



CHRISTIAN LEGAL FELLOWSHIP

— Alliance des chrétiens en droit —

INTEGRATING CHRISTIAN FAITH & LAW SINCE 1978

470 Weber St. N., Suite 202, Waterloo, ON, N2L 6J2 • Ph. 519-208-9200 • Fax 519-208-3600 • www.ChristianLegalFellowship.org

SUBMISSION OF THE
CHRISTIAN LEGAL FELLOWSHIP (“CLF”)
TO THE
STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS
REGARDING
BILL C-14, *AN ACT TO AMEND THE CRIMINAL CODE AND TO MAKE RELATED
AMENDMENTS TO OTHER ACTS (MEDICAL ASSISTANCE IN DYING)*

May 2, 2016

AUTHORS

DEREK B.M. ROSS, LL.B., LL.M.

CLF EXECUTIVE DIRECTOR

JONATHAN R. SIKKEMA, B.A., J.D.

CLF ASSOCIATE COUNSEL

NGO in Special Consultative Status with the Economic & Social Council of the United Nations

EXECUTIVE SUMMARY

CLF urges amendments to Bill C-14 in support of two key measures:

I. Parliament should affirm “suicide prevention” as an important public policy goal and “sanctity of life” as a fundamental societal principle

II. Parliament should implement stronger safeguards to protect the vulnerable

ANALYSIS

I. Parliament should affirm “suicide prevention” as an important public policy goal and “sanctity of life” as a fundamental societal principle

Parliament is looked to by provincial legislatures, courts, policy makers, and the general public as a leader in the formulation and articulation of public policy.¹ Once Parliament legalizes assisted suicide, professional regulators, other bodies, and society at large may come to view it as a “social good”. However, suicide must not become the “new normal” as a medical response to suffering. That the law will no longer prohibit a willing physician from providing medical assistance in dying (“MAID”) to a consenting patient in limited circumstances does not mean that the practice ought to be widely accepted or presented as just another “treatment” option, equal among others. Nothing in *Carter* requires this. Parliament can and must prevent the normalization of suicide. This should include reaffirming the public policy goal of suicide prevention and the fundamental principle of the sanctity of life.

Carter did not suggest that suicide prevention is no longer an important public policy goal. In fact, it affirmed that “sanctity of life” remains one of Canada’s “most fundamental societal values”. The government must support efforts of health care providers and others to prevent suicide (whether medically assisted or otherwise) and promote treatment. However, we fear that such efforts will be curtailed if they are perceived as undermining access to the so-called “right” to MAID. This is evident in Quebec, where the College of Physicians recently discovered that physicians were allowing suicide victims to die when life-saving treatment was available. The legalization of assisted death was cited as creating ambiguity about the need to intervene in such cases.² Parliament must eliminate any ambiguity regarding the importance of preventing and discouraging suicide, and play a lead role in combatting the “normalization of suicide”, starting with the following amendments to Bill C-14:

Recommendation #1:

Parliament should specifically affirm in the preamble to C-14 that:

- **suicide prevention remains an important policy goal**
- **sanctity of life is one of Canada’s most fundamental societal principles**
- **it is not contrary to the public interest to express the view that participating in causing a person’s death is intrinsically morally and legally wrong**
- **MAID should be considered only as a last resort, not as a measure that may be presented to patients as just another treatment option among others**

¹ Courts regularly look to legislation to determine what constitutes “public policy”: “Public policy is not determined by reference to only one statute or even one province, but is gleaned from a variety of sources, including provincial and federal statutes, official declarations of government policy and the Constitution.” *Canada Trust Co. v. Ontario Human Rights Commission* [1990] O.J. No. 615 (C.A.) at para. 92.

² “Some Quebec doctors let suicide victims die though treatment was available: college”, Graeme Hamilton (*National Post*: March 17, 2016).

Reassuring and Supporting Charities Devoted to Suicide Prevention & Awareness

Currently there are over 50 Canadian charities devoted specifically to suicide prevention and awareness, and these are just the ones that have the word “suicide” in their name.³ There are many others that work to prevent suicide - including religious organizations, disability rights advocates, health charities, and others. For greater certainty, such organizations should be reassured that their important work can continue, despite the legalization of MAID, and that their registered charitable status shall not be affected (provided that they otherwise comply with the *Income Tax Act*). The same is true for hospitals and their associated foundations that opt not to provide euthanasia or assisted suicide on their premises.⁴

Recommendation #2:

For greater certainty, Parliament should affirm that suicide prevention remains a charitable purpose and that no charitable institution will lose its registered status solely by reason of their:

- **lawful efforts or initiatives to reduce levels of suicide, including deaths caused by MAID**
- **in the case of health care facilities and their associated foundations, lawfully declining to provide MAID at their facilities, and**
- **in the case of religious charities, any of its members, officials, supporters or adherents exercising, in relation to assisted suicide, the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms*.**

Parliament should criminally prohibit pressuring others to obtain MAID or to participate in providing it

The *Criminal Code* should explicitly prohibit and impose penalties for pressuring another person to receive MAID. Counselling or abetting a person to commit suicide will, wisely, remain illegal under this bill. However, it is unclear whether the prohibition on counselling or abetting suicide would prohibit a person from pressuring a person to obtain MAID. Bill C-14 contemplates that a patient may face “external pressures” to receive MAID, but when she does, the only consequence is that she *may* be considered ineligible for MAID *if* her doctor determines that her request was made because of the external pressure she faces (see proposed s. 241.2(1)(d)). Even if the physician deems the patient ineligible because her request was motivated by external pressure, it does not preclude the patient from seeking MAID from another physician (potentially under continued pressure from the same third party). That second (or third, or fourth, or fifth) physician may fail to detect the external pressure on the patient. With respect, this is a significant oversight that leaves even the most malicious and prolonged forms of pressure seemingly free of prosecution.⁵

It is also imperative that C-14 contain positive affirmation of and explicit protection for the conscience rights of those who object to participating, directly or indirectly, in assisted suicide or euthanasia. Legislative silence on such matters will not afford adequate protection. Participating in the deliberate

³ See CRA Charities Listings, search for “suicide” in Charities’ Names <<http://www.cra-arc.gc.ca/ebci/haip/srch/basicsearchresult-eng.action?k=suicide&s=registered&p=1&b=true>>.

⁴ Corresponding amendments should be made to the *Income Tax Act* in order to protect the charitable status of registered charities that engage in suicide prevention initiatives and/or public express views that suicide is harmful, ought to be prevented, and/or that the participation by one individual in the death of another is intrinsically morally and legally wrong.

⁵ It is not clear that s. 241(a) would apply to prohibit such conduct; even if it did, it appears to apply only to MAID that is considered “death by suicide”, not MAID that would be considered consensual homicide (i.e. euthanasia).

inducement of death on another person remains an affront to medical ethics and to the longstanding legal principle of the inviolability of life. It is, as Justice Sopinka put in in 1993, “intrinsicly morally and legally wrong”. *Carter* did not challenge or overturn this conclusion. The fact that it created a narrow exception to the legal prohibition in very limited circumstances means only that the state can *allow* individuals and institutions to participate in MAID – it cannot require them to do so. To the contrary, the government would be wrong and unjustified if it were to require participation, as it would (among other problems) violate the dignity and freedom of such individuals.

The SCC in *Carter* specifically contemplated a role for Parliament to play in protecting conscience rights. **Parliament should make it an offence to pressure any person to participate in assisted suicide or euthanasia, pursuant to its criminal law power.** Such a provision would be a practical means of upholding the *Charter’s* guarantees of freedom of religion and conscience. It would also not conflict with a MAID-seeker’s *Charter* rights, which do not create a positive claim against an individual (such as a health care provider) or institution that is unwilling to participate in providing MAID.

Recommendation #3:

Pursuant to its criminal law power, Parliament should make it an offence to pressure any person to obtain or to participate in providing, directly or indirectly, assisted suicide or euthanasia. (See Appendix for draft amendment.)

II. Parliament should implement stronger safeguards to protect the vulnerable

In legalizing euthanasia, Bill C-14 places the most vulnerable members of society, including the elderly, infirm, and disabled, at risk. CLF endorses the recommendations contained in the Vulnerable Persons Standard, and in particular urges Parliament to ensure that all requests for PAS/E are subject to prior independent (preferably judicial) review and authorization.

In addition to the measures contained in the VPS, CLF specifically recommends the following amendments to C-14:

1. Add a requirement to s. 241.2(3) that a patient be fully informed of palliative care services. Without being presented with the option of meaningful pain-management treatment which may help alleviate their suffering, a patient’s decision to receive MAID can hardly be said to be “informed”.
2. Develop provisions to require oversight of “self-administration” and remove the exemption for aiding a person to self-administer a lethal drug, which is not subject to any oversight and raises serious risks of undetectable abuse.
3. Add to "reasonably foreseeable" that the physicians must be certain that the underlying illness(es) the patient has at the time the request is made will, with reasonable medical certainty, cause the patient's death (s. 241.2(1)(d)).
4. For clarity, add to 241.2(2): “... (e) a mental illness or psychiatric disorder is not a grievous and irremediable medical condition for the purposes of this section.”

**All of which is respectfully submitted,
Derek B.M. Ross
Jonathan R. Sikkema**

APPENDIX A

Amendments to Bill C-14

Preamble

WHEREAS it is not against the public interest to hold and publicly express diverse views about medical aid in dying, including the view that participating in the death of another individual is intrinsically morally and legally wrong;

WHEREAS sanctity of life is one of Canada's most fundamental societal principles and the Parliament of Canada has a responsibility to honour that principle;

WHEREAS suicide prevention is an important public policy goal supported by the Parliament of Canada, in part because suicide is a significant public health issue that can have lasting and harmful effects on individuals, families, and communities;

WHEREAS deliberately inducing a person's death by administering a deadly drug or by any means is historically contrary to the physician's oath to practice medicine ethically and should be considered only as a last resort and not just another treatment option among others;

Freedom of conscience and religion and expression of beliefs

1. For greater certainty, 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 assisted suicide or euthanasia, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms* or the expression of their belief that participation by one individual in the death of another is intrinsically morally and legally wrong.

Income Tax Act Amendments

Suicide and Medical Aid in Dying

149.1(6.22) For greater certainty, subject to subsections (6.1) and (6.2), a registered charity shall not have its registration revoked or be subject to any other penalty under Part V solely because it or any of its members, officials, supporters or adherents exercise, in relation to suicide and/or medical aid in dying, the freedoms of conscience, religion, and expression guaranteed under the *Canadian Charter of Rights and Freedoms*.

Criminal Code Amendments

Counselling, encouraging, intimidating, coercing, abetting, or aiding a person to die by suicide or homicide

241(1) Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years who, whether death by suicide or homicide ensues or not,

- (a) counsels, encourages, intimidates or coerces a person to die by suicide or homicide or abets a person in dying by suicide or homicide; or
- (b) aids a person to die by suicide or homicide.

(2) For greater certainty, for the purpose of subsection (1), “suicide” includes death by medical aid in dying as defined in s. 241.1(b) and “homicide” includes medical aid in dying as defined in s. 241.1(a).

(The following provisions are adapted from a similar proposal by The Protection of Conscience Project)

Compulsion to participate in homicide or suicide

241.3(1) Every one commits an offence who, by an exercise of authority or intimidation, compels another person to be a party to homicide or suicide.

Punishing refusals to participate in homicide or suicide

241.3(2) Every one commits an offence who

- a) refuses to employ a person or to admit a person to a trade union, professional association, school or educational program because that person refuses or fails to agree to be a party to homicide or suicide; or

Intimidation to participate in homicide or suicide

241.3(3) Every one commits an offence who, for the purpose of causing another person to be a party to homicide or suicide

- (a) suggests that being a party to homicide or suicide is a condition of employment, contract, membership or full participation in a trade union or professional association, or of admission to a school or educational programme; or
- (b) makes threats or suggestions that refusal to be a party to homicide or suicide will adversely affect
 - (i) contracts, employment, advancement, benefits, pay, or
 - (ii) membership, fellowship or full participation in a trade union or professional association.

Definitions

241.3(5) (a) For the purpose of this section, "person" includes an unincorporated organization, collective or business.

(b) For greater certainty, for the purpose of this section, “suicide” includes death by medical aid in dying as defined in s. 241.1(b) and “homicide” includes medical aid in dying as defined in s. 241.1(a).

(c) For the purpose of subsection (1), "homicide" and "suicide" include attempted homicide and suicide.

Punishment

241.3(6) (a) Every one who commits an offence under subsection (1) is guilty of an indictable offence and liable to imprisonment for life.

(b) Every one who commits an offence under subsection (2) is guilty of an indictable offence and liable to imprisonment for ten years.

(c) Every one who commits an offence under subsection (3) is guilty of an indictable offence and liable to imprisonment for five years.

Appendix B: About Christian Legal Fellowship

Christian Legal Fellowship (CLF) is a national charitable association representing over 600 lawyers, law students, professors, and others who support its work. CLF exists to serve the legal profession by deepening and strengthening the spiritual lives of its members. Its objectives include encouraging and facilitating among Christians in the vocation of law the integration of a Biblical faith with contemporary legal, moral, and social issues.

As Canada's largest association of Christian lawyers, CLF has members across Canada practicing in all areas of law and in every size of practice. It has chapters in cities across Canada and student chapters in most Canadian law schools. While having no direct denominational affiliation, CLF's members represent more than 30 Christian denominations working in association together.

CLF is dedicated to advancing the public good by articulating legal and moral principles that are consistent with, and illuminated by, our Christian faith through court interventions and public consultations. Over nearly two decades, CLF has intervened in 19 separate proceedings involving *Charter* issues, including several before the Supreme Court of Canada, seeking to advance justice, protect the vulnerable, promote equality, and advocate for freedom of religion, conscience, and expression.

The CLF has appeared before Parliamentary committees and made representations to provincial governments on issues of conscience, religious freedom, inviolability of life, and human rights. CLF has also been granted Special Consultative Status as an NGO with the Economic and Social Council of the United Nations, and has been involved in numerous international matters.

CLF has developed considerable expertise in legal issues surrounding assisted suicide and euthanasia. In 2012, CLF was recognized by the Quebec Superior Court as "possess[ing] an important degree of expertise in the areas of philosophy, morality, and ethics which areas could be useful for the defense considering the Plaintiff's request that article 241 (b) of the *Criminal Code* be declared unconstitutional." (*Leblanc v. Attorney General of Canada et al* at p. 45).

CLF was one of the few organizations to intervene in all levels of court in *Carter*, including the post-judgment motion for a further extension of time at the Supreme Court. CLF also intervened in both levels of court in *D'Amico c. Québec (Procureure générale)* concerning the constitutionality of Quebec's assisted suicide legislation (a case which remains ongoing). CLF participated, by invitation, in the consultations of the federal External Panel on Options for a Legislative Response to *Carter v Canada* and the Provincial/ Territorial Expert Advisory Group on Physician-Assisted Dying. CLF also participated in the consultations of the medical Colleges of Saskatchewan, Manitoba, Ontario, and New Brunswick on this issue. CLF filed detailed legal submissions to the Ontario and Alberta governments in response to their consultation on the issue of assisted suicide and euthanasia. Most recently, CLF made written submissions to the Special Joint Committee on Physician Assisted Dying.