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Subject: Correspondence from the Minister of Justice and Attorney General of Canada

Date: April 19, 2017 at 3:19:56 PM EDT

To: "'jocelyn.downie@dal.ca'" <jocelyn.downie@dal.ca>

Dear Professor Downie:

Thank you for your correspondence concerning *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, and the interpretation of the eligibility criteria in the legislation. I regret the delay in responding.

At the outset, I would like to express my sincere appreciation for your past and ongoing contributions to the national conversation, including through your publications and testimony before parliamentary committees, on this complex issue.

As you know, interpretation of the law once it is passed by Parliament is the function of the judiciary, not the executive. However, I can provide you with some information on the Government's policy intentions regarding this Act.

In crafting the legislation, the Government intended to make medical assistance in dying available to all competent adults who are in decline and approaching the end of their natural lives, in order that they may have the choice of a peaceful death instead of a painful, prolonged, or frightening one. Our policy was to treat the specific reasons underpinning the final stage of an individual's life as irrelevant to his or her eligibility.

Accordingly, the eligibility criteria in the Act, including the definition of "grievous and irremediable illness" found in subsection 241.2(2) of the *Criminal Code*, were framed around the overall medical circumstances of a patient, viewed holistically, as opposed to focusing on the presence or absence of specific medical conditions or types of conditions. Moreover, the criterion requiring that an individual have a "serious and incurable illness, disease or disability" is stated in general terms, with no delineation between different types of conditions. The Act does not impose any requirement to demonstrate a particular or singular explanation for an individual's advanced state of irreversible decline (241.2(2)(b)), nor why his or her natural death has become reasonably foreseeable (241.2(2)(d)).

Under the Act, the eligibility criteria require an individualized assessment of a person's medical circumstances by his or her medical practitioner(s). It is therefore not possible to make broad generalizations concerning whether a particular condition or illness qualifies or does not qualify someone for medical assistance in dying, as the person's disease or illness is only one medical circumstance, albeit an important one, relevant to his or her eligibility. For example, the degree to which a particular condition has progressed, the efficacy of treatments on the individual, the person's other medical circumstances, including his or her susceptibility to life-threatening infections or complications, the presence of other unrelated medical conditions, and overall frailty, along with other medical factors, are also relevant when considering an individual's eligibility for medical assistance in dying.

I wish to be clear that the Government's intention with this legislation was and remains that a person who meets all of the eligibility criteria may receive medical assistance in dying. As long as all of the criteria are satisfied, the legislation is silent with respect to whether a person's medical condition is a mental illness.

In response to the interest that was shown on this issue, as you know, the legislation requires that independent studies take place on other requests for medical assistance in dying, including where a person's mental illness is the sole underlying medical condition. This review is intended to focus on circumstances in which individuals with mental illnesses are not nearing a natural death and are not in a state of irreversible decline, and thus are not eligible for medical assistance in dying. The review is not intended to focus on cases where an individual with mental illness, in combination with other medical

circumstances, would already qualify for medical assistance in dying, such as a competent person with incurable cancer in an advanced state of decline who also experiences mental illness, or where a mental illness, such as an eating disorder, is at such an advanced stage that the individual will die as a result.

As you are aware, on December 13, 2016, my colleague the Honourable Dr. Jane Philpott, Minister of Health, and I announced that the Council of Canadian Academies (CCA) had been selected to conduct the independent reviews. The reviews will gather and analyze relevant information and evidence on requests for medical assistance in dying in the above-mentioned three areas, in order to facilitate an informed, evidence-based dialogue between Canadians and decision makers. In the coming weeks, it is expected that the CCA will make available more information about its process and the individuals selected to undertake the reviews. The reviews must be completed by December 2018, at which time reports will be released to the public and parliamentarians.

Thank you again for writing. I hope that this information is useful to you.

Respectfully,

The Honourable Jody Wilson-Raybould, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada