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May 2, 2016

To the Standing Committee on Justice and Human Rights,

CFIC is concerned that the proposed s. 241.2(2)(d) of the Criminal Code of Canada in Bill C-14 fails to respect religiously neutral values embodied in the Canadian Charter of Rights and Freedoms which the Supreme Court applied in Carter v Canada. It violates the right of individuals who experience irremediable and intolerable suffering from non-terminal medical conditions to request medical assistance in dying. There is no justification to distinguish individuals with unbearable non-terminal conditions from individuals with terminal conditions. This provision imposes an unacceptable religiously-based "duty to live" on these individuals.

The Charter should be the foundation of the proposed legislation. Canadians want health care based on the best clinical and scientific information which responds to the health care needs and rights of individuals.

Additionally, the vagueness of the phrase "reasonably foreseeable" in s. 241.2(2)(d) discourages medical practitioners from rendering assistance to individuals who experience unbearable suffering from terminal conditions and thus violates their rights. Medical practitioners may be unsure of whether the criterion of a "reasonably foreseeable natural death" is met. Although s. 241.2 (2)(d) does not specify what "prognosis" of the "time remaining" meets the criterion of reasonable foreseeability, the lack of specificity may lead practitioners to fear legal risks. The phrase "reasonably foreseeable" usually refers to what a person should know about the likely consequences of an act or omission, not to the length of an unspecified period of time.

Any proposed legislation must respect *Carter,* which holds that competent adult persons who (1) clearly consent to the termination of life and (2) have a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition have a s. 7 Charter-protected right to medical assistance in dying. The court did *not* restrict this class to those with a terminal diagnosis.

Bill C-14 fails to respect Carter by restricting the availability of medically assisted dying to those persons in the class whose "natural death has become reasonably foreseeable." This renders those who have a non-terminal medical condition which nevertheless is irremediable and incurable and which causes them intolerable enduring

suffering ineligible for medical assistance in dying. An example of such a condition is spinal stenosis, which afflicted Kay Carter, the mother of one of the plaintiffs in the Carter case.

The exclusion of people with non-terminal but unbearable medical conditions gives those who are developing such conditions a Hobson's choice: either take their own lives while they are able or condemn themselves to unendurable pain for an unforeseeable length of time.

We assert that Bill C-14 fails to provide adequate measures to assure Canadians have appropriate access to appropriate services in their communities. Canadians should not face unreasonable barriers services through failures of provincial health authorities or local primary health care institutions to fully engage in their responsibilities. Bill C- 14 should advance measures which direct provincial health authorities to provide services throughout their primary health systems and primary health care institutions must be informed that religious beliefs or perspectives, while respected as individual rights, do not have standing in the provision of clinical services.

Parliament may impose reasonable limits on this right for the purpose of protecting individuals from abuse, such as external pressure, and error, such as an inaccurate assessment of competence, to request medically assisted dying. Carter upheld the findings of a trial judge, made upon an extensive evidentiary record, that is possible to enact a permissive regime with adequate safeguards to protect vulnerable people from abuse and error and that physicians can assess vulnerability on an individual basis, using the procedures that they generally apply to informed consent and decisional capacity.

There is no evidence that sub-classes of individuals are at greater risk of abuse than those who have a terminal medical condition. Thus, there is no rational evidence that their exclusion fulfills the reasonable legislative purpose of protecting the vulnerable.

The exclusion of people with non-terminal but unbearable medical conditions effectively imposes a "duty to live" on them, a duty that Carter rejected. The exclusion of people with non-terminal but unbearable medical conditions, and of mature minors who also enjoy decisional rights as adults, from the regime is *not* a minimal impairment of their constitutional rights.

CFIC supports the human rights affirmations in the submission commentaries of Dying With Dignity Canada and BC Humanist Association.

Respectfully,

Eric Adriaans

National Executive Director