*Brief for the House of Commons 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)*

**Introduction**

As the advocacy agent of the Jewish Federations of Canada, the Centre for Israel and Jewish Affairs (CIJA) is a national, non-partisan, non-profit organization dedicated to improving the quality of Jewish life in Canada by advancing the public policy interests of Canada's organized Jewish community.

We have not developed a comprehensive formula to address every aspect of medical assistance in dying (MAID), nor are we putting forward an articulation of Jewish religious law on this issue. We are not representing any particular denominational stream within our community, nor do we purport to convey the uniform position of all Jewish Canadians. However, we believe our position faithfully represents key points of unity within the Jewish community on this deeply personal and highly contentious issue.

There has been vigorous debate within Canada's Jewish community regarding MAID, with a diversity of viewpoints rooted in compassion, religion, ethics and medical practice. Some in our community support physician-assisted dying, focusing on the plight of those stricken by a terminal or debilitating illness with no possibility of relief. Others oppose physician-assisted dying based on traditional religious grounds or concerns about a knock-on effect toward more broadly applied euthanasia.

Despite divergent opinions on whether MAID should be permitted, there is a strong consensus that, following the Supreme Court's decision, substantial measures are needed to protect healthcare providers who object to MAID for reasons of conscience and to ensure that eligibility for MAID is sufficiently regulated.

**Conscience**

Many healthcare practitioners object to MAID on the basis of deeply held professional, moral and religious convictions. Unfortunately, Bill C-14 is currently silent on the conscience rights of physicians, nurses and pharmacists who may be called upon to participate in MAID.

The *Carter v. Canada* decision explicitly noted: "nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying." Instead, the Court noted that "the Charter rights of patients and physicians will need to be reconciled in any legislative and regulatory response." C-14 should be amended to explicitly ensure that physicians, nurses and pharmacists who object to MAID for reasons of conscience cannot be compelled to provide it, nor be subject to discriminatory employment practices in any area of federal jurisdiction.

For some healthcare providers, even making a referral for MAID would be an unconscionable act. We are encouraged that Bill C-14 does not compel physicians to provide a direct referral.

Had this been the case, Canada would be the only jurisdiction with such a requirement, which would likely fail to satisfy the Supreme Court's mandate to balance the rights of patients and physicians.

Accommodation for physicians with regard to referral must not degrade patient access to MAID. Several models have been proposed to balance these competing rights. For example, the Canadian Medical Association has proposed a "separate central information, counselling and referral service" to which objecting physicians could direct patients seeking physician-hastened death.

Dr. Hershl Berman, a specialist in internal medicine and palliative medicine at the Temmy Latner Centre for Palliative Care and an associate professor in the faculty of medicine at the University of Toronto, recently proposed another model in the Hill Times. He wrote: "Rather than actively referring patients, all physicians should be required to report any request for assisted death to the provincial Ministry of Health or a regulatory body. Physicians would be required to register if they are willing and qualified to provide MAID, and indicate how many additional patients they are able to take on per year. If the report is from a doctor willing to provide the service, he or she would receive confirmation. If not, the registry would connect the patient with a nearby practitioner."

Dr. Berman also noted that, "in addition to respecting the beliefs and values of physicians who object to MAID, this process has an additional benefit. Many physicians, especially specialists, have a limited network of colleagues to whom they are accustomed to referring. In isolation, particularly in underserviced areas, any doctor may have difficulty finding a colleague willing to accept the patient. If the process is managed centrally, a registry can ensure more effective and timely access for patients who wish to hasten their own death."

**Eligibility**

Reflecting the views of many in our community, we empathize with patients below the age of majority who are suffering from a terminal condition and may wish to avail themselves of MAID. However, there are significant concerns both with minors taking such a grave decision on their own and with parents taking such a decision on behalf of their child. Given the finality of MAID, a cautious approach to criteria for consent is warranted. We believe the government has struck the correct balance in Bill C-14 by limiting access to MAID to competent adults 18 years of age or older. This is consistent with assisted dying laws in Quebec and other North American jurisdictions, with the Netherlands and Belgium standing alone as the only jurisdictions to enshrine a right to MAID for minors.

We recommended to the Special Joint Committee that the requirements codified in Quebec's Bill 52 could be considered a blueprint in formulating eligibility requirements for federal legislation. According to Bill 52, a patient must "be at the end of life; suffer from a serious and incurable illness; be in an advanced state of irreversible decline in capability; and experience constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable."

This orientation is universal across all North American jurisdictions, which permit MAID only for adult patients nearing a natural death, and we support Bill C-14's orientation in this regard.

Parliament must choose between two distinct approaches to MAID. The first views hastened death as an end-of-life option, a means for those who are nearing death to choose how and when to die. The second approach views physician-hastened death as a compassionate means of alleviating suffering more broadly. This is predominantly the approach in European jurisdictions, where children and individuals with psychiatric disorders or minor medical conditions can be eligible for MAID.

We acknowledge those within our community who would prefer to have MAID available more broadly, along the lines of the European countries, and empathize with their motivations. However, these concerns appear to be beyond the scope of what the Supreme Court intended in its decision, which stated that "high-profile cases of assistance in dying in Belgium... would not fall within the parameters suggested in these reasons, such as euthanasia for minors or persons with psychiatric disorders or minor medical conditions."

**Consent**

Many in our community believe that Canadians should be able to provide consent for MAID in advance of physical or mental deterioration, establishing an advance directive in the event she or he becomes incapacitated. Some view this as a fundamental component of any effective MAID regime. Others have voiced serious concerns. Upon diagnosis, the patient may not wish to live through an advanced stage in their illness. This does not mean their desire for MAID will necessarily remain when they become eligible, but are no longer competent to revoke consent.

If this committee chooses to amend C-14 to include advance directives, we believe such directives should adhere to the same rigorous safeguards defined in the bill. The patient would have to satisfy these requirements while still competent to consent, and their directive could only be carried out once they subsequently satisfy all eligibility requirements.

**Palliative Care**

There is a clear consensus in our community that palliative care should be made universally available as an end of life option. MAID cannot substitute for palliative care, home care and support for the terminally ill and their caregivers. It is essential that MAID not be the only, nor the default, option available as Canadians consider end of life care.

While respecting the division of jurisdictional responsibilities with the provinces, the federal government should do its utmost to ensure that palliative care of the highest quality and consistency is universally accessible and that first-rate psychosocial supports are made available to all Canadians separately from MAID.

While it may be impossible to achieve consensus on many of the issues surrounding MAID, surely we can all agree that every Canadian should have access to other means of alleviating suffering before contemplating a physician-hastened death.