

I. INTRODUCTION

I am an elder law/appellate lawyer in Washington State USA where assisted suicide and euthanasia are legal.¹ Our law is modelled on a similar law in Oregon. Both laws are similar to Bill C-14.²

Bill C-14 seeks to legalize physician-assisted suicide and euthanasia, which it terms "medical assistance in dying." There is, however, no requirement that patients be dying: "Eligible" persons may have years, even decades, to live. The bill is also sold as assuring patient choice and control. The bill is instead stacked against the patient and a recipe for elder abuse.

The bill is a response to *Carter v Canada*, which found a right under the *Charter of Rights and Freedoms* to assisted suicide and euthanasia for a "competent" adult near death who "clearly consents."³ *Carter* also envisioned "a carefully designed and monitored system of safeguards."⁴ The bill, however, does not comply with these criteria. In short, the bill violates *Carter*.

¹ I am an elder law/appellate lawyer licensed to practice in Washington State USA since 1986. I am also a former Law Clerk to the Chief Justice of the Washington State Supreme Court and a former Chair of the Elder Law Committee of the American Bar Association Family Law Section. I am president of Choice is an Illusion, a nonprofit corporation opposed to assisted suicide and euthanasia. See: www.margaretdore.com and www.choiceillusion.org.

² An official copy of Bill C-14 is attached hereto at A-1 through A-16.

³ *Carter v Canada*, 2015 SCC 5, ¶ 147.

⁴ *Id.*, ¶ 117.

The bill also violates the *Charter's* right to life, liberty and security. This is because the bill encourages people with years to live, to throw away their lives; the bill's illusory procedures and lack of transparency leave people unprotected under the law.

Don't make Oregon and Washington's mistake. I urge you to read the fine print and vote "No" on Bill C-14. Don't be fooled.

II. FACTUAL AND LEGAL BACKGROUND

A. Definitions: Physician-Assisted Suicide; Assisted Suicide; and Euthanasia

"Physician-assisted suicide" occurs when a physician facilitates a patient's death by providing the necessary means and/or information to enable the patient to perform the life-ending act.⁵ For example,

a physician provides sleeping pills and information about the lethal dose, while aware that the patient may commit suicide.⁶

"Assisted suicide" is a general term in which the assisting person is not necessarily a physician. "Euthanasia," by contrast, is the direct administration of a lethal agent with the intent to cause another person's death.⁷

⁵ The American Medical Association Code of Medical Ethics, Opinion 2.211 - "Physician-Assisted Suicide," attached at A-21.

⁶ Id.

⁷ The American Medical Association Code of Medical Ethics, Opinion 2.21, "Euthanasia." (Attached hereto at A-22).

B. Withholding or Withdrawing Treatment is Not Assisted Suicide or Euthanasia

Withholding or withdrawing treatment ("pulling the plug") is not assisted suicide or euthanasia if the purpose is to withhold or remove burdensome treatment -- as opposed to an intent to kill the patient. More importantly, the patient does not necessarily die. Consider this quote from an article in Washington State regarding a man removed from a ventilator:

[I]nstead of dying as expected, [he] slowly began to get better.⁸

C. Elder Abuse is a Problem Throughout Canada; it Includes the Financial Exploitation and Murder of Older Adults

In Canada, elder abuse is a pervasive problem in which perpetrators are often family members.⁹ They may start out with small crimes, such as stealing jewelry and blank checks, before moving on to larger items or to coercing victims to sign over deeds to their homes, to change their wills or to liquidate their

⁸ Nina Shapiro, "Terminal Uncertainty – Washington's new 'Death with Dignity' law allows doctors to help people commit suicide – once they've determined that the patient has only six months to live. But what if they're wrong?," *The Seattle Weekly*, January 14, 2009. (Article at A-23; quote attached at A-25).

⁹ See CBC News, "Abusers of elderly are often family: police," November 19, 2008, attached hereto at A-26 to A-27; Alberta Seniors and Housing, "Facts on Elder Abuse" ("Elder abuse is often committed by someone known to the victim, such as a family member, friend or caregiver"), attached at A-28; Government of Canada, "Elder abuse: It's Time to Face the Reality," at <http://www.seniors.gc.ca/eng/pie/ea/elderabuse.shtml> ("One in five Canadians believes they know of a senior who might be experiencing some kind of abuse"); and "Breaking the Silence: A Report on Elder Abuse in Perth County," Perth County Social Research Council, November 2009, available at <http://perthhuron.unitedway.ca/wp-content/uploads/2013/09/ElderAbuse-FINAL-REPORT.pdf>

assets.¹⁰

Perpetrators can also be calculating criminals. Consider, for example, Melissa Ann Shepard, Canada's "Internet Black Widow," whose past crimes include: (1) killing her husband, who was "heavily drugged" when she ran him over with her car; (2) administering a "noxious substance and failing to provide the necessities of life" to another husband; and (3) suspicious circumstances surrounding the death of yet another husband.¹¹ A recent article states:

[These men] sought companionship and found instead . . . someone who siphoned their savings, slipped drugs into their food and, in the case of one man, ran him over . . . and left him dead on a dirt road.¹²

D. Victims Do Not Report

In Canada, elder abuse is a largely hidden problem, in part, due to the reluctance of victims to report. Canada's elder abuse website gives these reasons:

¹⁰ Cf. Met Life Mature Market Institute, Broken Trust: Elders, Family and Finances," March 2009, <https://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf>

¹¹ See Cassie Williams, CBC News, "Internet Black Widow Melissa Ann Shepard arrested in Halifax," April 12, 2016, attached hereto at A-29 & A-30. See also CTVNews.ca Staff, "'Black Widow' pleads guilty to 2 charges in N.S. court," June 13, 2013, at <http://www.ctvnews.ca/canada/black-widow-pleads-guilty-to-2-charges-in-n-s-court-1.1318723> and https://en.wikipedia.org/wiki/Melissa_Ann_Shepard and <http://jimfishertruecrime.blogspot.com/2012/10/melissa-ann-friedrich-canadas-black.html>

¹² Yanan Wang, "This 80-year-old 'Black Widow,' who lured lonesome old men to horrible fates, is out of prison again," *The Washington Post*, March 21, 2016. (Attached hereto at A-19 and A-20)

Older adults may feel ashamed or embarrassed to tell anyone they are being abused by someone they trust. They may fear retaliation or punishment, or they may have concerns about having to move from their home or community. They may also feel a sense of family loyalty.¹³

III. CARTER

Carter held that Criminal Code provisions prohibiting “counselling or aiding suicide” (s. 241(b)) and “consent[ing] to [one’s own] death” (s. 14) are void insofar as they prohibit “physician-assisted death” for “competent” persons who “clearly consent” in the context of a “grievous and irremediable medical condition.”¹⁴ *Carter* also said that its holding was “intended to respond to the factual circumstances of [the] case” involving plaintiff Gloria Taylor, a woman with ALS (Lou Gehrig’s disease) who died before the case was over.¹⁵ *Carter* states:

We make no pronouncement on other situations where physician-assisted dying may be sought.¹⁶

¹³ “Facts on Elder Abuse Government of Canada, “Elder abuse: It’s Time to Face the Reality,” at <http://www.seniors.gc.ca/eng/pie/ea/elderabuse.shtml>

¹⁴ *Carter*, ¶ 127 states:

s. 241 (b) and s. 14 of the Criminal Code are void insofar as they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. (Emphasis added).

¹⁵ *Id.*, ¶¶ 127 and 129.

¹⁶ *Id.*, ¶ 127.

Carter also envisioned "a carefully designed and monitored system of safeguards" to protect against error and abuse.

Carter stated:

We agree with the trial judge that the risks associated with physician-assisted death can be limited through a carefully designed and monitored system of safeguards.¹⁷

IV. THE BILL

A. What the Bill Does

Bill C-14 amends four existing statutes: (1) the Criminal Code; (2) the Pension Act; (3) the Corrections and Conditional Release Act; and (4) the Canadian Forces Members and Veterans Re-establishment and Compensation Act. A copy of the bill is attached hereto at A-1 to A-16.

B. How the Bill Works

The bill has an application process, which includes a written request, which may be signed by another person on the patient's behalf. There is no required oversight when the lethal dose is administered to the patient.

The bill deems deaths via assisted suicide and euthanasia as the result of an illness, disease or disability. There are no required investigations or monitoring under the bill.

V. PATIENTS MAY HAVE YEARS, EVEN DECADES, TO LIVE

The bill applies to adults with a "grievous and irremediable

¹⁷ Id., ¶ 117.

medical condition."¹⁸ Such persons may have years, even decades, to live. This is true for the following reasons.

A. Doctor Predictions of Life Expectancy Can Be Wrong

Patients may have years to live because doctor predictions of life expectancy can be wrong. This is due to misdiagnosis and the fact that predicting life expectancy is not an exact science.¹⁹ Consider John Norton, who was diagnosed with ALS at age 18.²⁰ He was told that he would get progressively worse (be paralyzed) and die in three to five years.²¹ Instead, the disease progression stopped on its own.²² In a 2012 affidavit, at age 74, he states:

If assisted suicide or euthanasia had been available to me in the 1950's, I would have missed the bulk of my life and my life yet to come.²³

B. Treatment Can Lead to Recovery

Patients may also have years to live because treatment can

¹⁸ Bill C-14, s. 241.2(1)(b) & (c), attached hereto at A-7.

¹⁹ See Jessica Firger, "12 million Americans misdiagnosed each year," CBS NEWS, 4/17/14 (attached at A-52); and Nina Shapiro, "Terminal Uncertainty – Washington's new 'Death with Dignity' law allows doctors to help people commit suicide – once they've determined that the patient has only six months to live. But what if they're wrong?," *The Seattle Weekly*, January 14, 2009. (Excerpts attached at A-23 through A-25).

²⁰ Affidavit of John Norton, ¶ 1 (Attached hereto at A-53).

²¹ *Id.*, ¶ 1.

²² *Id.*, ¶ 4.

²³ *Id.*, ¶ 5.

lead to recovery. Consider Oregon resident, Jeanette Hall, who was diagnosed with cancer in 2000 and made a settled decision to use Oregon's law.²⁴ Her doctor convinced her to be treated instead.²⁵ In a 2012 affidavit, she states:

This last July, it was 12 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.²⁶

VI. THE BILL VIOLATES CARTER

A. The Bill Violates Carter Because it Does Not Require a "Competent" Adult Who "Clearly Consents"

1. The bill does not use the word, "competent"

Carter's holding allowing assisted suicide and euthanasia is limited to a "competent" adult.²⁷ The bill, however, does not contain this requirement. The bill does not even use the word "competent," except in the bill's preamble, which does not have force of law.²⁸ The bill violates *Carter*, which requires that the patient be a "competent adult."

²⁴ Affidavit of Kenneth Stevens, MD, at A-45 to A-51; Jeanette Hall discussed at A-45 to A-46. Jeanette is still alive today, 16 years later.

²⁵ Id.

²⁶ Affidavit of Jeanette Hall, attached at A-56, quote at A-57.

²⁷ Again, *Carter*, ¶ 127, states:

s. 241 (b) and s. 14 of the Criminal Code are void insofar as they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life (Emphasis added).

²⁸ See the bill, at A-1 to A-16 (there is no requirement that a patient be "competent;" the word, "competent," is merely discussed in the bill's preamble, at A-3, which does not have the force of law).

2. The bill can be read as allowing persons who are "incompetent" to obtain assisted suicide/euthanasia

The bill requires a written request for assisted suicide/euthanasia, which may be completed by another person on the patient's behalf if the patient is "unable" to sign and date the request.²⁹ The bill does not, however, define "unable."³⁰ Dictionary definitions include "incompetent."³¹

With this situation, the bill can be read as allowing an incompetent person to request termination of life, which is contrary to *Carter*. The bill thereby violates *Carter's* requirement of a "competent" adult.

B. The Bill Violates *Carter* Because There is No "Carefully Designed and Monitored System of Safeguards"

A "carefully designed and monitored system of safeguards," would at the very least require oversight when the lethal dose is administered to the patient. The bill does not do so. There is also no required monitoring or investigation after the patient's

²⁹ The bill, s. 241.2(4), states:

If the person requesting medical assistance in dying is unable to sign and date the request, another person – who is at least 18 years of age and who understands the nature of the request for medical assistance in dying – may do so in the person's presence, on the person's behalf and under the person's express direction. (Emphasis added).

Attached at A-9.

³⁰ Bill C-14 in its entirety, at A-1 to A-16.

³¹ The Free Dictionary, "Unable" ("incompetent"), attached at A-58.

death.

The bill requires that deaths by assisted suicide and euthanasia be "deemed" the result of an "illness, disease or disability." As explained below, this single requirement will trump any safeguard against murder. The bill's "independence" safeguard is also illusory. The bottom line, people will be left unprotected under the law as to their heirs and other predators.

1. There is a complete lack of oversight at the death

There is no required oversight when the lethal dose is administered to the patient.³² Not even a witness is required.³³ In the case of assisted suicide, no doctor or other medical personnel is required to be present at the death.³⁴

Without oversight, the opportunity is created for someone else to administer the lethal dose to the patient without his or her consent, and with no one else to know what happened. The drugs used are water and alcohol soluble, such that they can be

³² The bill's definition of "medical assistance in dying" states only: for euthanasia, administration of the lethal substance will be by a medical practitioner or a nurse practitioner; and for assisted suicide, the substance will be provided to the patient for him or her to self-administer. (Bill C-14, s. 241.1, attached hereto at A-7). No bill provision provides for an official witness or other oversight when the lethal dose is administered. See Bill C-14 in its entirety, at A-5 through A-16.

³³ Id.

³⁴ Id.

injected into a sleeping or restrained person.³⁵

Possible motivations include an inheritance or other financial benefit as was the case with the Internet Black Widow, Melissa Ann Shepard.³⁶ Medical professionals too, can have financial motives, for example, to cover up malpractice. Darker motives include the occasional health care professional who just likes to kill people.³⁷ Even if the patient struggled, who would know?

2. "Monitoring" is not required

The bill contains one reference to "monitoring," saying that the Minister of Health "may" make regulations "for the purpose of monitoring" deaths under the bill.³⁸ Saying that regulations "may" be made does not constitute a "carefully designed and monitored system of safeguards." The bill does not comply with *Carter*.

³⁵ The drugs used for assisted suicide in Oregon and Washington include Secobarbital and Pentobarbital (Nembutal), which are water and alcohol soluble. See "Secobarbital Sodium Capsules, Drugs.Com, at <http://www.drugs.com/pr/seconal-sodium.html> and <http://www.drugs.com/pro/nembutal.html> See also Oregon's government report, page 5, attached at A-39 (listing these drugs).

³⁶ See "Internet Black Widow . . .", attached at A-30 (The family of husband, Robert Friedrich, "alleged his money had started to disappear"; regarding another man, Shepard pled guilty to "three counts of grand theft").

³⁷ See James B. Stewart, "Blind Eye," Simon & Schuster 1999 ("Michael Swango at first seemed the model physician. Then his patients began dying under suspicious circumstances") See more at: <http://books.simonandschuster.com/Blind-Eye/James-B-Stewart/9780684865638#sthash.sbqXh1bF.dpuf> and https://en.wikipedia.org/wiki/Michael_Swango

³⁸ Bill C-14, s. 241.31(3), attached hereto at A-12.

3. The bill discourages investigations

Under current law, the Corrections and Conditional Release Act, s. 19(1), requires that all inmate deaths be investigated.³⁹ Bill C-14, however, amends the Act to create an exception for inmates who die by assisted suicide or euthanasia, to thereby discourage investigations. The bill states:

Subsection [19] (1) does not apply to a death that results from an inmate receiving medical assistance in dying, as defined in section 241.1 of the Criminal Code, in accordance with section 241.2 of that Act.⁴⁰

With existing investigations discouraged, the idea of a "carefully designed and monitored system of safeguards" is undermined. *Carter* is once again violated.

4. Deaths by assisted suicide/ euthanasia are "deemed" to be the result of an "illness, disease or disability," which will preclude prosecution for murder

The bill amends the Pension Act and the Canadian Forces Members and Veterans Re-Establishment Act to deem that any deaths occurring via assisted suicide and euthanasia be treated as a

³⁹ The Corrections and Conditional Release Act, s. 19(1) states:

Where an inmate dies . . . the Service shall, . . . forthwith investigate the matter and report thereon to the Commissioner or to a person designated by the Commissioner.

⁴⁰ The amendment to the Corrections and Conditional Release Act can be viewed in the Appendix at A-59.

result of an "illness, disease or disability."⁴¹ The significance is a legal inability to prosecute criminal behavior, for example, in the case of an outright murder for the money. The cause of death, as a matter of law, will be an "illness, disease or disability." The bill thereby creates the perfect crime.

5. The "independence" safeguard is illusory

The bill lists "safeguards," including having a medical practitioner or nurse practitioner ensure that the request to terminate life was signed and dated before two independent witnesses.⁴² The bill defines independence in several ways, including that the witness will not benefit financially from the patient's death.⁴³

There is, however, no requirement that the person signing the request on behalf of a patient be independent.⁴⁴ The bill merely requires that the signing person be "at least 18 years of age" and understand the "nature" of the request.⁴⁵ The bill thereby allows the signing person to be the patient's heir who will financially benefit from the patient's death, for example,

⁴¹ The amendments can be viewed at A-14 & A-15, and A-60 and A-61.

⁴² Bill C-14, s. 241.2(3)(c), attached hereto at A-8.

⁴³ Id., s. 241.2(5)(a), attached hereto at A-9

⁴⁴ See bill in its entirety.

⁴⁵ 241.2(4) at A-9.

another Melissa Ann Shepard. Patients remain at risk.

VII. THE BILL VIOLATES THE CHARTER

Section 7 of the *Charter* states that:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."⁴⁶

It is not fundamentally just to allow people to be killed for their money or due to another bad motive under a regime that has no required oversight at the death, no required monitoring and which deems the deaths to be the result of an "illness, disease or disability," as a matter of law, to thereby prevent prosecution. The bill, which creates the perfect crime, must be violation of the *Charter*.

VIII. OTHER CONSIDERATIONS

A. Legal Assisted Suicide and Euthanasia Will Allow Canada's Healthcare System to Steer Individuals to Terminate Their Lives.

Oregon's government health plan (Medicaid) uses coverage incentives to steer patients to terminate their lives.⁴⁷ Oregon doctor, William Toffler, states:

This was first publicized in the media in 2008 with the cases of Barbara Wagner and Randy Stroup, neither of whom saw the situation as a celebration or their choice

⁴⁶ Carter v. Canada, ¶ 54.

⁴⁷ See Declaration of William Toffler, MD (attached hereto at A-31 to A-44) and Affidavit of Kenneth R. Stevens JR., MD (attached hereto at A-45 to A-A-51)

and control. . . .

"It was horrible," Wagner told ABCNews.com. I got a letter in the mail that basically said if you want to take the pills, we will help you get that from the doctor and we will stand there and watch you die. But, we won't give you the medication to live." . . .⁴⁸

Steerage is also allowable under Bill C-14, which is discussed by Dr. Toffler in his declaration attached hereto at A-31 through A-44. For more information about steerage, see the Affidavit of Kenneth Stevens, MD, attached hereto at A-45 through A-51.

B. Physician-Assisted Suicide Can Be Traumatic for Family Members

In 2012, a research study was released addressing trauma suffered by persons who had witnessed a legal assisted suicide in Switzerland.⁴⁹ The study found that one out of five family members or friends present at an assisted suicide was traumatized. These people,

experienced full or sub-threshold PTSD (Post Traumatic Stress Disorder) related to the loss of a close person through assisted suicide.⁵⁰

⁴⁸ Declaration at A-33.

⁴⁹ "Death by request in Switzerland: Posttraumatic stress disorder and complicated grief after witnessing assisted suicide," B. Wagner, J. Muller, A. Maercker; *European Psychiatry* 27 (2012) 542-546, available at <http://choiceisanillusion.files.wordpress.com/2012/10/family-members-traumatized-eur-psych-2012.pdf> (Cover page attached at A-87).

⁵⁰ Id.

C. My Clients in Washington and Oregon.

In Washington State and Oregon, I have had two cases where my clients suffered trauma due to assisted suicide. In the first case, one side of the family wanted my client's father to take the lethal dose, while the other side did not. The father spent the last months of his life caught in the middle and torn over whether or not he should kill himself. My client, his adult daughter, was severely traumatized. The father did not take the lethal dose and died a natural death.

In the other case, it is not clear that administration of the lethal dose was voluntary. A man who was present told my client that my client's father had refused to take the lethal dose when it was delivered, stating, "You're not killing me. I'm going to bed," but then he (the father) took it the next night when he was intoxicated on alcohol. My client, although he was not present at the death, was traumatized over the incident, and also by the sudden loss of his father.

D. In Oregon, Other Suicides Have Increased with Legalization of Physician-Assisted Suicide; the Financial Cost Is "Enormous"

Government reports from Oregon show a positive statistical correlation between the legalization of physician-assisted suicide and an increase in other (conventional) suicides. This statistical correlation is consistent with a suicide contagion in which legalizing physician-assisted suicide encouraged other

suicides. Please consider the following:

Oregon's assisted suicide act went into effect "in late 1997."⁵¹

By 2000, Oregon's conventional suicide rate was "increasing significantly."⁵²

By 2007, Oregon's conventional suicide rate was 35% above the national average.⁵³

By 2010, Oregon's conventional suicide rate was 41% above the national average.⁵⁴

There is a significant financial cost associated with these other suicides. One reason is that people who attempt suicide (and fail) can injure themselves or become disabled by the attempt, to thereby require cure, rehabilitation and other support. A government report from Oregon states:

[T]he estimate of total lifetime cost of suicide in Oregon was over 680 million dollars.⁵⁵

If Canada, with its larger population, legalizes assisted suicide and has the same experience as Oregon, the financial cost could be larger.

⁵¹ Oregon's assisted suicide report for 2014, first line, at <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year17.pdf>

⁵² See Oregon Health Authority News Release, 09/09/10. ("After decreasing in the 1990s, suicide rates have been increasing significantly since 2000"). (Attached at A-88)

⁵³ *Id.*

⁵⁴ Oregon Health Authority Report, Suicides in Oregon, Trends and Risk Factors (2012 Report), at A-90.

⁵⁵ See report at A-91.

IX. CARTER IS WRONG

Carter held that a blanket prohibition against assisted suicide and euthanasia violates the right to life under the *Charter* because it forces patients to kill themselves while they are still physically able to do so, which requires them to do so prematurely before they are ready to die.⁵⁶ This argument presumes a right to suicide under the *Charter*. There is no such right.

X. CONCLUSION

Bill C-14 is deceptively written legislation, which is stacked against the patient and a recipe for abuse and worse. Don't make Washington and Oregon's mistake. I urge you to say "No" to the bill; say "No" to assisted suicide and euthanasia.

Respectfully Submitted,

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⁵⁶ *Carter*, ¶57 & 58.