Parliament of Canada Special Joint Committee on Physician-Assisted Dying
Submission by William F. Sullivan, MD, CCFP, PhD, FCFP

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As a family physician and ethicist, I offer reasons in this brief to support the following objectives in any Canadian legislation to address the Supreme Court of Canada's decision regarding *Carter v. Canada*:

1. Adequate safeguards to ensure appropriate care for persons requesting assisted suicide or euthanasia who are experiencing unmanaged pain, psycho-social or spiritual distress;

2. An adequate inter-disciplinary assessment of the decision-making capacity of persons making the request;

3. Recognition of a family perspective in such assessments and decision making;

4. Provision of an alternative for persons and families who do not wish to be cared for by health care teams or in health care facilities, including long-term care, that offer physician-assisted suicide or euthanasia.

These objectives can be achieved concretely by legislation that creates a third-party agency with jurisdiction in all provinces and territories that is mandated by the Government of Canada to provide information, inter-disciplinary assessments, and referrals across indicated legal interventions. These would include:

(a) an assessment offered by the physician who knows the patient, his/her family or intimate community best, usually the patient's family physician;

(b) input from health care and allied health care professionals who have specialized knowledge and experience in assessing bio-psycho-social and spiritual distress that can manifest in suicidal behaviour;

(c) legal expertise on issues related to eligibility for and administration of physician-assisted suicide or euthanasia;

(d) facilitation of discussion by the patient with his/her family or intimate community who are affected by the patient's decision.

The creation of such an agency would protect the legal rights of health care teams, health and long-term care facilities, and individual physicians who wish to opt out of participating in assisted suicide or euthanasia or facilitating such practices in a manner that violates their ethos or their individual conscience. It would also provide an alternative to Canadians who do not wish to be cared for by health care teams or in health care facilities, including long-term care, that offer physician-assisted suicide or euthanasia.

This proposal is consistent with the decision of *Carter v. Canada* and the mandate of the Government of Canada to find the appropriate balance in legislation between allowing individual patients and willing physicians to pursue what is decriminalized while protecting the interests of vulnerable individuals and groups in Canada.

According to the testimony of Ms. Jeanette Ettel given at the Meeting of the Special Joint Committee (Minutes of Meeting #2, Jan. 18, 2016), the question before the Supreme Court in *Carter v. Canada* was the constitutionality of a blanket prohibition in the Criminal Code against anyone (including a physician) assisting in another's suicide or inflicting death on another even if consent were given. She submitted that it is left for the Parliament of Canada to find a regime that provides the right balance between allowing eligible individuals and their physicians to pursue what is decriminalized and the protection of vulnerable Canadians.

On this interpretation, decriminalization does not amount to an absolute positive right to employ specific means to bring about death. It can be argued the Parliament of Canada has considerable latitude in determining the regime in which provision of physician-assisted suicide and euthanasia is regulated in order to protect the interests of vulnerable Canadians.

The criteria of eligibility set out in paragraph 127 of the Supreme Court's *Carter* decision for persons eligible to seek physician-assisted suicide or euthanasia do not take into account the wide-ranging reasons and clinical and ethical contexts in which requests for physician-assisted suicide or euthanasia will arise. Nor do they recognize the complexities associated with assessing such requests or the clinical, ethical and legal issues that require inter-disciplinary input. Some of these considerations are outlined in *A Guide for Reflection on Ethical Issues Concerning Assisted Suicide and Voluntary Euthanasia* prepared by the College of Family Physicians of Canada's Task Force on End-of-Life Care (September 2015), p. 5.

This proposal argues that the complexity of the issues requires the establishment of an intermediate body. This body would have the mandate to provide a clear process that applies relevant legislative rules to the complex set of issues involved in applying these rules to individual cases. Such a process is fully consistent with current health care standards and accepted practice in the assessment of suicidal behaviour.

The Parliament of Canada and the Special Joint Committee are tasked with proposing an optimal regime for the regulation of physician-assisted suicide and euthanasia compliant with *Carter v. Canada* that goes beyond that decision by ensuring a regime that protects vulnerable Canadians. This requires the proper assessment of individual requests, safeguards to ensure care for Canadians who would benefit from mental health interventions and management of bio-psycho-social and spiritual distress, consideration of the effect of assisted suicide and euthanasia on family members, and protection for Canadians who do not wish to receive care from physicians, health care teams or health care facilities providing or facilitating such practices.

The establishment of a third-party as outlined in this proposal is a feasible and, in my view, optimal measure to address these concerns.

Thank you for considering this brief.

Sincerely, 

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Dr. Sullivan is a practicing family physician with specialized certifications and clinical focus in health care of the elderly and health care of people with intellectual and developmental disabilities (IDD). He is an Associate Professor in the Department of Family and Community Medicine at the University of Toronto and a member of the Family Health Team, St. Michael's Hospital. He served as the founding director of the Developmental Disabilities Primary Care Initiative (DDPCI, 2009-14) based at Surrey Place Centre, Toronto, which was funded by the Ontario Ministries of Health and Long-Term Care and Community and Social Services.

In addition to this clinical experience, Dr. Sullivan completed a Ph.D. in philosophy (University of Toronto, 1998). His doctoral work focused on elaborating an account of ethical deliberation as it pertains to decision making in medicine. Since 2010, he has served as chair of the Committee on Ethics of the College of Family Physicians of Canada (CFPC) and chaired the CFPC's Task Force on End-of-Life Care (2014-16). In the latter role, Dr. Sullivan was the lead author of the Task Force's *Guide for Refection on Ethical Issues Concerning Assisted Suicide and Voluntary Euthanasia* (2015). He has also represented the CFPC's Committee on Ethics on the Canadian Medical Association's Ethics Committee.