Dying With Dignity Canada
It's your life. It's your choice.

May 2, 2016

Dying With Dignity Canada's Submission to the House Standing Committee on Justice and Human Rights — Brief on Bill C-14

1. Who we are

Dying With Dignity Canada is the national organization committed to improving quality of dying, expanding end-of-life choices and helping Canadians avoid unwanted suffering. We represent the 85 per cent of Canadians who support the Supreme Court's 2015 decision in *Carter v. Canada.*

2. Substantial revisions to Bill C-14 are required

While we are pleased the federal government has tabled new legislation on end-of-life choice, we are alarmed that a number of core recommendations of Parliament's Special Joint Committee on Physician-Assisted Dying are not reflected in Bill C-14. The proposed legislation is unnecessarily restrictive and is not in compliance with the Supreme Court's decision in *Carter*. This brief identifies key problems with Bill C-14 and suggests amendments that must be made in order to bring the legislation in line with the Supreme Court's ruling as well as the *Charter*.

3. Bill C-14's definition of "grievous and irremediable" is unfairly restrictive

a. In *Carter*, the Court qualifies "irremediable," noting that this criterion "does not require the patient to undertake treatments that are not acceptable to the individual." In contrast, Bill C-14 makes no such qualification and instead requires that the patient's condition be "incurable." This will exclude people with serious medical conditions who do not wish to undergo further treatment.

Proposed remedy: Replace the current wording of Section 241.2, Line 2a with the following: "They have a serious illness, disease or disability that is irremediable or for which there is no treatment that is acceptable to the person."

b. Only individuals in an "advanced state of irreversible decline in capability" are eligible for assistance in dying under Bill C-14. This will force years of severe, unwanted suffering upon people who have a grievous and irremediable medical condition, such as multiple sclerosis or ALS, but who have not reached the end stages of their medical condition. As a result, Bill C-14 risks violating these individuals' *Charter* right to life, liberty and security of the person.

This rule, along with the prohibition on advance requests for assisted dying, is discriminatory. It effectively denies access to assisted dying for Canadians with dementia or other degenerative conditions like Huntington's disease, who will not be competent when they reach an "advanced state of irreversible decline."

Proposed remedy: Remove Section 241.2, Line 2b from the proposed definition of "a grievous and irremediable condition."

c. Under Bill C-14, only individuals whose "natural death has become reasonably foreseeable" will have access to assisted dying. This implies that a person's prognosis must be terminal for the patient to qualify for an assisted death. This condition is not reflected in *Carter* and will force years of severe, unwanted suffering upon Canadians who find themselves in a similar position to the late Kay Carter, who suffered intolerably from spinal stenosis — a grievous and irremediable chronic medical condition — but who was not dying. Secondly, this criterion is unacceptably vague. As a result, most healthcare providers will refuse to authorize an assisted death unless the patient is imminently dying.

Proposed remedy: Remove Section 241.2, Line 2d from the proposed definition of a "grievous and irremediable condition."

4. Amend discriminatory safeguards

Section 241.2, Line 3h mandates that individuals must give "express consent to receive medical assistance in dying" immediately before the assisted death takes place. This represents an unfair barrier for individuals who have already requested and received approval for an assisted death, but who are not competent at the time it is supposed to be carried out. Take, for example, an individual with terminal cancer who meets all the criteria for assisted dying, but who unexpectedly suffers a stroke a day before her scheduled assisted death, leaving her incapacitated but still alive. She will now be denied access to assistance in dying, despite her unequivocal, enduring wish for relief from her suffering.

Proposed remedy: Amend 241.2, Line 3h to include "If the person is still capable."

5. Include advance consent for assisted dying

Prohibiting advance consent for assisted dying discriminates against Canadians diagnosed with dementia or other degenerative conditions that rob victims of competency. For example, a person with a recent Alzheimer's diagnosis would almost certainly not be able to access assisted dying under the rules outlined in Bill C-14. By the time her suffering becomes intolerable and she is in an "advanced state of irreversible decline," she will have long since lost capacity and will be ineligible for assistance.

Proposed remedy: Bill C-14 must be amended immediately to allow for advance requests for assisted dying. If this is not considered a viable amendment because more time is needed, the bill must include a statutory mandate requiring an independent expert study of the issue, with a prescribed deadline of 18 months to report back to Parliament with recommendations for possible amendments to the *Criminal Code*. The same remedy may also be applied for the inclusion of mental illness as the sole qualifying condition and for provisions for mature minors.

6. Clearly outline that medical assistance in dying should be treated as a private healthcare matter

Bill C-14 must respect the autonomy of patients and allow patients to be the sole decision-makers when determining whether assisted dying is the appropriate medical option for their particular circumstances. After consulting with their healthcare providers, patients must have the final say over whether they will receive an assisted death. Bill C-14 should make it clear that patients do not need to go to court or undergo a prior tribunal review in order to access assistance in dying.