CATHOLIC CIVIL RIGHTS LEAGUE
LA LIGUE CATHOLIQUE DES DROITS DE L'HOMME

T 416.466.8244 2305 BLOOR STREET WEST
F 416.466.0091 TORONTO, ON M6S 1P1
T 1.844.722.CCRL CANADA
CCRL@CCRL.CA WWW.CCRL.CA

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The Standing Committee on Justice and Human Rights
JUST@parl.gc.ca

Basing itself on a highly controversial interpretation both of human autonomy and of Charter rights, *Carter* provided a defence to physicians willing to be involved in assisted suicide or euthanasia. It compromised, but did not erase, sections 241 a and b of the Criminal Code, which remain good law, and applicable to non-physicians. Bill C-14 re-writes s. 241 b so as to open the door, not only to physicians, but to nurse practitioners and "others" (lawyers, pharmacists, social workers, according to the bill's accompanying explanatory note) to commit acts once considered engagement in culpable homicide.

Canadians should not be confused by the purported limitations expressed in the current bill, as opposed to the wide ranging recommendations of the Parliamentary Joint Committee report issued in February. We are crossing into largely predictable territory, as seen in other jurisdictions where assisted suicide has been enacted, and which have caused jurists in other jurisdictions to come to the opposite conclusion expressed by our Supreme Court.

We are embarking on a loosening of what was understood until last year to be criminal activity. In fact, in a lengthy essay recently published by *Toronto Life*, right to die activist, John Hofsess, admitted to assisting eight people with their deaths between 1999 and 2001, prior to taking his own life this past March. Hofsess was no doctor or nurse practitioner. He was a journalist, who adopted methods propounded by Jack Kevorkian.

If charges were never brought against Mr. Hofsess prior to the passage of the proposed bill, is it likely that the system will engage in any investigation of a doctor, nurse practitioner, or third party who may engage in imperfect compliance with future assisted deaths?

We stand with those many physicians, healthcare workers, and concerned citizens who oppose these changes.

Safeguards Are Illusory

The CCRL has consistently warned that the pursuit of safeguards for vulnerable people have been ignored over time in other mature western jurisdictions when it comes to assisted suicide. In fact, Madam Justice Smith, the trial judge in *Carter*, whose reasoning was adopted by the Supreme Court, addressed such concerns by suggesting that Canada could enact appropriate safeguards to avoid unacceptable outcomes. A more recent decision of the High Court of Ireland came to the opposite conclusion:

> The Canadian court reviewed the available evidence from other jurisdictions with liberalised legislation and concluded that there was no evidence of abuse. This Court also reviewed the same evidence and *has drawn exactly the opposite conclusions* (emphasis added).[1]

That Irish court's review, upheld on appeal, based on the available evidence from the medical literature and reported findings, found serious examples of abuse, disturbing practices, and several cases of deaths without explicit request. The Court's concerns were based on risks of impropriety that remained "strikingly high" in countries which have legalized assisted suicide.

Ireland is not alone in this context. In 2014, a U.K. Supreme Court decision deferred to Parliament the issue of assisted suicide in *Nicklinson*. British MPs then voted in September, 2015 against adopting an assisted suicide bill, 330 to 118.

[1] *Fleming v. Ireland & Ors*, [2013] I.E.H.C. 2 (H.C.), summarizing paras. 88-105 of the judgment. Judgment of the High Court of Ireland, upheld unanimously on appeal to the Supreme Court of Ireland, *Fleming v. Ireland & Ors*, [2013] I.E.S.C. 19 (Ireland S.C.)

Bill C-14 Does Not Create a Complex Regulatory Process

The Supreme Court in *Carter* stated as follows:

> Parliament faces a difficult task in addressing this issue; it must weigh and balance the perspective of those who might be at risk in a permissive regime against that of those who seek assistance in dying. It follows that a high degree of deference is owed to Parliament's decision to impose an absolute prohibition on assisted death. On the other hand, the trial judge also found — and we agree — that the absolute prohibition could not be described as a "complex regulatory response" (para. 118). The degree of deference owed to Parliament, while high, is accordingly reduced. (para. 98)

Later, in response to objections about the risks of an assisted suicide regime, the Court stated:

> The trial judge, on the basis of her consideration of various regimes and how they operate, found that it is possible to establish a regime that addresses the risks associated with physician-assisted death. We agree with the trial judge that the risks associated with physician-assisted death can be limited through a carefully designed and monitored system of safeguards. (para. 117)

The Supreme Court proposes a wait and see approach on possible abuses:

> The trial judge, after an exhaustive review of the evidence, rejected the argument that adoption of a regulatory regime would initiate a descent down a slippery slope into homicide. We should not lightly assume that the regulatory regime will function defectively, nor should we assume that other criminal sanctions against the taking of lives will prove impotent against abuse. (para. 120)

Applications arising from "*Carter 2*" (the subsequent 5-4 decision of the Supreme Court allowing a judicial review procedure pending passage of any new law by Parliament) required that evidence be provided not merely from the applicant seeking death, but from the attending physician, a psychiatrist, and the physician willing to undertake the performance of the deed.

In the proposed bill, no psychiatrist is required. A wait period of 15 days is suggested. It is understood that the current wait time for a psychiatric consultation in most of Canada would typically be a minimum of three months. No stipulation is accorded for the subtle multi-disciplinary approach required of most mental health teams in our current system to assess an interim suicidal request from a demand for one's premature death if only one practitioner is required.

The proposed legislation suggests that third parties who may assist in causing death may be immune from prosecution, leaving the door open for any number of possible abuses: sections 241 (3) and (5).

It also remains a possible option for someone's power of attorney to sign the proposed request for death.

The bill contains no requirement that an applicant for medically assisted suicide be provided psychiatric consultation, a period of palliative care, or pain management consultation. A suicidal patient should be allowed access to a proper prognosis. A 15 day waiting period is unacceptable for a proper assessment of underlying factors, such as depression, for which modern medicine has ample methodologies for possible treatments.

The proposed standard to allow assisted suicide where "natural death has become reasonably foreseeable" could be applied to everyone. Moreover, the attending medical provider merely must provide an "opinion" to this effect, without the requirement of a "prognosis" or an assessment of the specific length of life one has remaining. This contradicts good medicine.

Access to physician assisted suicide in other jurisdictions is reported at approaching 4 to 5 per cent of all deaths, *for those cases that are reported*, which could approach 14,000 deaths each year if applied in Canada.

In sum, the bill lacks stringent oversight. The proposed legislation allows for assisted suicide when death is reasonably foreseeable, as opposed to when death may be "imminent". Moreover, it does not include a stringent reporting system or forbid falsification of death certificates (which ought always to stipulate the actual cause of death), thus inviting grave and widespread abuses.

It is our submission that a "complex regulatory response" as expected from the Supreme Court has not been proposed. The CCRL asserts that mistakes are destined to be made, or worse, intentional actions will be taken, leading to the deaths of innocent and vulnerable victims, without any likely prosecution.

Inadequate Protection of Conscience Rights of Healthcare Professionals

A provision in the preamble to Bill C-14 provides a reference to conscience rights of healthcare workers, but such protections need greater clarification from the federal level, with a secure process for enforcement, whether by a provision of the Criminal Code to oppose any infraction. Such protections should not be left merely to provincial mandates.

Health Minister Dr. Jane Philpott asserted that "no healthcare provider will be required to provide medical assistance in dying", yet without addressing issues of mandatory referrals, or institutional protections for religious institutions.

C-14 suggests that Canada is embarking on a sad course to change irrevocably the practice of medicine.

RECOMMENDATIONS

1. The CCRL continues to assert that the notwithstanding clause of the *Charter of Rights and Freedoms* should be employed to provide time for a full debate about *Carter* and its implications.

2. The CCRL submits that legislators should reject the redefinition of medicine implied by *Carter* and entailed in Bill C-14. The should instead support medicine as historically understood by making substantial funding commitments to the universally accepted areas of palliative care and pain management, which remains at unacceptably low levels of availability.

3. Rights and freedoms of medical practitioners, medical institutions, and the many citizens who desire traditional (Hippocratic) medical care must not be obviated in any fashion, including loss or diminishment of funding. Islands of refuge for religious hospitals and hospice care facilities must be established as a matter of law, and no prejudice should be suffered. Provincial transfers under the *Canada Health Act* should accommodate such institutions, as a matter of best practice.

About the CCRL

Catholic Civil Rights League (CCRL) (www.ccrl.ca) assists in creating conditions within which Catholic teachings can be better understood, cooperates with other organizations in defending civil rights in Canada, and opposes defamation and discrimination against Catholics on the basis of their beliefs. The CCRL was founded in 1985 as an independent lay organization with a large nationwide membership base. The CCRL is a Canadian non-profit organization entirely supported by the generosity of its members.

For further information:
Christian Domenic Elia, PhD
CCRL Executive Director
celia@ccrl.ca
416-466-8244
@CCRLtweets