



February 10, 2016

Shanaaz Gokool  
Chief Operating Officer  
Dying with Dignity  
#802 – 55 Eglinton Ave. E.  
Toronto, ON M4P 1G8

Dear Ms. Gokool,

Thank you for your letter, dated February 8, 2016 addressed to the Honourable Heather J. Smith, Chief Justice of the Superior Court of Justice, with suggestions on amendments to the Practice Advisory issued on January 29, 2016 regarding physician assisted death applications. Chief Justice Smith has reviewed your letter and has asked that I provide you with the following response.

The Chief Justice very much appreciates hearing from Dying with Dignity on this very important matter. It is a unique situation that only exists because the government has not yet introduced statutory amendments to address the legislative gap following the Supreme Court of Canada's decision in *Carter v Canada*, 2015 SCC 5. Under different circumstances, broader consultations would likely have occurred before a practice advisory of this nature would have issued. Unfortunately, time did not permit broad consultation to occur. Members of this Court strongly believed that some advisory document should issue to the profession to provide practical assistance to an applicant.

Please note that the Practice Advisory does not impose legal protocols that guarantee the outcome of a physician assisted death application brought before the Superior Court. As stated in the Practice Advisory, it is only intended to provide guidance to those who seek to bring such an application. It addresses matters that could be relevant to the judge hearing the application, but it is subject to orders made by the judge hearing each application. Notwithstanding the content of the Practice Advisory, the onus rests with the applicant to confirm and meet the evidentiary requirements set out in *Carter*.

We understand that Dying with Dignity is concerned about some of the specific evidentiary *suggestions* listed in the Practice Advisory, considering that evidence of a different nature could be led to meet the *Carter* criteria. When applying the *Carter* criteria in a particular case, an

application judge may still consider evidence that is different from what is suggested in the Practice Advisory.

When drafting the Practice Advisory, the intention was to include the type of evidence that *may* be considered relevant by an application judge. The Practice Advisory was drafted after a review of existing case law, reports and other relevant sources. Until new legislation is introduced in the coming months that will hopefully provide greater clarity on the evidentiary requirements in a physician assisted death application, it is the view of the Chief Justice that it is preferable to maintain the current Practice Advisory issued on January 29, 2016. It will no doubt require amendment or revocation once the new statutory provisions are introduced and in force in the coming months. To amend the Practice Advisory at this time may result in greater confusion among the medical and legal communities, which was not the intention of this exercise.

I hope the above information is helpful in responding to the concerns you have raised.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roslyn J. Levine".

Roslyn J. Levine, Q.C.,  
Executive Legal Officer.

RJL:ce