Canadian Psychological Association (CPA) Submission to the Standing Committee on Justice and Human Rights

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

April 29, 2016

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The Canadian Psychological Association (CPA) was organized in 1939 and incorporated in 1950. It is the national professional association of the country's psychologists. The CPA represents a discipline and profession that includes researchers and academics, as well as a range of applied or practicing psychologists who work in industry, health and health care settings, correctional facilities, the educational system and in private practice. There are approximately 18,000 licensed psychologists in Canada.

CPA's mandate is to promote the science, practice and education of psychology in the service of the health and well-being of the Canadian public and the profession.

Bill C-14 concerns: The Canadian Psychological Association (CPA) has specific concerns with Bill C-14 as it relates to two areas. The first concerns the role of health providers in end of life decision-making. The second concerns the assessment of a person's capacity to give consent to end his or her life, particularly when a psychological or cognitive disorder is concomitant with a grievous and irremediable physical one.

The role of health providers in end of life decision-making: Section 241 (1) notes that it is an offence to counsel a person to die by suicide (a) and to aid a person to die by suicide (b). Section 241(2) and 241(3) appear to exempt practitioners from the provisions of 241(1) if they provide medical assistance in dying [241(2)] or aid a practitioner in providing medical assistance in dying [241(3)].

CPA's concern is that the exemptions articulated in 241(2) and 241(3) appear relevant to aiding a person to die [241(1)(b)] and none to counselling a person about an end of life decision [241(1)(a)]. While 241(2) and 241(3) appear to exempt practitioners for involvement in the act of dying itself, regulated health providers will reasonably be involved in decision-making before any end of life act is carried out. Psychologists would be among the health providers who might assess a person's capacity to give consent to medically assisted death. Psychologists would also be among the providers to whom persons with irremediable conditions might bring their end of life concerns. It is important that persons who are considering hastening death have the opportunity to bring their concerns to a trusted regulated health provider if they so wish. It is equally important that a regulated health provider who enters into an end of life discussion or consultation with a patient also be exempt from 241(1).

RECOMMENDATION ONE

To this end, we recommend the following additional exemption:

241 (4) to be inserted after 241 (3) as follows:

(4) No regulated health practitioner commits an offence under paragraph (1)(a)

- if they assess a person's capacity to give consent to an end of life decision and/or if they provide counselling regarding end of life decision-making issues at the request of a person with a grievous and irremediable condition or
- if they aid a health practitioner in the assessment of a person's capacity to give consent to an end of life decision and/or in the discussion of an end of life decision for a person with a grievous and irremediable condition

Further, the word "counsel" has both legal and profession-specific meaning. Mental health providers like psychologists can be said to regularly provide counselling to their patients. In this sense, counsel has a very different meaning than the one intended by 241(1) (a).

RECOMMENDATION TWO

We recommend that 241(1) (a) be revised as follows:

(a) **Persuades or encourages** a person to die by suicide or abets a person in dying by suicide;

The assessment of capacity to give consent: The CPA was also concerned that the Bill is silent on how capacity to give consent should be assessed. While in many instances, it may be straightforward to ascertain that informed consent can and has been given [241.2(1) (e)], there may be times when it may not be. Examples might be when a patient has a cognitive or psychological disorder concomitant with a grievous and irremediable physical one. The concomitance of a cognitive or psychological disorder with a physical one occurs commonly.

CPA's submission to the Expert Panel[1] made the following point:

> "…the global experience of suffering, including suffering due to physical symptoms, is much more pervasive among terminally ill patients who are depressed than among those who are not depressed (Wilson, Chochinov, Graham, et al., 2007). In the Netherlands, Dees et al. (2011) have reported that only patients with a comorbid diagnosis of a mental disorder suffer unbearably all the time. Hence, it is likely to be a common scenario for depressed terminally ill patients to make requests for assistance in ending their lives. To prepare for this, legislation should be informed by certain clinical realities…A mere diagnosis of a depressive disorder does not necessarily mean that someone is incompetent to make critical health decisions. Especially severe depression, however, may result in negative attitudinal biases that distort rational decision making around medical aid in dying (Blank, Robison, Prigerson, & Schwartz, 2001)." (p.10)

The assessment of a person's capacity to give informed consent, particularly when that person has a concomitant psychological or cognitive disorder, must be left to those regulated health providers with the training and expertise to undertake these kinds of complex assessments. It is CPA's view that psychologists, along with physician specialists such as psychiatrists and neurologists, have the necessary training and expertise.

RECOMMENDATION THREE

To ensure that the provisions of 241.2(1) (e) are fully met, we recommend a provision be added under Safeguards either as 241.2(3)(i) or as a new 241.2(3)(e) in between the current (e) and (f) as follows:

ensure that when a person presents with a grievous and irremediable medical condition concomitant with a cognitive and/or psychological one, the person's capacity to give consent be assessed by a regulated health provider whose scope of practice includes the assessment of cognitive and/or psychological conditions.

[1] Dr. Keith G. Wilson (2015). Canadian Psychological Association Submission to the External Panel on Options for a Legislative Response to Carter v. Canada http://www.cpa.ca/docs/File/Government%20Relations/Submission%20External%20Panel%20Carter%20v.%20Canada.pdf