BRITISH COLUMBIA HUMANIST ASSOCIATION
400 – 3381 Cambie Street
Vancouver, BC V5Z 4R3

bchumanist.ca
info@bchumanist.ca

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Allow assisted dying for all who choose it

A brief for the Special Joint Committee on Physician-Assisted Dying

The British Columbia Humanist Association supports the right of any individual who has made a clear decision, free from coercion, to choose a physician-assisted death. We urge Parliament to work together with the provinces to create a legal and regulatory framework that grants the right to a physician-assisted death to all Canadians who freely choose it.

Support for choice in dying

The overwhelming majority of Canadians support physician-assisted dying. This has been found by research groups including Ipsos Reid[1], Forum Research[2] and Insights West[3]. That support is nearly universal (over 95%) among Canada's non-religious community, who we represent, according to the 2014 survey by Ipsos Reid.

Fewer and fewer Canadians identify with traditional religions. According to the 2011 National Household Survey, 24% of Canadians and 44% of people in British Columbia are not religious[4]. This is an increase from 17% and 36% in 2001[5]. Our own research suggests the question asked by Statistics Canada exaggerates the number of religious respondents. A survey we commissioned from Justason Market Intelligence in 2013 found that 64% of British Columbians do not practice a religion or faith[6].

This growing non-religious constituency does not hold the same views on the sanctity of life and morality around dying as traditional religions. They strongly support an individual's free choice to live and die as they choose, so long as it doesn't harm or infringe upon others. As more Canadians leave

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[1] Dying With Dignity Canada. (2014) *Dying with Dignity Public Perception Survey* [Data Set]. Ipsos Reid [Producer] Retrieved from: https://d3n8a8pro7vhmx.cloudfront.net/dwdcanada/pages/47/attachments/original/1435159000/DWD_IpsosReid2014.pdf?1435159000

[2] Forum Research Inc. (2015) *Support for assisted suicide increases across four years* [Data Set]. Retrieved from: http://poll.forumresearch.com/post/1365/opposition-down-sharply/

[3] Insights West. (2015) *Survey on Physician-Assisted Suicide in Canada* [Data Set]. Retrieved from: http://www.insightswest.com/wp-content/uploads/2015/12/AssistedSuicide_CAN_Tables.pdf

[4] Statistics Canada. (2011) *2011 National Household Survey* [Data Set].

[5] Statistics Canada. (2001) *Census of Population* [Data Set].

[6] BC Humanist Association (2013) *2013 BC Religious and Secular Attitudes Poll* [Data Set]. Justason Market Intelligence [Producer]. Retrieved from: http://www.bchumanist.ca/2013_bc_religious_and_secular_attitudes_poll

traditional religious identities behind, they are increasingly demanding greater liberty to choose how and when they die.

While a number of religious organizations who are dogmatically opposed to physician-assisted dying have spoken out on these issues[7], these Bishops, Ministers and clergy are offside, not just of Canadians in general, but of the men and women in the pews of their own churches. According to the Ipsos Reid survey, 80% of Christians and 83% of Catholics support assisted dying. Religious Canadians overwhelmingly reject the arguments of their supposed moral leaders and agree that Canadians should have the right to choose an assisted death.

Minimal eligibility criteria

We support legislation to give all Canadians the right to freely choose a physician-assisted death. We do not believe there is a strong moral case to limit access just to those who 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," as in the Supreme Court of Canada's decision in *Carter v Canada 2015*[8]. We agree with Professor Jocelyn Downie[9] and Hadi Karsoho[10] who have characterized the *Carter* decision as "a floor and not a ceiling" and we encourage Parliament to use this opportunity to craft legislation that makes Canada a world-leader in end of life options.

Anyone mature enough, regardless of age, to give an informed and voluntary consent should be free to choose a physician-assisted death. It is the right of a competent individual to determine whether they are ready to end their life.

Provide options for physician-assisted deaths

We believe that all reasonable options for physician-assisted deaths (injection or oral by physician or oral by prescription) should be available to Canadians. There is no moral difference between a physician or pharmacist prescribing a pill for a patient to end their own life and the physician administering a life-ending treatment. There is a difference for some, however, in the ability to self-administer medications, so restrictions on the methods available to hasten death will unjustly discriminate against some patients.

Wherever feasible, individuals should be able to choose the location to end their life, for example, in the home, a hospital, or hospice.

Reasonable safeguards

Safeguards to ensure that decisions are free, voluntary, and informed will be essential to any regulatory regime but they must not make access unjustly difficulty. Claims that legalizing physician-assisted dying

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[7] Canadian Conference of Catholic Bishops and Evangelical Fellowship of Canada. (2015) *Declaration on Euthanasia and Suicide*. Online: http://www.euthanasiadeclaration.ca/declaration/

[8] Carter *v* Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331

[9] External Panel on Options for a Legislative Response to *Carter v Canada. Consultations on Physician-Assisted Dying – Summary of Results and Key Findings.* Chapter 7. (2015) http://canada2.justice.gc.ca/eng/rp-pr/other-autre/pad-amm/p6.html

[10] Karsoho, Hadi. "The Supreme Court of Canada Ruling in Carter v. Canada: A New Era of End-of-Life Care for Canadians." *BioéthiqueOnline.* (2015) http://bioethiqueonline.ca/4/4

will lead to a "slippery slope" where vulnerable people will be taken advantage of are refuted by the best available evidence. A thorough review of evidence from Oregon and The Netherlands concludes: "There is no current evidence for the claim that legalised [physician-assisted dying] or euthanasia will have disproportionate impact on patients in vulnerable groups."[11]

In order to receive an assisted death, an individual must be competent and make a free, voluntary and informed decision. Physicians regularly assess patients' competence to make life and death decisions. We rely on their expertise in assessing competence and determining when they need additional information to do so.

We support the "Supports and Procedures" set out in *A Proposed Framework for Physician-Assisted Dying* by Dying With Dignity Canada[12]. A second, independent physician should be required to provide written confirmation that the patient has made a free, voluntary, and informed decision and meets the criteria for access to physician-assisted dying. This will ensure that the patient is competent and is not being coerced into a decision that they would not otherwise make. A specialized capacity assessment may be sought by either physician if they have any uncertainty about the patient's capacity to provide informed consent. An individual whose request for a physician-assisted death is declined would have the right of timely appeal.

Physicians, who regularly judge a patient's competency, are sufficiently qualified to attest to whether a patient is making a free, voluntary, and informed decision. Additional psychological tests only serve to create further barriers to access and needlessly restrict patients' rights.

We also expect physicians to honour a patient's request for a physician-assisted death when that request is made freely and explicitly in advance, for example through an advance care directive (or similar living will).

We do not support mandatory waiting periods because they are necessarily arbitrary and do not reflect individual circumstances. The determination of whether the request for assistance is enduring should be part of the physician's assessment process. We believe physicians are best positioned to assess the need for waiting periods and should do so on a case-by-case basis.

We are strongly opposed to any requirement that a patient would have to consult with anyone besides their physician, particularly a pastor or religious leader. Choosing to end a life is a personal choice between a patient and their physician.

We do not support establishing independent panels to determine the legitimacy of an individual's request to have a physician-assisted death. Such requests should remain between a patient and their physician. Therapeutic Abortion Committees in the 1970s and 80s showed that such panels severely restrict access and create large discrepancies in availability between jurisdictions across Canada. We

[11] Battin MP, van der Heide A, Ganzini L, van der Wal G. Legal physician-assisted dying in Oregon and the Netherlands: evidence concerning the impact on patients in "vulnerable" groups. *Journal of Medical Ethics*. 2007;33(10):591-597. doi:10.1136/jme.2007.022335.

[12] Dying With Dignity Canada. *A Proposed Framework for Physician-Assisted Dying*. (2015) http://www.dyingwithdignity.ca/principles_for_legislation Accessed: Sep 9, 2015

have no reason to believe that physician-assisted dying committees would result in a more just provision of services.

Guaranteed access

The *Carter* decision is clear: Eligible Canadians have the right to a physician-assisted death. However, this will only be a hypothetical right unless it is enshrined in the publicly-funded Canadian healthcare system. Among other principles, the *Canada Health Act* is based on accessibility and universality. These principles ensure that everyone is able to access necessary treatments in Canada and should apply to end of life care. Otherwise we risk restricting the right to die with dignity and to end suffering to only those who can afford it.

Similarly, guarantees must also be provided to ensure access for people who cannot speak or write. Patients should be able to present their request for a physician-assisted death in writing or orally.

Health care institutions (including but not limited to hospitals, hospices, residential or long-term care facilities) that receive public funds should be required to allow physician assisted death within the institution. Institutions that refuse should see their funding withdrawn. This is not just a hypothetical concern. Since Quebec legalized physician-assisted dying, numerous hospices have proclaimed that they planned to refuse to provide the service. This institutional boycott threatens to create a larger discrepancy in service than already exists in the provision of abortions in Canada. Such a challenge to access must be pre-empted by ensuring Canadians have access to their rights under the *Carter* decision.

No conscientious objections

Similarly, because of the risk that access will be jeopardized, we do not support so-called "conscientious objection" clauses that permit physicians and pharmacists to opt-out of doing their jobs because of their personal beliefs. Medical professionals have a responsibility to respect their patients' autonomy and their dignity. Therefore the right of an individual to receive a physician-assisted death outweighs any personal, ethical or religious objections of a medical professional.

If allowances for conscientious objections are permitted, such allowances must be rare, unrelated to belief in a deity (or deities) or other supernatural entities, and applied in a manner that places first priority on the patient's wishes. Objections should not interfere with or obstruct a patient's right to a physician-assisted death. Physicians and pharmacists should be required to provide information about physician-assisted dying according to the established norms of informed consent law. Physicians who are not prepared to provide physician-assisted death and pharmacists who are not prepared to fill prescriptions for life-ending medication should be required to provide effective and timely referral. Patients in remote areas should be guaranteed equal access as those in major cities and should not be required to travel to obtain a physician-assisted death.

Collecting statistics

Data on requests for physician-assisted deaths and subsequent outcomes should be collected. Such data will be vital to ensure we know if access is equitable and to highlight other issues as they arise. Summary results from these data should be publicly released and data (stripped of personally identifiable information) should be available to independent researchers.

Concerns over the External Panel's impartiality

Finally, we wish to reiterate our concern that of the three members on the External Panel on Options for a Legislative Response to *Carter v Canada*, two were witnesses who testified against physician-assisted dying for the Government in the case. The online "Issue Book" released by the panel was particularly problematic as it rehashed debunked arguments, failed to present the robust evidence from jurisdictions where physician-assisted dying has been legalized and attempted to sow fear about supposed "risks from physician-assisted dying". An analysis conducted for Dying With Dignity Canada found the survey to be "ambiguous and biased." [13]

While the committee has been tasked with reviewing the External Panel's report, we encourage you to instead follow the leadership shown by the Government of Ontario's concurrent consultation on physician-assisted dying and the new law to allow physician-assisted dying in Quebec, which followed widespread consultation.

Conclusion

It is time for Canada to take a leadership role on the right to die with dignity. Parliament should go beyond the *Carter* decision and make it the right of every individual in Canada to freely choose to end their life and to have access to the means to do so. If legislation and regulations unjustly limit access, the rights of individuals will be infringed, and, most critically, individuals will continue to suffer needlessly.

We thank the members of the special joint committee for their time and efforts in considering this important issue. We look forward to the outcome of your consultations.

Recommendations

1. The choice of a physician-assisted death should be available for all who freely choose it.
2. There is no moral argument for limiting access to a physician-assisted death to individuals with "a grievous and irremediable medical condition."
3. Safeguards should ensure that decisions are free, voluntary, and informed but should not make access unjustly difficult.
4. Physician-assisted death should be guaranteed through the publicly-funded healthcare system and institutions that refuse should see their funding removed.
5. There should be no "conscientious objection" clauses for physicians and pharmacists who refuse to honour a patient's request for a physician-assisted death.

About the British Columbia Humanist Association

Since 1984, the British Columbia Humanist Association has campaigned for progressive and secular values. Humanism is a worldview that promotes human dignity without belief in a higher power. We believe that the promotion of human dignity requires allowing an individual to choose both how to live and how to end their life. People who have made the decision to end their life should have access to the means and assistance to do so with dignity.

[13] McRuer, Geordie, "A methodological analysis of the Issues Book survey on doctor-assisted dying." *Dying With Dignity Canada*. (2015) http://www.dyingwithdignity.ca/issues_book_analysis