Response to the CPSO Consultation Request regarding C-7 and MAiD

I am writing this commentary to address the specific question, with respect to MAiD, of how the College might fulfill its mandate to regulate the medical profession, both to protect the public and uphold the reputation of the profession.

MAiD not a matter of black letter law or binary decision making. It is a matter of nuance, something many of us who have lived and struggled with this issue for years come to fully realize only after a time. Allow me to share the particular experience and expertise I bring to this issue.

As internist, oncologist and cancer centre leader,

My personal position is a matter of public record. Prior to Carter I held the view that on the balance of harms, legalizing assisted suicide, as it was then termed, would be unwise. After the Court reached its decision, my view was that this decision would have far reaching consequences over a long term, and that we should proceed cautiously, examining our experience in detail each step of the way. Bill C-14 is consistent with that view, as it provided limited avenues for MAiD, and legislated a five year review before further changes. Further, it mandated a concerted effort to understand the issue, the intent of the deliberations. It is worth noting that the instructions to that Panel were that no recommendations were to be made, only a survey of knowledge. Nonetheless, the Panel did make one recommendation, namely to examine our experience before proceeding.

Bill C-7 is now law. The legislators have passed the buck to the provinces, and on to the Colleges as regulators. The Colleges are stuck with the difficult part, making abstract principles work.

I have three (3) specific concerns with are not adequately addressed by the College:
1. **Standards of Care**

Put simply, there is no selection process, required training program, defined learning module, or evidence of experience and progression in responsibility with respect to MAiD. Currently, MAiD providers are self-identified. To suggest that we should rely on a generally trained physician's experience and judgment is illogical, even negligent. We don’t do that with surgical procedures, complex psychiatric interventions or the treatment of cancer. We limit physicians ‘*practice only in areas of medicine in which (named physician) is educated and experienced.*’ As an example of the complexity of the issue, how one goes about assessing patient capacity to make such a decision in the context of ‘intolerable suffering’ is not clear in the literature, as evidenced by a report from the Law Commission of Ontario specifically addressing this matter. This goes to the heart of *Carter.*

2. **Protecting the public**

Anyone who requests MAiD is highly vulnerable. Whether they are at death’s door with cancer, physically frozen by a neuro-degenerative disease, or depressed to the point of considering suicide, they are particularly vulnerable to suggestion and manipulation. Just as the College sees its obligation to ensure patients who wish their lives ended are dealt with legally and fairly, so the College must reassure the public that those who are vulnerable are not manipulated under cover of the law to forego support or treatment they require and wish. The *blank* case, among others, makes this shortcoming in the College’s position explicit. My reading of the guidelines is that MAiD providers are obligated to present the treatment options, including death, as equivalent choices. That fundamentally reframes medicine, and I’m not sure we mean that. *Carter* envisaged assisted suicide as a last resort. This guideline amounts to a cafeteria of choices. I do believe trust by the public is at risk.

3. **Conscientious Objection**

I am aware of the balance of rights issue, as elucidated in *Carter,* and the Ontario Court of Appeal decision which holds that in the event the balance cannot be resolved, the patient’s rights prevail. Understand that this decision took place in the context of C-14, and not the more liberalized C-7. I maintain that the more liberal the right to and application of MAiD, the broader the right to conscientious objection must be. A more restricted MAiD, as originally envisaged, is usually less complex in its understanding, and less controversial. It is thus less likely to compromise the physician-patient relationship of trust. There is no satisfactory solution to this conundrum, one that will provide comfort to all parties. I agree with the College guideline that says objecting physicians are not obligated to provide an assessment. I do not agree they are to be obligated to refer to some person or agency that will provide MAiD. Within the context of the Standards of Care above, referral can be made passively to a person or agency which will independently consider the request.
In sum

I am quite aware of the College's role in the cascade of responsibility following this legislation. Taken at face value, the obligation is to guide and regulate our physicians within the law. However, it goes significantly further than that. As stated by Lord Bingham in *Boulton*, oft cited by the College in requiring a higher than narrowly legal standard,

...The second purpose is most fundamental of all: to maintain the reputation of the solicitor’s profession as one in which every member, of whatever standing, may be trusted to the end of the earth. To maintain this reputation and sustain public confidence in the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission.¹

There remains deep controversy about MAiD in Canada. That controversy will be expressed in many ways, including, likely, new legal challenges. It is a product of a particular secular view of autonomy, a view not shared by many Canadians of different cultural heritages. Our legislation and as yet un-analysed national experience is broader than that of any other jurisdiction, and younger. If the College is to continue its role as an effective regulator, it seems to me, it must actively shape our practice, not just passively regulate. We can’t forget that MAiD is absolutely unique...the only place in our cultural, legislated, or medical heritage where the active ending of a life is permitted.

¹¹ *Boulton v Law Society* [1994], 1 W.L.R. 512 at pp. 6-7, and at pp. 1, 7