



Federation of Medical Regulatory Authorities of Canada

Bill C-14, Medical Assistance in Dying

Submission to the Senate Standing Committee on Legal and Constitutional Affairs

10 May 2016

The Federation of Medical Regulatory Authorities of Canada and the Legislated Role of Its Members

The Federation of Medical Regulatory Authorities of Canada (FMRAC) appreciates the opportunity to make this submission to the Senate Standing Committee on Legal and Constitutional Affairs on Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts* (medical assistance in dying, MAID).

FMRAC is the national organization representing the 13 provincial and territorial medical regulatory authorities across Canada. Each of FMRAC's members is legislated to regulate the medical profession in the interest of public safety. These submissions are made on behalf the patients served by the medical regulators and in the interest of establishing effective regulation of MAID.

Regulation will include the responsibility of communicating to the public and the medical community how MAID will be provided. Medical regulators are on the front lines of providing clear direction to physicians for the purposes of serving and protecting the public. In essence, as regulators, we foresee playing a central role in Canada's approach to MAID.

FMRAC Guidance Document on Physician-Assisted Dying and the Need for a Consistent, Cross-country Approach to MAID

FMRAC and its members support the need for a consistent approach to MAID across the country.

In 2015, the FMRAC Board of Directors struck a national advisory group to provide guidance to the medical regulatory authorities on an approach to physician-assisted death, in the absence of federal, provincial or territorial legislation in response to the 6 February 2015 Supreme Court of Canada judgment in *Carter v Canada*. The resulting *FMRAC Guidance Document on Physician-assisted Dying* (appended), approved by the FMRAC Board in June 2015, outlines both principles and recommendations for consideration by FMRAC's members, consistent with the terminology and other aspects reflected in the *Carter* decision.

Bill C-14

FMRAC supports many of the fundamental aspects of Bill C-14. Specifically, FMRAC supports the provisions of Bill C-14 that outline exemptions from criminal liability for physicians and other health care workers appropriately involved in providing MAID to eligible patients. As well, FMRAC wishes particularly to express support for the principle that two physicians must be involved in the assessment of eligibility. In large measure, FMRAC views Bill C-14 as being aligned with the foundational principles outlined in FMRAC's 2015 *Guidance Document on Physician-assisted Dying*.

FMRAC has the following overriding concerns with Bill C-14:

1. Clarity

Eligibility for MAID must be clear to ensure patient safety and to facilitate the harmonized delivery of medical aid in dying across the country.

This concern centers on subsection 241.2 (2) d:

“a person has a grievous and irremediable condition if ...*“their natural death has become reasonably foreseeable”*. (*emphasis added*)

This provision attempts to address proximity to death as a criterion for eligibility. FMRAC makes no submission on whether eligibility should be limited to those near or somewhat near death. It is for government or the courts to determine whether MAID should only be available to competent individuals with intolerable, enduring suffering who are also near or somewhat near death.

In the submission of FMRAC, this criterion for eligibility needs to be made more clearly. This language is too vague to be understood or applied by the medical profession and too ambiguous to be regulated effectively.

In the absence of clear language, physicians will be reluctant to act. If this language remains, FMRAC submits a barrier to access may develop because physicians are unable to confidently determine eligibility.

2. Access Issues

With respect to the broad questions regarding Bill C-14's effect on access to MAID, FMRAC makes the following submissions.

There are no provisions in Bill C-14 contemplating the arc of the competence-declining patient who seeks MAID. Faced with the spectre of being denied MAID once found to be incompetent, patients may determine that they have no option except to seek MAID precipitously, while still competent and before they would otherwise choose to die. This mirrors the situation that brought Lee Carter before the courts.

Physicians of such declining patients will be faced with the precarious task of making deathbed determinations of competence and providing the service before it is too late, before the patient slips into incompetence.

Regulators will be faced with the impossible challenge of providing clear guidance to physicians attempting to navigate these waters on behalf of their suffering patients.

FMRAC respectfully submits that Bill C-14 provide specific language with respect to consent and eligibility for the suffering patient with declining competence.

FMRAC submits that the physician's freedom of conscience cannot interfere with or impede a patient's right to access MAID. As regulators, FMRAC's members have been exposed to many situations where the exercise of physicians' conscience has affected the rights of patients to access

care. These situations include interference with access to contraception or abortion, the provision of blood products to patients whose faith opposes, and the denial of the provision of traditional healing.

FMRAC and its members firmly believe that medical regulatory authorities have the obligation to ensure that physician rights of conscience and patient rights of access are reconciled. It is important to note, however, that the first duty of FMRAC's members is to act in the public interest.

FMRAC and its members note that Bill C-14 sets out eligibility criteria for MAID more limited than those contemplated by the Supreme Court of Canada in *Carter*. FMRAC would welcome the opportunity of participating in the study of the questions regarding mature minors, advanced directives and mental illness that remain open in Bill C-14. FMRAC's members will continue to work with their provincial and territorial governments to align legislative objectives with regulation on behalf of patients and the medical profession.

FMRAC and its members are concerned about any barriers to access that may make it difficult for a physician to carry out MAID once all other conditions of eligibility have been met. These include issues addressed specifically by the College of Physicians and Surgeons of Ontario, such as definitions of independence, limitations on witnesses, and exclusions from participation in MAID by physicians who have "business relationships" or who have connections with patients.

3. Robust Safeguards

FMRAC and its members support the objective of ensuring a system of robust safeguards in the provision of MAID, as proposed in Bill C-14. These include patient eligibility criteria, process requirements to request MAID, as well as monitoring and reporting requirements.

FMRAC and its medical regulatory authority members look forward to the invitation to provide their key perspectives on (a) balancing the need to protect the marginalized and isolated vulnerable persons without creating unnecessary barriers to care; (b) the type of information that should be collected in a monitoring system; and (c) other important matters.

4. Further Studies

The Government of Canada has indicated that it plans to engage in further study on three issues pertaining to MAID: mature minors, advance requests and requests where mental illness is the sole underlying medical condition. FMRAC and its members firmly believe that legislation relating to MAID must address all eligible patients and principles as articulated by the Supreme Court of Canada in *Carter* and that access not be further inhibited or delayed by administrative matters.

In closing, FMRAC and its members strongly support the legislative goal to have a consistent approach to MAID across the country, and will continue to work together, and with governments at the federal and respective provincial/territorial levels, to achieve it. This includes our willingness to assist in addressing the three outstanding issues noted above, as identified by the Minister of Justice and the Minister of Health. FMRAC's members also stress the need to work with their provincial/territorial governments to align legislative objectives with regulatory details, and ensure the best interests and rights of patients are preserved.