

Deputation to Ontario Legislature Standing Committee on Finance and Economic Affairs

Re: Bill 84 Medical Assistance in Dying Statute Law Amendment Act, 2017

Date: March 23, 2017 @2:15 – 2:30pm

Introduction

My name is Amy Wah and I am policy counsel at the HIV & AIDS Legal Clinic Ontario. I will be speaking on behalf of our clinic and the Canadian HIV/AIDS Legal Network. First I will introduce both organizations, explain why we are here today and speak to you about our particular concerns with Bill 84.

The HIV & AIDS Legal Clinic Ontario – which I will refer to by the acronym “HALCO” – is the only community-based legal clinic in Canada serving low-income people living with HIV through legal advice and representation, public legal education, law reform, and community development initiatives. Since its inception, the clinic has handled over 50,000 requests for legal services, delivered hundreds of workshops, presented numerous briefs to various government committees, and intervened in matters at courts including nine matters at the Supreme Court of Canada.

The Canadian HIV/AIDS Legal Network – which I will refer to as “the Legal Network” – is the only national organization in Canada that works exclusively on legal and policy issues related to HIV and AIDS, and is one of the world’s leading expert organizations in the field, with an extensive body of human rights-based research and analysis on a range of issues related to HIV.

Why are we here?

Since the beginning of the HIV epidemic, people with HIV have been concerned with bodily autonomy. This includes the right to access health care without stigma and without discrimination.

“Nothing about us without us” articulates the GIPA or the ‘Greater Involvement of People Living with HIV/AIDS’ Principle, started by people living with HIV in the early eighties at the outset of the AIDS epidemic and formalized at the 1994 Paris AIDS Summit when 42 countries agreed to “support a greater involvement of people living with HIV/AIDS at all levels and to stimulate the creation of supportive political, legal and social environments”.

The work of both our organizations aims to ensure that we promote this principle in law- and policy- making at all levels of government and courts.

Carter v. Canada

This is the reason HALCO and the Legal Network intervened jointly in *Carter v. Canada (Attorney General)* at the Supreme Court of Canada, the case that led to the availability of medical assistance in dying. We presented the perspective of people living with HIV, a community of people who live with a complex and deeply stigmatized medical condition, and supported the position that the criminalization of assisted death which denies a suffering individual access to medical assistance to relieve their distress is constitutionally impermissible (a violation of bodily integrity and liberty under section 7 of the Charter of Rights and Freedoms) – the conclusion the Court ultimately arrived at. As a result, Canada amended the Criminal Code and other Acts to legalize medical assistance in dying. (I will refer to this as MAiD in the rest of my remarks today.)

In regards to Bill 84, we comment today only on two aspects:

a) Referral of all MAiD deaths to the Coroner

I indicate our support for Dying With Dignity's submissions regarding Coroner involvement in MAiD

b) FIPPA and MFIPA

Bill 84 proposes to exclude public access to information related to MAiD which identifies facilities or individuals using amendments to FIPPA (*Freedom of Information and Protection of Privacy Act*) and MFIPA (*Municipal Freedom of Information and Protection of Privacy Act*). While we support privacy protections for individuals requesting or accessing MAiD, it is *not in the public interest* to shield hospitals and other publicly-funded facilities through these proposed amendments to FIPPA and MFIPA.

Ontario has already enacted legislation (Bill 41 *An Act to amend various Acts in the interests of patient-centred care, 2016*) which provides special protection for (publicly-funded) faith-based hospitals and facilities against Ministerial or Local Health Integration Network (LHIN) operational policies or directives that would require them to provide a service (such as MAiD) "that is contrary to the religion related to the organization." While we take very seriously the Charter right to freedom of religion and conscience, we think that amendment is wrong. However, if publicly-funded facilities are given government sanction to refuse to provide MAiD, Ontario needs to balance any religious or conscience rights against the right of patients to access MAiD.

Let me explain why Bill 84's proposed amendment is wrong.

When hospitals are opaque about their stance on MAiD – particularly hospitals which refuse to provide this service – patients are not able to determine whether they can access MAiD until they are hospitalized. It is vitally important that individuals who wish to access MAiD either directly or prospectively have the information necessary to do so.

When individuals fall so gravely ill that they would be legally entitled to access MAiD, Ontario should not create barriers to that access. Patients who are that acutely ill are hardly in a position to advocate for a transfer, let alone locate an appropriate facility or practitioner. In some cases, particularly in smaller Ontario communities, they may be required to travel hundreds of miles. We support public access to hospital policies on MAiD so that individuals can properly plan and make informed decisions about where they access health care.

There is currently an application before the Ontario Divisional Court to challenge the College of Physicians and Surgeons' policy (Policy No. 4-16 *Physician Assisted Death*) which requires physicians who decline to provide medical assistance in dying (on the basis of conscience or religion) to provide patients with an effective referral to a health-care provider who is willing to provide such assistance. The Policy further requires physicians to provide care that is "urgent or otherwise necessary to prevent imminent harm, suffering, and/or deterioration, even where that care conflicts with their religious or moral beliefs." HALCO and the Legal Network have been granted intervener status to participate in the matter and will argue that if the Charter entitles physicians to limit the medical services they provide for reasons of conscience or religion, then they must provide an effective referral and they must provide the service in emergency situations.

It cannot be controversial to suggest that it is near-impossible for a patient to access diagnostic or treatment services their primary care physician is

reluctant or refusing to provide. This would be hard enough if you were seeking treatment for a serious illness such cancer or heart disease, but imagine that you are seeking a still-socially-stigmatized medical service such as MAiD. Imagine that you are suffering from a stigmatized underlying medical condition such as HIV. Imagine that you are a person who is socially stigmatized. Imagine that you are a patient who is Gay, trans, a sex worker, or a drug user. Without that referral, many individuals will simply be stopped from accessing MAiD.

We urge you to do the right thing and ensure the Charter right to MAiD will not simply be a legal fiction.

Thank-you for the opportunity to address you today.