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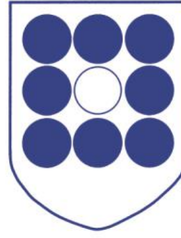

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Submission to the Standing Committee on Justice and Human Rights

Bill C-14: Medical assistance in dying

Canadian Civil Liberties Association
May 2016

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Canadian Civil Liberties Association (CCLA)

The CCLA fights for the civil liberties, human rights, and democratic freedoms of all people across Canada. Founded in 1964, we are an independent, national, nongovernmental organization, working in the courts, before legislative committees, in the classrooms, and in the streets, protecting the rights and freedoms cherished by Canadians and entrenched in our Constitution.

CCLA intervened in the case of *Carter v. Canada (Attorney General)*[1] and argued that the absolute prohibition on assisted suicide was a violation of section 7 of the *Canadian Charter of Rights and Freedoms* that could not be upheld. We are grateful for the opportunity to make submissions to this Committee on Bill C-14.

A. Concerns about the Committee Process

The legalization and regulation of assisted dying is new to Canada, and presents some complex challenges. When CCLA was invited to submit a brief to the Committee, the instructions were to confine submissions to proposed recommendations for changes to the text of Bill C-14 (and limit submissions to no more than three pages). Moreover, we understand that the Committee is confining its study of the bill to only four (consecutive) days. The limits placed on the scope of submissions and the truncated timeline for consideration of the bill is cause for concern. While we appreciate that there was significant work done by an external panel, an interprovincial advisory group, and a special joint committee on the issue of physician-assisted dying, this Committee will be the first time a piece of proposed legislation is actually being considered. Every Canadian is a stakeholder on this issue; a more robust process for considering the legislation is warranted.

The fact that the Supreme Court's declaration of invalidity will come into effect in early June is not a basis for rushed consideration of this important issue. Indeed, the Minister of Justice has said that the Bill falls within the parameters of the Court's decision in *Carter,* but if no federal legislation is in place on June 6, it is the parameters of the *Carter* decision that will govern in any event. While CCLA is of the view that national legislation on this issue is important and beneficial for a number of reasons, this doesn't mean we should rush to enact a law that hasn't been sufficiently considered through a meaningful democratic process.

B. Proposed Changes to the Text of Bill C-14

i) Removal of "reasonable foreseeability" requirement

The most vital change we recommend to the text of the bill is an amendment to proposed s. 241.2(2) of the *Criminal Code* which defines when a person has a grievous and irremediable

[1] 2015 SCC 5 ["*Carter*"].

medical condition. In particular, subsection (d) which requires that "natural death has become reasonably foreseeable…" is unduly vague, contrary to the Supreme Court's decision in *Carter,* and will lead to further violations of *Charter* rights and avoidable litigation. We propose that s. 241.2(2) be amended to delete subsection (d). The remaining subsections would form the exclusive criteria for establishing a grievous and irremediable medical condition. A further section should be added following s. 241.2(2) stating:

> 241.2(2.1) For greater certainty, neither a diagnosis of a terminal illness nor a temporal proximity to natural death is a requirement for establishing a grievous and irremediable medical condition.

The Supreme Court's decision in *Carter* did not suggest that a violation of life, liberty and security of the person was established in cases where individuals were suffering intolerably and where death was otherwise reasonably foreseeable. The focus of the ruling was on quality of life, not quantity. The reasonable foreseeability requirement will cause confusion, is unnecessary, and should be removed. If this provision is removed, a consequent amendment of proposed s. 241.2(3)(b)(ii) is also required to remove the reference to a reasonably foreseeable death. This reference could be replaced with the following language:

> 241.(2)(3)(b)(ii) signed and dated after the person was informed by a medical practitioner or nurse practitioner that the person meets all of the criteria set out in subsection (1).

ii) *Independent witness requirement*

The safeguards included in proposed s. 241.2(3) include a requirement that a person's request for medical assistance in dying is signed before two independent witnesses and proposed s. 241.2(5) excludes certain individuals from acting as independent witnesses. CCLA appreciates the objective behind this particular safeguard, but is concerned that the exclusions may make it challenging for individuals to find appropriate witnesses. This might be addressed by including a power for the Minister of Health to make regulations that address the provision of witnesses, although we appreciate that there are division of powers issues that arise here. We wish to bring this issue to the Committee's attention as failing to address it could pose a practical barrier to the meaningful implementation of the physician-assisted death regime.

iii) *Exclusions from the bill*

While the government's introduction of the bill was accompanied by a commitment to engage in further study on a number of issues, CCLA is particularly disappointed by the exclusion of mature minors from the assisted dying regime, and the failure to allow for advance requests. The fact that the Supreme Court's decision does not squarely address these issues does not diminish the government's and Parliament's obligations to respect *Charter* rights or to guard against needless suffering by those with a grievous and irremediable medical condition. The legal concept of the mature minor recognizes that some young people have the capacity to consent to

and refuse treatment (including life-saving treatment) where they demonstrate understanding of their medical condition and the consequences of treatment.[2] In CCLA's view, there is no principled reason to distinguish between mature minors and competent adults, and the age requirement set out in proposed s. 241.2(1)(b) should be eliminated. Similarly, amendments should be made to allow for advance requests for medical assistance in dying, where an individual is otherwise eligible. Once again, there is no principled basis to exclude an advance requests when such requests are already permitted to allow an individual to consent to termination of life-sustaining treatment.

C. Conclusion

The CCLA urges the Committee to extend their hearings on Bill C-14 to ensure that a broad range of stakeholders are consulted on the text of the bill. A legal vacuum will not be created if legislation is not passed by June 6, and the issue of assisted dying is too important to rush through our legislative process. To the extent the Committee considers amendments to the bill, CCLA proposes removal of the reasonable foreseeability requirement, addressing the concern about independent witnesses, and allowing for advance requests and mature minors.

[2] *A.C. v. Manitoba,* 2009 SCC 30.