolerable suffering, and physicians who wish to assist, should not have to guess about the criminality of their actions based on *ex post facto* application of concepts with no settled meaning.
- The Alliance urges the Committee to remove the requirement that natural death be reasonably foreseeable.

[3] Government of Canada, *Legislative Background: Medical Assistance In Dying (Bill C-14)* at pages 6, 20.
[4] Government of Canada, *Legislative Background: Medical Assistance In Dying (Bill C-14)* at pages 6, 20.
[5] Government of Canada, *Legislative Background: Medical Assistance In Dying (Bill C-14)* at page 20.
[6] See, for example, *R. v. Levkovic*, 2013 SCC 25 at para. 33.
[7] Government of Canada, *Legislative Background: Medical Assistance In Dying (Bill C-14)* at page 10.

4. Independent Recommendations on Mature Minors and Mental Illness Should Be Required

- At the moment, the preamble to Bill C-14 make a non-binding pledge to "explore" these "other situations".
- These topics are too important to be left to such an uncertain process.
- The Act should mandate that a panel of independent experts make recommendations on these two subjects on a defined and limited deadline.

5. Two Legislative Drafting Choices in Bill C-14 Should Be Amended

- Bill C-14 confusingly uses "they" to refer to individual subjects – *e.g.*, subsection 227(1): "No medical practitioner … commits culpable homicide if they provide a person with medical assistance in dying …"
  - This use of the "singular they", aside from being jarring to the eye and ear, fails to harmonize with the bulk of the *Criminal Code*.
  - The *Criminal Code* generally achieves gender-neutrality not by using the "singular they" but rather by using such phrases as "that person",[8] or "the person",[9] or "he or she",[10] or "his or her".[11]
  - Alternatively, provisions can be re-worded to avoid the problem altogether – *e.g.*, "No medical practitioner … commits culpable homicide who provides a person with medical assistance in dying …"
- Bill C-14 also uses em dashes in several sections (see, for example, sections 241.1 and 241.2).
  - These make for complicated and lengthy clauses that need to be read multiple times just to be understood.
  - They also inappropriately demote as parenthetic asides language that plays an important role in Bill C-14.
  - Clarity and ease of reference would be enhanced by the use of lettered subparagraphs.

6. Closing

- Thank you for the opportunity to participate in the important work of this Committee.

[8] See, for example, sections 13 and 290(2) of the *Criminal Code*.
[9] See, for example, sections 16(1), 117.14(3), 150.1(3), 366(5), and 394(3) of the *Criminal Code*.
[10] See, for example, section 188.2 of the *Criminal Code*.
[11] See, for example, section 626(2) of the *Criminal Code*.