DEPARTMENT OF PHILOSOPHY

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House of Commons
Standing Committee on Justice and Human Rights
Mike MacPherson – Committee Clerk
Via Email

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Invited Brief on Draft Bill C-14

I chaired between 2009 and 2011 the international expert panel tasked by the Royal Society of Canada (RSC) with drafting a landmark national Report on End-of-Life Decision-Making in Canada. The Report recommended that medical aid in dying be decriminalized for decisionally competent people. The panel recommended that 'terminal illness' not be made a threshold condition for a person to be eligible for medical aid in dying (MAID) for two reasons: 1) There is no precise science to providing a prognosis of terminal illness in terms of a specific length of time. 2) if the term 'terminal illness' is made a necessary condition in the statute, then it would be under-inclusive; there are many individuals whose lives, to them, are no longer worth living, who have not been diagnosed with a terminal illness. They may be suffering greatly and permanently, but are not imminently dying. There is no principled basis for excluding them from assisted suicide or voluntary euthanasia.

The Supreme Court of Canada in its February 2015 decision in *Carter v. Canada (Attorney General)* on the subject matter concurred.

These are the features of an eligible person:

'**competent adult who**
(1) clearly consents to the termination of life and
(2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual of his or her condition.'

The current draft legislation is at variance with these Supreme Court criteria at

241.2 (2)
(b) they are in an **advanced state of irreversible decline in capability**;
(d) **their natural death has become reasonably foreseeable**, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

The Supreme Court's criteria are clear:

- **patients do not need to be in an advanced state of irreversible decline to be eligible**;
- **patients do not need to suffer from a condition where their natural death has become reasonably foreseeable to be eligible**.

The Department of Justice is clearly aware that the proposed legislation is too restrictive. It tried to provide a rationale for 241.2 (2)(d). It states, 'This approach respects autonomy during the passage to death, while otherwise prioritizing respect for human life and the equality of all people regardless of illness, disability or age. It also furthers the objective of suicide prevention and the protection of the vulnerable. Recognizing the complexity of the legal and social issues associated with medical assistance in dying, this approach strikes an appropriate balance between the competing rights, interests and values.'

None of this addresses the variance at hand. Respect for human life is not undermined if competent persons requests MAID who suffer from an irreversible clinical condition that renders their lives not worth living to them. Preventing the deaths of competent people who suffer from intractable clinical conditions that render their lives not worth living to them serves no desirable objectives and certainly does not protect the vulnerable. Rather, it condemns them to continuing suffering or haphazardly undertaken suicide attempts. The last line of the quoted rationale is plainly vacuous; it explains or justifies nothing and is not a minimally impairing limit on the rights of those affected.

A lot has been made in various expert witness statements with regard to this category of patients, warnings were sounded about dangers involving our most vulnerable. These expert witness accounts were rejected unanimously by the justices of the Supreme Court of Canada, the expert panel advising the provinces on territories (PTEAG) on this subject matter, as well as the special joint parliamentary committee. I have argued in the *Journal of medical ethics* that competent patients suffering from intractable depression, who have tried all reasonably available treatment modalities, should be eligible for MAID, not only because they evidently meet the criteria as set out by our Supreme Court, but also because there are sound ethical reasons for such a policy. Nothing in our Charter of Rights and Freedoms suggests that by labelling competent depressed people as 'mentally ill' or 'vulnerable' we are justified in removing their agency in questions of life and death.

The current public debate about eligibility criteria features phrases such as 'reasonable compromise' or 'cautious approach', using some of the same rhetoric deployed in the Department of Justice's failed attempt at a rationale for its restrictive regime. This misses something rather basic, the Supreme Court stipulated clear minimum criteria that the new legislation must meet. These criteria would have been developed with a view to reasonable limits in s.1 of the Charter. The proposed draft legislation, for the reasons mentioned, does not. It is at variance with the Supreme

Court of Canada criteria, the Joint Special Parliamentary Committee, the PTEAG, as well as the RSC's expert panel report on the subject matter.

I propose therefore that the current draft legislation be amended to read:

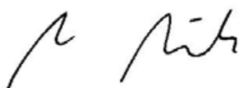
Preamble: And whereas the Government of Canada has committed to develop non-legislative measures that would support the improvement of a full range of options for end-of-life care, respect the personal convictions of health care providers and explore other situations — each having unique implications — in which a person may seek access to medical assistance in dying, namely situations giving rise to requests by mature minors~~,~~ and advance requests~~ and requests where mental illness is the sole underlying medical condition~~;

241.2(2) A person has a grievous and irremediable medical condition if
(a) they have a serious and incurable illness, disease or disability; or
(b) they are in an advanced state of irreversible decline in capability; and
(c) that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable~~; and~~
~~(d) their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining~~.

241.2(3)(b) ensure that the person's request for medical assistance in dying was
(i) made in writing and signed and dated by the person or by another person under subsection (4), and
(ii) signed and dated after the person was informed by a medical practitioner or nurse practitioner of their diagnosis or prognosis, ~~that the person's natural death has become reasonably foreseeable,~~ taking into account all of their medical circumstances;

The Supreme Court decision arguably does not require government to include mature minors among those eligible for MAID, neither does it require government to permit advance directives. It is my considered view that both are desirable and logical extensions of the rationale driving the judgment. I recommend therefore that these subject matters be studied during the next 18-24 months, and that this be a statutorily mandated process codified in the Act.

Sincerely,



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