

May 2, 2016

Dying With Dignity Canada Disability Advisory Council's Submission to the Standing Committee on Justice and Human Rights — Brief on Recommended Amendments to Bill C-14

We are members of Dying With Dignity Canada's (DWDC) Disability Advisory Council. DWDC is the leading national organization committed to improving quality of dying, expanding end-of-life choices and helping Canadians avoid unwanted suffering. Our Council provides advice on DWDC's mandate from the perspective of the disability community. Together, we represent the 85 per cent of Canadians who support the Supreme Court's 2015 decision in *Carter v. Canada*.

We are pleased that the federal government has chosen to formally legalize medical assistance in dying. However, the proposed legislation is discriminatory and does not comply with the Supreme Court's decision. We urge the Standing Committee on Justice and Human Rights to amend problematic aspects of Bill C-14 to ensure the legislation does not exclude or discriminate against individuals on the basis of their medical diagnoses. We also urge the Committee to make changes that will bring the legislation in line with the Supreme Court's ruling and the *Canadian Charter of Rights and Freedoms*.

Section/Line	Proposed Remedy	Explanation
241.2, Line 2a	Replace with "They have a serious illness, disease or disability that is irremediable or for which there is no treatment that is acceptable to the person."	Under Bill C-14, only individuals with "incurable" conditions are eligible for assisted dying. This discriminates against suffering Canadians who do not wish to undergo treatments that are unacceptable to them. To fall in line with the <i>Carter</i> decision, which qualified "irremediable" as "not acceptable to the individual," Bill C-14 must be amended to qualify the definition of "incurable."
241.2, Line 2b	Remove entirely from definition of a "grievous and irremediable" condition	This criterion discriminates against whole classes of suffering Canadians. Under Bill C-14, only those individuals who are in an "advanced state of irreversible decline in capability" will be eligible for assisted dying. This excludes Canadians with certain types of chronic, degenerative illnesses from rightful access to assistance in dying. As a result, some people with a grievous and irremediable medical condition, such as multiple sclerosis or ALS, will have to endure years of severe, unwanted suffering because they have not yet reached the end stages of their illness, disease or disability. This violates those individuals' <i>Charter</i> rights. Along with the prohibition on advance requests for assisted dying, this policy excludes and

		discriminates against Canadians with dementia or other chronic degenerative conditions like Huntington's disease, because those individuals will have lost competency once they reach an "advanced state of irreversible decline."
241.2, Line 2d	Remove entirely from definition of a "grievous and irremediable" condition	The <i>Carter</i> decision did not limit eligibility to individuals who are terminally ill, so the new legislation has no precedent for the requirement that a patient's "natural death has become reasonably foreseeable." This restriction is impermissibly vague and is likely to be interpreted as forbidding access to all but the terminally ill. This will force years of severe, unwanted suffering upon Canadians — like the late Kay Carter — who are already suffering intolerably from a grievous and irremediable condition, but who are not terminally ill.
241.2	Amend Section 241.2 of <i>the Criminal Code</i> to allow individuals with a diagnosis for a medical condition that is or could be become grievous and irremediable to make advance requests for assisted dying.	Bill C-14 must be amended immediately to include advance requests. Prohibiting advance consent discriminates against Canadians — including members of this Council — diagnosed with dementia or other degenerative conditions that rob patients of capacity and who would otherwise be eligible for assistance in dying.
241.3, Line 3h	Include "If the person is still capable."	Bill C-14 requires a patient to give "express consent to receive medical assistance in dying" immediately before the assisted death takes place. This discriminates against people who have lost competency but continue to suffer. It violates the rights of individuals who have clearly expressed an unequivocal, enduring wish for relief from their suffering, but have since lost capacity.
N/A	Include a statutory mandate requiring the government to work with the provinces and territories and their medical regulatory bodies to ensure that medical practitioners who oppose assisted dying are required to provide an effective referral for patients who request it.	Patients who are suffering intolerably are weak and vulnerable. The responsibility for finding a willing provider should not be left to them. Such a situation is tantamount to patient abandonment. No physician or nurse practitioner will be required to provide assistance in dying, but any person choosing to practice medicine has obligations to their patients. A medical practitioner's right to conscience must be balanced with the patient's right to access assistance in dying.