



EFC

The Evangelical Fellowship
of Canada

**Submission to the House of Commons Standing Committee on
Justice and Human Rights**

Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*

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Bill C-14: An Act to Amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)

The EFC is opposed to the legalization of assisted suicide and euthanasia. Our recommended amendments to Bill C 14 are intended to minimize the harm and risk to vulnerable persons, to protect conscience and religious freedom, and to protect our society's commitment to respect for life.

Preamble

Protection and Promotion of Life

1. Insert the following as the first clause in the preamble:

“Whereas the sanctity of life is one of our most fundamental societal values, and Section 7 of the *Charter* is rooted in a profound respect for the value of human life;”¹

2. After the clause in the preamble on autonomy, insert:

“Whereas Parliament has a duty to balance individual autonomy and the protection and promotion of life;”

Prevention of Suicide

3. Add the following to the clause on the public health effects of suicide:

“...and the prevention of suicide remains a crucial public policy objective.”

Freedom of Conscience and Religion

4. Insert the following clauses:

“Whereas everyone has the freedom of conscience and religion under section 2 of the *Canadian Charter of Rights and Freedoms*;

Whereas freedom of religion under the *Charter* accounts for the socially embedded nature of religious belief, and the deep linkages between this belief and its manifestation through communal institutions and traditions;”²

Whereas nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of all persons and health care institutions to decline to participate directly or indirectly in the provision of medical assistance in dying if doing so is against such person's religious beliefs or conscience, or contrary to an institution's purposes.

Whereas it is not against the public interest to hold and publicly express diverse views on medical assistance in dying;”

Definition of M.A.I.D. as health care

5. We flag as problematic the clauses in the Preamble that begin: ““Whereas it is desirable to have a consistent approach to medical assistance in dying...” and “Whereas the Government of Canada has

¹ *Carter* decision, para. 63. The Court's limited exemption to the ban on assisted suicide is an exception to this fundamental principle.

² *Loyola* decision, para 60.

committed to uphold the principles set out in the *Canada Health Act...*” These clauses describe and define medical assistance in dying as health care. We object to the notion that taking a life can be considered health care. As well, we note that if MAID is defined and accepted as a form of health care, it will be very difficult to deny access to anyone, for example, to minors or to persons with mental illness, and this leaves the legislation vulnerable to a s. 15 challenge.

Exemption for Aiding a Patient

6. The Exemption for a person aiding a patient in s. 241(5) is not subject to any oversight, and raises serious risks of undetected abuse. The exemption should either be removed or amended. For example, this legislation should impose an obligation on the person seeking the exemption to take reasonable steps to confirm that the suicide is authorized and the substance has been provided under s. 241.2, such as seeing the written request and the doctor’s certifications under 241.2. The legislation must include some form of oversight to provide protection for the patient and confirmation of consent.³

Freedom of Conscience and Religion

7. We support the creation of a self-referring central agency to facilitate conscience protection for health care providers; however, conscience protection for individuals and institutions in the legislation is crucial. We recommend the following be inserted as a standalone provision of C-14, in a new section before Related Amendments, or as an amendment to the *Canada Health Act*:

Freedom of Conscience

For greater certainty, no person or organization is required to participate directly or indirectly in the provision of medical assistance in dying, and no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of medical assistance in dying, of the freedom of conscience and religion guaranteed under the *Charter of Rights and Freedoms*.

8. Create a *Criminal Code* offence that prohibits the coercion of any person to apply for, seek or receive MAID, and prohibits coercion of health care providers and institutions to counsel in relation to, or to participate directly or indirectly in MAID.

Eligibility

9. In s. 241.2(2)(c), delete “or psychological” so that the provision describes a condition that causes “enduring physical suffering that is intolerable...”.⁴

³ An alternative is to delete s. 241 (5) and require a medical practitioner or nurse practitioner to be personally present during self-administration and responsible for care and control of the substance and care for the patient. The wider the group of people eligible for a homicide exemption, the greater the risk. Subsection (5) makes every Canadian potentially eligible for exemption. Under safeguards in s. 241.2(3), add (i) requiring medical practitioner or nurse practitioner to be present at the time of the assisted suicide. If this safeguard is not put in place, amend subsection (5) to include oversight provisions.

⁴ The SCC in *Carter* expressly stated at para. 127: “the scope of this declaration is intended to respond to the factual circumstances in this case. We make no pronouncement on other situations where physician-assisted dying may be sought.” *Carter* does not require MAID to be provided to those with psychological suffering, and it would be dangerous to do so as mental illness often vitiates the ability to give informed consent to death.

10. In s. 241.2(2)(d), keep the focus on those who are dying, and replace “reasonably foreseeable” with one of the following:⁵

- “within reasonable medical judgment will produce death within 6 months,”⁶ or
- “at the end-of-life”⁷

Judicial Oversight

11. As an additional safeguard, C-14 should extend the current requirement for judicial oversight established by the Supreme Court or mandate an independent prior review process for all cases of MAID.

Informed Consent

12. In s. 241.2(3) on safeguards, insert a clause that the medical practitioner or nurse practitioner must ensure that the person has had a palliative care or other professional evaluation to become informed about the full range of available treatments and supports that could ease their suffering, as recommended by the Vulnerable Persons Standard.

This could be accomplished by either:

- creating a subsection that says that in order for a patient to give “informed consent” in 241.2(1)(e) the patient must have been provided with the information/assessment; or
- adding a definition for “informed consent” in 241.1 that includes a palliative care or other professional evaluation.

Regulations

13. Revise s. 241.31(3) to read: “The Minister of Health *will* make regulations...”

14. Data collection should include reasons for requesting assisted death, similar to Oregon legislation.

⁵ Reasonable foreseeability is a concept imported from the law of civil and criminal negligence for after-the-fact determinations by a court as to whether a past action attracts legal liability because its bad consequences could have been foreseen and thus avoided. The concept is never used for advance eligibility determinations and is ill-fitting in C-14. Furthermore, doctors have no training in applying legal tests. Since doctors, not lawyers, are the eligibility gatekeepers under C-14, a medical standard should be applied.

⁶ Following precedent in Oregon and other U.S. states, and establishing a clear, medical standard.

⁷ Following precedent of Quebec legislation