

April 29, 2016

Re: Bill C-14

Dear Honourable Members of the Standing Committee on Justice and Human Rights

We sincerely thank you for serving as Parliamentarians and on this committee, especially given the very difficult nature of the subject of euthanasia and assisted suicide.

Killing Some or Killing Many - There Is Another Option!

It always has been and always will be wrong to kill innocent human beings. Regardless of what Bill C-14 will look like when it receives Royal Assent, as long as it allows any humans to be killed at the hands of the state, it will be broadened, as others who wish to have assistance in dying will demand the same treatment. Any distinction will be arbitrary and eventually struck down as discriminatory. It is crucial that Parliament upholds its duty to protect human life.

An independent legal analysis commissioned by ARPA Canada has proven that Parliament can still prohibit all euthanasia and assisted suicide – without invoking the notwithstanding clause – by clarifying in law that the purpose of an absolute prohibition goes beyond what the Supreme Court mistakenly concluded it was in the *Carter* decision. The Court thought that the objective of the criminal prohibition on assisted suicide was merely to protect vulnerable persons from being induced to commit suicide at a moment of weakness. The Court thought that the objective was not to protect life broadly speaking, or even to prevent suicide. This distinction effectively determined the outcome of the case.

But what if the purpose or objective of the assisted suicide law was actually much broader than the SCC thought? Parliament has opportunity now to clarify.

Parliament can enact a complete prohibition on assisted suicide, without relying on the notwithstanding clause, by explicitly stating in a new law that the purpose of the prohibition is broader than merely protecting vulnerable persons in a moment of weakness.

We respectfully urge Parliament to seize this opportunity while it still can to pass a new law which maintains and enforces the longstanding common law principle of the inviolability of life by prohibiting assisted suicide and euthanasia as acts that are intrinsically legally and morally wrong. A draft law to this effect is attached to this brief as **Appendix A**. An extended legal opinion defending the constitutionality of this option is available at <https://arpacanada.ca/assisted-suicide-total-ban.pdf>

Putting Limits on State-Condoned Killings

If Parliament refuses to recommend absolute protections for all humans, the following amendments to Bill C-14 will help mitigate the inevitable harm that will result from any law which condones the killing of some individuals who don't measure up to societal standards:

1. 241.2(3)(a): Replace “be of the opinion that the person meets all the criteria...” to “be certain and have documented proof that the person meets all the criteria...”
 - a. **Rationale:** Having an opinion is nebulous and requires little justification. When the outcome determines whether someone will live or die, it is important that there is certainty, both to the individual making the decision and those they will have to justify it to.
2. 241.2(2)(d): Replace “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.” to “their illness is terminal with a prognosis of not more than 3 months.” – the physician must be sure that the specific illness the patient has will cause the patient's death within 3 months.
 - a. **Rationale:** The current wording is so vague as to have no limits. Natural death is reasonably foreseeable for every human being.
 - b. Parliament has the freedom to precisely define the term “grievous and irremediable”. Precise terms, including a confirmed diagnosis and prognosis, is crucial for limiting assisted suicide. Failure to do so leaves it open to subjective and contradicting standards which could include thousands of Canadians who suffer from chronic illness, psychiatric illness, or long-term disability.
 - c. A requirement for life expectancy of less than three months, with diagnosis and prognosis confirmed in writing by more than one doctor, protects against abuse and the expansion of the availability of suicide as a means to avoid being a “burden” on society or on family.
3. 241.2(2)(c): remove the words "or psychological". Add to s. 241.2(2) the following: “(e) a mental illness or psychiatric disorder is not a grievous or irremediable medical condition for the purposes of this section.”
 - a. **Rationale:** psychological suffering on its own cannot qualify a person for euthanasia/assisted suicide. Psychological suffering categorically invalidates the free and informed consent of a patient because psychological suffering renders the judgement of the patient impaired.
 - b. The Carter decision noted that “Complex regulatory regimes are better created by Parliament than by the courts” (par.125). Psychological suffering is inherently

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- subjective and difficult to measure. Permitting assisted suicide for psychological suffering will result in far more deaths and is particularly susceptible to abuse.
- c. The Oregon Death with Dignity Act provides the following safeguard: “If in the opinion of the attending physician or the consulting physician a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. No medication to end a patient’s life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment” (Oregon Death with Dignity Act 127.825 s3.03)
4. Remove section 241(5) which provides an absolute exemption from criminal liability for any person who helps a person self-administer a prescribed poison.
 - a. **Rationale:** There is absolutely no supervision here. Prosecution for abuse would be extremely difficult, if not impossible. Further, taking the poison prescription home to self-administer at any time is also problematic. How can it be determined whether or not somebody did pressure/force/fool the deceased into taking them? Where is the oversight as to whether the safeguards found in section 241.2 are being followed?
 5. Add conscience protection language akin to the Civil Marriage Act to C-14 in order to protect the best practices of medicine. We recommend adding to the body of C-14 the following:

Conscientious Protection

Physicians and other health practitioners are free to refuse to participate in or refer for assisted suicide and euthanasia in accordance with their professional medical opinions or sincerely held religious beliefs.

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 refusal to participate in or refer for an assisted suicide or euthanasia, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms*.
 6. Remove 241.2(4) **Unable to sign**
 - a. **Rationale:** This section undermines the earlier safeguard requiring signed confirmation by allowing someone else to do so in their place, simply on the basis that they are in the person’s presence. Being in someone’s presence in no way ensures that someone else speaks on their behalf, especially when they are vulnerable. Other means of ensuring consent on behalf of the patient can be found.

APPENDIX "A"

First Session, Forty-second Parliament,

64-65 Elizabeth II, 2015-2016

HOUSE OF COMMONS OF CANADA

BILL C-14

An Act to amend the Criminal Code (medical assistance in dying)

Preamble

Whereas section 91 of the *Constitution Act, 1867* gives exclusive authority to Parliament to make laws in relation to the Criminal Law;

Whereas Parliament has the authority to decide what constitutes a criminal act;

Whereas Parliament has the authority to enact criminal prohibitions on the basis of fundamental social and ethical considerations;

Whereas it is Parliament's duty to protect human life and uphold the inviolable right to life of all human beings;

Whereas assisted suicide and euthanasia are inherently social acts and are, in this respect, fundamentally different than the act of suicide;

Whereas the active participation by one person in causing the death of another person is intrinsically morally and legally wrong;

Whereas the previous two statements apply equally to physicians as to others;

Whereas permitting physician-assisted suicide and/or euthanasia would overturn longstanding and foundational principles of medical ethics;

And whereas an absolute prohibition on euthanasia and assisted suicide is not an overbroad means of achieving these objectives;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. C-46

CRIMINAL CODE

R.S.C. 1970,

1. Section 14 of the *Criminal Code* is repealed and the following provision enacted:

Purpose

14. (a) The purpose of section 14 (b) is to prohibit, as intrinsically morally and legally wrong, the inflicting of death by one person on another regardless of the consent of the person on whom death is inflicted;

(b) No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

R.S.C. 1970,

2. Section 241 of the Act is repealed and the following provision enacted:

241 (a) The purpose of section 241.1(b) and (c) is to prohibit, as intrinsically morally and legally wrong, the act of counselling a person to commit suicide or the active participation in the suicide of another person, regardless of consent or the vulnerability of the person committing suicide.

(b) Everyone who counsels a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

(c) Everyone who aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

[OR]

Section 241(b) of the Act is repealed and the following provision enacted:

241.1 (a) The purpose of section 241.1(b) is to prohibit, as intrinsically morally and legally wrong, the active participation by one person in the suicide of another person, regardless of the consent of the person committing suicide.

(b) Everyone who aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

*One day after
royal assent*

5. The provisions of this Act come into force one day after the day on which this Act receives royal assent.