Ontario Nurses' Association

Submission to the Standing Committee on Justice and Human Rights

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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Ontario Nurses' Association

85 Grenville Street, Suite 400

Toronto, ON M5S 3A2

Phone: (416) 964-8833

Fax: (416) 964-8864

Website: www.ona.org

The Ontario Nurses' Association (ONA) is the union for registered nurses and allied health professionals in Ontario and has represented members in the health sector since 1973. ONA currently represents 60,000 front-line registered nurses, nurse practitioners, registered practical nurses and allied health professionals and more than 14,000 nursing student affiliates. ONA represents its members working in palliative care teams in community hospitals and long-term care facilities across Ontario.

Bill C-14 will have significant impact on ONA's members. It contemplates that nurse practitioners may provide medically assisted dying and recognizes that other health practitioners, including registered nurses, may aid in providing medically assisted dying. ONA's concerns with Bill C-14 are summarized as follows:

1. Nurse practitioners can be held criminally liable for breaching any of a detailed set of procedural protections and filing requirements, which would be better dealt with in a regulatory context. Criminal liability at this level of procedural detail will act as a major disincentive for nurse practitioners to participate in medically assisted dying.

2. The standard requiring the person's natural death to be "reasonably foreseeable" is unclear and not sufficiently understandable to provide a workable standard for nurse practitioners, who will be expected to reach an opinion regarding a person's eligibility for medical assistance in dying.

3. It should be clarified specifically that registered nurses are protected from criminal liability when they provide assistance to patients in advance of or during medically assisted dying. This includes nurses assisting with the administration of medication and providing information to patients.

1. Criminal Liability

While ONA supports the need for detailed and specific procedural guidance with respect to medically assisted dying, these should not be at the risk of criminal liability. It is highly unusual for criminal liability to attach to detailed procedural requirements, standards and regulations in any context. Moreover, other jurisdictions with legislation for medically assisted dying do not typically have detailed and exacting procedural requirements for health care professionals, at the risk of criminal liability.

In ONA's submission, exposing nurse practitioners to criminal liability in relation to highly detailed procedural safeguards, as set out in the Bill, is not only inappropriate but will act as a serious disincentive to participation. Nurse practitioners in these situations are stepping forward to assist patients who are experiencing intolerable suffering. They should not face the choice between exercising compassion for their patients and protecting themselves from criminal liability, particularly in relation to requirements that typically would be considered regulatory.

The Bill specifies detailed procedural safeguards, which, if knowingly breached, may result in criminal liability (s. 241.3). In addition, a nurse practitioner may be criminally liable for knowingly failing to comply with regulations governing the filing of information (s. 241.31). While evidence may not support that a nurse practitioner has acted "knowingly" under the Bill,

nonetheless, nurse practitioners may be exposed to criminal investigation and charges for failing to ensure, for example, that a second witness who was present actually signed the request (s. 241.2(3)(c)) or for mis-counting the "15 clear days" between the request and the provision of medically assisted dying (s. 241.2(3)(g)), or for breaching any regulatory filing requirement (s. 241.31(3)).

Section 241.2(7) of the Bill raises similar concerns, in that it asserts that medical assistance in dying must be provided with reasonable knowledge, care and skill and in accordance with any applicable provincial laws, rules or standards. Again, ONA fully supports the provision of medical assistance in dying in accordance with provincial laws, rules and standards, but submits that these will be fully covered by provincial requirements. As the subsection is currently worded, it does not specify which rules or standards are covered, giving an exceedingly broad and unspecified reach to the potential criminal liability for practitioners.

The practical consequence of nurse practitioners being exposed to criminal investigation and charges for such detailed procedural requirements is that they will be reluctant to participate in medically assisted dying. The Special Joint Committee recommended that nurse practitioners be authorized to provide medically assisted dying in order to ensure access to this procedure, including in remote regions. In ONA's view, the onerous and complex approach in Bill C-14 will undermine this objective.

In ONA's submission:

- Bill C-14 should be revised to remove the procedural safeguards set out in s. 241.2(3). ONA agrees that informed consent is critical and would not oppose a provision simply requiring the medical or nurse practitioner to ensure the person had provided informed consent. Otherwise, the procedural safeguards are appropriately left to the provinces, including provincial regulatory Colleges. ONA expects that the provinces will enact legislation and provincial regulatory Colleges will establish standards for participation in medically assisted dying. Breach of these standards could constitute professional misconduct, with its associated penalties. Provincial laws and regulatory standards are the appropriate mechanism to address these detailed procedural requirements.

- ONA supports the federal collection of information regarding medically assisted dying but the federal government should not require practitioners to provide it at the expense of criminal prosecution. The offences related to filing requirements (s. 241.31(4) and (5)) should be removed.

- Subsection 241.2(7) should be removed. Healthcare practitioners are required by s. 216 of the *Criminal Code* to use reasonable knowledge, care and skill in providing medically assisted dying. Subsection 241.2(7) is unnecessary; its only addition would be to extend criminal liability to undefined provincial and regulatory standards, which in any event would be separately enforceable at the provincial and regulatory level.

2. Death Reasonably Foreseeable

In ONA's submission, the standard requiring the person's natural death to be "reasonably foreseeable" is too unclear for nurse practitioners to apply. It is critical to consider the Bill from the standpoint of those who provide medically assisted dying on the front lines. The Minister of Justice, in her remarks introducing the Bill in the House of Commons, stated that the Bill "does not require that people be dying from a fatal illness or disease or be terminally ill." The Minister of Justice claimed that Kay Carter would be eligible for medical assistance in dying under this definition. In the meantime, the Carter family, who had legal representation up to the Supreme Court of Canada, has publicly stated that their mother would not qualify for medically assisted dying under the Bill.[1] If experts on medically assisted dying cannot agree on the meaning of "reasonably foreseeable" death, nurse practitioners realistically will not be able to apply the definition. Again, the practical result may be that nurse practitioners will be reluctant to provide medically assisted death, except where they are sure the legal requirements are met. Nurse practitioners may only be sure the legal requirements are met when the person has a terminal illness, contrary to the intention in the *Carter* decision. ONA recommends that the eligibility test be revised to provide clear guidance to practitioners.

3. Protection for Registered Nurses

ONA is very concerned that the Bill does not provide clear protection from criminal liability to registered nurses with respect to roles they may be expected to perform in the context of medically assisted dying. Registered nurses provide 24-hour front-line bedside care to palliative care patients. It is expected that patients will ask nurses for information on their end-of-life options, including medically assisted dying. Under the current wording, ONA is concerned that s. 227(2) and s. 241(3) will not protect registered nurses from liability for providing this information. In addition, registered nurses typically are responsible for administering medication as ordered by a medical or nurse practitioner. Registered nurses may be asked to administer the medication causing death; a medical practitioner may not have the skill to do so. Under the current wording of the Bill, it is not clear whether registered nurses would be protected from liability for doing so. ONA recommends that the Bill be revised to clarify that registered nurses are permitted to assist by administering the medication. ONA recommends:

- That a subsection be added after s. 227(2) to read:

  > For the purpose of subsection (2), aiding includes where a registered nurse (i) administers a substance to a person that causes their death if it is under the direction and in the presence of a medical practitioner or nurse practitioner; or (ii) provides information regarding medically assisted dying to a person.

- That a subsection be added after s. 241(3) to read:

  > For the purpose of subsection (3), aiding includes where a registered nurse provides information regarding medically assisted dying.

1 E.g.http://www.cbc.ca/news/politics/doctor-assisted-suicide-bill-carter-family-speaks-out-1.3546472