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Submission to
The Standing Committee on Justice and Human Rights
Hearings on Bill C-14

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by

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1. PHYSICIAN-ASSISTED DYING AS AN EXEMPTION FROM CULPABILITY UNDER THE CANADIAN *CRIMINAL CODE*

1.1 Let me begin by putting on the record I believe physician-assisted suicide and euthanasia (so-called "physician-assisted dying/death" - PAD) are morally wrong, and that even if they were not their risks and harms to individuals, institutions (especially law and medicine), and society far outweigh any possible benefits.

1.2 That said, if, as now seems inevitable, PAD is to be legalized in Canada in certain circumstances on certain conditions, I agree with the general approach taken in Bill C-14 of legislating PAD as an "exemption" from, that is an exception to prosecution for, the *Criminal Code* offences of culpable homicide and assisted suicide. However, for several very important reasons, which I explain below, this exemption must be very limited and strictly controlled.

1.3 Treating PAD as an exception will help to ensure, as is essential, that PAD is not normalized or become part of the norm for how Canadians die. That requires, first, that PAD can only to be employed in exceptional circumstances. As counsel for the plaintiffs in *Carter*, Joseph Arvay, stated to the Supreme Court in his oral argument: "Assisted dying should only be allowed in the most serious cases, and not just because somebody wants to." (114:36 in the webcast.)

1.4 For the same reason of preventing PAD becoming part of the norm for how we die, PAD must be rarely used (as both the trial court judge in *Carter* and the Supreme Court of Canada envisaged would be the case) and only as a last resort for those who clearly qualify for it. If, as has occurred in both the Netherlands and Belgium, PAD were to become part of the norm and, as in those countries, the same 3.5 percent of total deaths were deaths by euthanasia, Canada would have over 9000 such deaths each year. Dr. Ellen Wiebe, the first doctor to kill a patient in Canada pursuant to judicial authorization, told a webinar of around 300 pharmacists that she believed that deaths from euthanasia and assisted suicide in B.C. would match the Netherlands rate. Taking the annual number of deaths in BC that would mean around 1,212 deaths annually – about three per day - just in that province.

1.5 Recognizing PAD as an exception, as Bill C-14 does, also helps to establish that access to it is not a right - but rather, under certain conditions, an immunity from prosecution for a criminal offence - which carries an important anti-suicide public health message.

As well, this immunity characterization of the legal nature of claims to access PAD and its provision, will assist in protecting the freedom of conscience *Charter* rights of healthcare professionals, who refuse involvement in PAD for reasons of conscience or religion.

2. GOALS OF BILL C-14

2.1 While in allowing PAD, Bill C-14 unavoidably damages the value of respect for life and puts vulnerable Canadians at risk, its goals include, as its Preamble recognizes, maintaining respect for human life at both individual and societal levels, and the protection of vulnerable people. Achieving those goals demands that we make another goal explicit in the Preamble: ensuring PAD does not from become part of the norm for how we die. Preventing that is a necessary safeguard for both individuals and society.

So how can we best achieve these three goals?

2.2 First, it is worth noting that these goals are intimately intertwined and connected. Promoting one will promote the others. Likewise, acting so as to detract from achieving one will detract from achieving the others.

2.3 The conditions that you legislate for qualification for PAD will be critical in determining whether we can achieve these goals and in deciding on those conditions you must keep that in mind. I leave it to others to discuss in detail what those conditions should be, but they must underline that PAD is an exceptional intervention allowed only in very limited circumstances. They should include that PAD is limited to adults who are competent at the time of death, terminally ill from a physical disease or disability, in unbearable suffering and who give their informed consent to PAD. It merits recalling that ethically and legally valid informed consent requires that the consent be unambiguous and that, in relation to PAD, all persons whose requests for PAD are granted must be offered and have access to fully adequate palliative care.

3. JUDICIAL AUTHORIZATION

3.1 In the short space I have left, I want to focus on just one condition that I propose is essential to achieving the goals I have identified, but is not yet in Bill C-14. For both practical and symbolic reasons, a Superior Court judge should be required to review and approve each request for PAD that has been approved prior to its being implemented. (Remote area cases can be accommodated via Skype.)

3.2 Judicial involvement underlines the seriousness of the decision to use PAD; will assist in doing the least damage to the foundational value of respect for human life in society in general; will provide better protection both against abuse of PAD and of vulnerable people, than is in the present draft; and will help to ensure that PAD is rarely used and only where all necessary conditions are complied with.

3.3 Superior Court judges should be mandated to certify that all legal requirements for access to PAD (physician-assisted suicide or euthanasia) have been fulfilled. This safeguard requirement has a history of judicial recognition and use in the precise context of authorizing PAD. Chief Justice McLachlan imposed it in her dissent in *Rodriguez,* as did the trial court judge in Carter during the period of her judgment's suspension, and, likewise, the five Judges of the Supreme Court in granting Parliament a four month extension to draft legislation in response to the *Carter* judgment for cases of PAD occurring in that interim period.

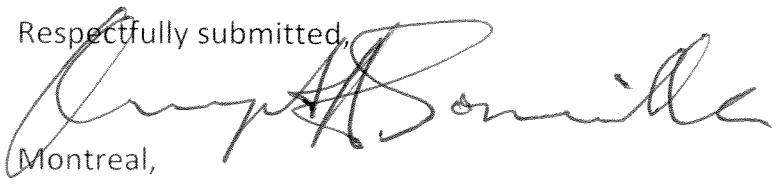
3.4 There is also a well-established precedent for legislating quasi-judicial or judicial review of physician decision making in another healthcare context. Provincial mental health legislation often requires such involvement in the involuntary commitment of a person to a psychiatric hospital. Surely inflicting death is at least as momentous a decision, and the potential for abuse of the power to inflict death, especially on vulnerable people, is just as serious a concern, as restricting a person's liberty through involuntary commitment.

4. CONCLUSION

4.1 I urge you to recognise the full weight and seriousness of the decisions you must make about Bill C-14 and to the largest extent possible decide in a way that does the least damage to the value of respect for life; prevents abuse; maintains as fully as possible in the circumstances the protection of vulnerable people; and prevents PAD becoming the norm for how we die.

4.2 What you decide about Bill C-14 will be a major component in determining what the shared foundational values of Canadian society will be, not just in the present but also in the long-term future. You face a momentous decision and have an enormous responsibility to decide ethically, prudently and wisely.

Respectfully submitted,



Montreal,
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