



Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de
la Conférence du désarmement

Note No.: GENEV-6341

Reference: Canada's response to UA CAN 3/2019

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the joint letter UA CAN 3/2019 dated 7 August 2019. The Permanent Mission of Canada further has the honour to submit Canada's response.

The submission consists of one document.

The Permanent Mission of Canada to the Office of the United Nations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 11 March 2020.



RESPONSE OF CANADA TO THE JOINT URGENT APPEAL FROM SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

INTRODUCTION

1. On August 7, 2019, the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent a Joint Urgent Appeal to Canada: reference UA CAN 3/2019.
2. The Government of Canada, on its behalf and on behalf of the Government of Ontario, welcomes the opportunity to respond to this Communication.
3. Canada takes very seriously its international human rights obligations and is committed to maintaining a constructive dialogue with UN mechanisms, including the Special Procedures, which are a vital aspect of a strong and effective international human rights system. Canada thus engages with the Special Procedures in good faith, and provides the following information in response to the Joint Urgent Appeal.
4. Canada has a robust human rights framework that is working effectively to address the issues raised in the Joint Urgent Appeal openly and accountably through the legislative policy development process, public consultations and discussion facilitated by a free press, and before Canada's courts and tribunals.

BACKGROUND

Jurisdiction over medical assistance in dying (MAID) within Canada

5. Under Canada's constitutional framework, responsibility for medical assistance in dying is shared by federal and provincial levels of government.
6. The Government of Canada is responsible for the criminal law, which was amended in 2016 to permit MAID through the creation of an exemption from the criminal offences of culpable homicide and assisting suicide, and for the overall monitoring of MAID within Canada.
7. Provinces and territories are responsible for the delivery of health care services, the regulation and discipline of medical professionals, as well as for determining compliance with and enforcement of criminal laws in specific cases.

Legal framework for the protection of human rights in Canada

8. The legislative, executive and judicial branches of government, at all levels of government in Canada, share responsibility for the protection of human rights and the implementation of international human rights treaty obligations. Relevant legislation is enacted by Parliament and the provincial and territorial legislatures.

9. The *Canadian Charter of Rights and Freedoms* (Charter) applies to federal, provincial and territorial legislatures and governments to ensure the protection of individuals from violations of their human rights and fundamental freedoms by government. In particular, section 7 of the Charter protects the right to life, liberty and security of the person and requires that state actions that interfere with these rights conform to the principles of fundamental justice, which include principles of substantive justice and procedural fairness. Section 12 of the Charter protects against cruel and unusual punishment or treatment. Section 15 of the Charter protects against discrimination, and guarantees the right to equality before and under the law, and the right to the equal benefit and protection of the law without discrimination, and in particular, without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. The rights and freedoms in the Charter are subject “...only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”¹.
10. In addition, all governments in Canada – federal, provincial and territorial – have adopted human rights legislation prohibiting discrimination on various grounds in regard to employment matters, the provision of goods, services and facilities customarily available to the public, and accommodation. Generally, human rights codes prohibit discrimination on the grounds of race or colour, religion or creed, age, sex, sexual orientation, gender identity or expression, family or marital status, physical or mental handicap or disability, national or ethnic origin and ancestry or place of origin. Human rights legislation differs in its application from the right to equality in section 15 of the Charter in that it provides protection against discrimination by individuals in the private sector, as well as by governments.

Redress for human rights violations

11. In Canada, various modes of redress for human rights violations are available, depending on the nature of the right infringed and the form of remedy sought.
12. The courts have jurisdiction to determine whether there have been violations of the Charter, including in the context of court challenges against the government alleging Charter violations.
13. Under section 32 of the Charter, the Charter applies not only to federal, provincial and territorial legislatures and governments, but also to a wide range of governmental entities, as well as to non-governmental entities when they are carrying out governmental functions.
14. If a challenge based on the Charter is successful, the courts may declare a law of no force and effect pursuant to section 52 of the *Constitution Act, 1982*. In circumstances where a Charter violation is the result of state action, as opposed to legislation, courts of competent jurisdiction have broad discretion to grant appropriate and just remedies under section 24 of the Charter.

¹ *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada*

15. Further, contrary to the information provided to the Special Rapporteurs by Mr. Foley,² injunctive relief is available in constitutional cases. Where the applicable legal thresholds have been satisfied, courts may exempt a litigant who is bringing a constitutional challenge to legislation from that legislation on a temporary basis until the court has had a chance to fully consider and decide the issue.
16. The primary means of enforcing human rights codes and legislation is through the human rights commissions or tribunals established under them. Although the functions of these bodies vary, common functions include the determination or conciliation of complaints of discrimination brought under the relevant legislation. If the commission or tribunal concludes that a person has engaged in a discriminatory practice, it may make an order, which is enforceable through the court. The person who has engaged in the discriminatory practice may be ordered to cease such practice, to take measures to reverse the effects of discrimination, such as rehiring the victim, to pay compensation and/or to adopt an affirmative action program. Decisions of commissions or tribunals are subject to judicial review by the courts.
17. These forms of redress are all available to patients in Ontario for any human rights violations. For example, a person who believes that their rights under the *Human Rights Code*, RSO 1990, c H.19 have been infringed may bring an application before the Human Rights Tribunal of Ontario.

Domestic litigation concerning the allegations set out in the Joint Urgent Appeal

18. The allegations set out in the Urgent Appeal are the subject of a civil court claim. On May 8, 2018 and August 23, 2018, Mr. Foley filed two Statements of Claim in the Ontario Superior Court of Justice against the hospital in which Mr. Foley is being treated (the London Health Sciences Centre), the Centre for Independent Living in Toronto (CILT), the South West Local Health Integration Network (SW LHIN), the Government of Ontario, and the Government of Canada.
19. Both claims raise the same causes of action against the defendants. Mr. Foley alleges that, among other things, the defendants violated his rights under ss. 7, 12, and 15(1) of the Charter.
20. Mr. Foley seeks \$20 million in Charter damages against the defendants. He also seeks declarations that several provincial enactments,³ as well as the federal *Criminal Code* provisions governing MAID,⁴ are unconstitutional.

² As described at p. 3 of the Urgent Joint Appeal, Mr. Foley alleges that there are “no injunctive relief options for constitutional cases”.

³ In particular, Mr. Foley seeks declarations that Ontario’s *Patients’ First Act, 2016*, S.O. 2016, c. 30; Regulations 386/99 and 438/17 under the *Home Care and Community Services Act, 1994*, S.O. 1994, c. 26; and Regulation 367/94 under the *Ministry of Community and Social Services Act, 1990*, R.S.O. 1990, c. M.20 are invalid in their entirety. He also seeks a declaration that s. 28.5(1) of the *Home Care and Community Services Act, 1994* is invalid.

⁴ *Criminal Code*, R.S.C., 1985, c. C-46, ss. 241-241.4.

21. The Ontario Superior Court of Justice has jurisdiction to determine whether the defendants have violated Mr. Foley's rights under the Charter or the common law. This Court is independent of the legislative and executive branches.
22. A case management judge of the Ontario Superior Court of Justice has been appointed for this action. Under case management, the court imposes time limits for steps in the litigation process. The process provides opportunities for the parties to settle, narrow or consolidate issues in order to streamline proceedings and focus trial resources where they are most needed. It also involves the early and active intervention by the court to promote the resolution of disputes or to bring cases to trial in a timely manner. The Governments of Ontario and Canada have and will continue to attend case management conferences to discuss next steps in the litigation.
23. On September 30, 2019, each of the defendants brought preliminary motions to strike the claim or portions of it.
24. The Government of Canada takes the position that the constitutional challenge against the federal legislation involving medical assistance in dying (MAID) should be dismissed because the facts of the claim do not engage the operation of the MAID regime. Rather, the factual allegations are directed exclusively toward the allegedly inadequate delivery of health and home care services to Mr. Foley, which are matters outside the Government of Canada's jurisdiction. With respect to the Charter challenge to the federal law, the claim does not allege that Mr. Foley has ever requested, consented to or been deemed eligible for MAID. In the absence of pleaded facts sufficient to establish that Mr. Foley is at least potentially eligible for MAID, the claim lacks an appropriate factual foundation for an examination of the existing safeguards in the law.
25. Ontario takes the position that Mr. Foley has not pleaded any facts that, if proven, would support a finding of unconstitutionality in relation to the impugned provincial statutes or regulations. Further, in relation to the allegations concerning Mr. Foley's treatment within the hospital and his home, and the administration of the provincial legislation, Ontario takes the position that the hospital, CILT, and the SW LHIN are independent entities from the provincial government that are answerable to courts in their own right for any Charter breaches. Ontario has no knowledge of the factual basis for the allegations Mr. Foley has made against them. Ontario also does not have a supervisory relationship over these entities. It is their responsibility to govern their operations in a manner that is Charter-compliant.
26. The defendants' motions to strike have not yet been scheduled. By agreement between counsel, a motion by the plaintiff will be heard first, on March 4, 2020.

RESPONSES TO SPECIFIC QUESTIONS POSED BY THE SPECIAL RAPPORTEURS

27. In the joint allegation letter, the Special Rapporteurs request information on six distinct matters:
 - i. information and comment on the allegations set out in the Urgent Appeal;

- ii. information on the measures that have been taken to ensure Mr. Foley's access to healthcare to manage his medical condition;
 - iii. information on community support services provided to Mr. Foley to prevent his institutionalization;
 - iv. information about any investigation conducted into the allegations of physical and verbal abuse perpetrated against Mr. Foley;
 - v. information about any investigation into the allegations of pressure exerted to Mr. Foley to consider medically assisted dying; and
 - vi. information regarding the conditions and safeguards to prevent abuse within the medical assistance in dying regime;
28. Canada's response to these questions begins with information concerning the federal regime governing medical assistance in dying (question vi., above), including in relation to safeguards to prevent abuse as well as the monitoring of and public reporting on the operation of the MAID regime.
29. Information concerning the specific allegations pertaining to Mr. Foley (responding to questions i. through v., above) is provided by Ontario and is set out at paragraphs 48 to 84, below.

Information concerning Canada's medical assistance in dying regime and its compliance with international human rights obligations

Eligibility and safeguards to prevent abuse

30. On February 6, 2015, the Supreme Court of Canada rendered its judgment in *Carter v. Canada (Attorney General)*,⁵ ruling that the provisions of Canada's *Criminal Code* creating a blanket prohibition on medical assistance in dying violated the rights to life, liberty and security of the person under section 7 of the Charter. The Court declared the provisions invalid, but suspended the declaration of invalidity for 12 months in order to give the Parliament of Canada and provincial legislatures time to respond to the ruling. The suspension was subsequently extended by an additional four months until June, 2016.
31. On April 14, 2016, following extensive consultation with experts, stakeholders and other Canadians with regard to how best to respond to the *Carter* decision, Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* was introduced in Parliament. Bill C-14 proposed, in part, to create an exemption from the criminal prohibitions on aiding a person to die by suicide and culpable homicide for certain medical practitioners who provide MAID in accordance with criteria set out in the *Criminal Code*. The Bill was enacted into law on June 17, 2016 after extensive Parliamentary debate and consideration.

⁵ 2015 SCC 5, [2015] 1 S.C.R. 331.

32. The law aims to strike a balance between, on the one hand, the autonomy of persons who seek medical assistance in dying, and on the other hand, the interests of vulnerable persons in need of protection and those of society.

33. The legislation achieves that balance through the creation of an exception to the general criminal prohibitions on culpable homicide and assisting suicide, coupled with the eligibility requirements and safeguards set out in s. 241.2 of the *Criminal Code*.⁶

(1) A person may receive medical assistance in dying only if they meet all of the following criteria:

(a) they are eligible – or, but for any applicable minimum period of residence or waiting period, would be eligible – for health services funded by a government in Canada;

(b) they are at least 18 years of age and capable of making decisions with respect to their health;

(c) they have a grievous and irremediable medical condition;

(d) they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and

(e) they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.

34. Under s. 241.2(2), a person has a “grievous and irremediable medical condition” if they meet the following criteria:

(a) they have a serious and incurable illness, disease or disability;

(b) they are in an advanced state of irreversible decline in capability;

(c) that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and

(d) their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

35. Subsection 241.2(3) sets out procedural safeguards. This subsection requires that, before providing MAID, a medical or nurse practitioner must be satisfied that: a request for MAID was made in writing; the patient (or person) meets the eligibility criteria prescribed under s. 241.2(1); this opinion is shared by at least one additional and independent practitioner; and that at least 10 calendar days elapse between the day the written request was signed and the day that MAID is to be provided. Finally, the

⁶ <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-53.html#h-119953>

practitioner must ensure that immediately before MAID is provided, the patient has been given an opportunity to withdraw their consent, and expressly confirms their consent to receive MAID.

36. Failing to comply with any of the requirements of the exemption would render it inapplicable, which could expose the practitioner to a charge of murder or aiding a person to die by suicide. In addition, it is a distinct criminal offence to knowingly fail to comply with these requirements.⁷ It is, further, a criminal offence to counsel or abet a person in dying by suicide.⁸
37. Importantly for present purposes, the provision of MAID in the absence of a voluntary request that was not the result of external pressure, and in the absence of informed consent, would constitute one or more criminal offences, as set out in the paragraph above.
38. On June 14, 2017, a civil claim was filed in the Superior Court of Quebec challenging, among other things, the constitutionality of the eligibility requirement in the *Criminal Code* restricting MAID to individuals whose natural death has become reasonably foreseeable.
39. On September 11, 2019, the Superior Court of Quebec ruled that the requirement that a person’s “natural death has become reasonably foreseeable” violates the s. 7 (life, liberty and security of the person) and s. 15 (equality) Charter rights of individuals who are not dying but who are nevertheless suffering intolerably from a grievous and irremediable medical condition.⁹
40. The Prime Minister of Canada and the Attorney General of Canada have both indicated that the Government of Canada will not appeal the decision and will seek, instead, to amend the law to broaden eligibility for MAID.
41. Canada is committed to the protection of vulnerable people and has committed to working with the disability community to address concerns around vulnerability and choice, while protecting equality rights.¹⁰ Any legislative amendments that may be made to the federal MAID regime to respond to the decision of the Superior Court of Quebec and to expand eligibility for MAID in Canada will continue to incorporate appropriate safeguards to prevent abuse and to protect vulnerable individuals.

Monitoring and Public Reporting

42. Since the enactment of Canada’s medical assistance in dying law, governments have been working together to support the integration and implementation of medical assistance in dying within the Canadian health care system.

⁷ *Criminal Code*, s. 241.3.

⁸ *Criminal Code*, s. 241(1)(a).

⁹ *Truchon et Gladu c. Canada (Procureur général)*, 2019 QCCS 3792.

¹⁰ Department of Justice Canada, News Release, January 13, 2020, available online:

<https://www.canada.ca/en/departement-justice/news/2020/01/government-of-canada-consults-canadians-on-medical-assistance-in-dying.html>.

43. Canada recognizes that a robust monitoring regime is essential to foster transparency and trust in the new law on medical assistance in dying. The need for the consistent collection of information and public reporting also reflects the seriousness of MAID as an exception to the criminal laws that prohibit the intentional termination of a person's life.
44. The legislation on MAID authorizes the federal Minister of Health to make regulations to support data collection and reporting on both requests for, and the provision of, MAID. While these regulations were under development, the federal government collaborated with provincial and territorial governments to produce interim reports on MAID using data provided voluntarily by the provinces and territories.
45. Since the implementation of the *Criminal Code* provisions permitting MAID, the Government of Canada has released four federal interim reports. The [first interim report](#) was released on April 26, 2017, providing information on the first six months (June 17 to December 31, 2016) of medical assistance in dying in Canada.¹¹ The [second report](#) was released on October 6, 2017 and covered the next 6-month period (January 1 to June 30, 2017) providing insight into the implementation of MAID in its first year.¹² The [third report](#) was released on June 21, 2018 covering the 6-month period from July 1 to December 31, 2017.¹³ The [fourth and final interim report](#) covers a 10-month period from January 1, 2018 to October 31, 2018, which is the period just prior to the commencement of the new reporting regime in accordance with the federal Regulations for the Monitoring of Medical Assistance in Dying.¹⁴
46. With the coming into force of the federal *Regulations for the Monitoring of Medical Assistance in Dying* on November 1, 2018,¹⁵ which apply throughout Canada, the federal government will begin to produce annual reports starting in the spring of 2020 using the more robust MAID data set collected under the authority of these Regulations. This expanded data set will contribute to better understanding of the circumstances under which MAID is sought and administered, the reasons why requests for MAID may go unfulfilled, and information on the application of the eligibility criteria and safeguards.
47. As set out above, responsibility for medical assistance in dying in Canada is shared between federal and provincial levels of government. The following information, which responds to questions raised in the Joint Urgent Appeal relating to areas of provincial responsibility, is provided by the Government of Ontario.

¹¹ <https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-dec-2016.html>

¹² <https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-sep-2017.html>

¹³ <https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-june-2018.html>

¹⁴ <https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-april-2019.html>

¹⁵ SOR/2018-166

Information and comment on the allegations set out in the Joint Urgent Appeal Letter

48. The Government of Ontario has not been provided directly with the information received by the Special Rapporteurs concerning the allegations made by Mr. Roger Philip Foley and therefore cannot respond directly to the allegations contained therein.
49. However, it appears that the factual allegations referenced by the Special Rapporteurs relate to (1) actions of hospital staff at the hospital in London, Ontario where Mr. Foley is being treated; (2) actions of the Centre for Independent Living in Toronto (CILT) in assessing Mr. Foley's application for Direct Funding and determining that he was not eligible for this program; and (3) actions of the South West Local Health Integration Network (SW LHIN) in assessing and coordinating home care and community services for Mr. Foley prior to his transfer to hospital.
50. These allegations are currently the subject of a civil action in the Ontario Superior Court of Justice. As discussed above, hospitals, LHINs and the CILT are responsible for governing their own operations and are answerable to courts in their own right for any Charter breaches.
51. The Special Rapporteurs also reference Mr. Foley's allegation that the Ontario Crown Attorney and Police investigated and charged Mr. Foley with assault after a nurse who was attending to Mr. Foley accused Mr. Foley of biting him/her. Mr. Foley alleges that the investigation was initiated "in spite of lack of evidence."
52. In Ontario, police officers have sole responsibility and discretion over the investigation of a criminal offence and the laying of criminal charges except where the consent of the Attorney General is required by statute. The offences with which Mr. Foley was charged did not require Attorney General consent.
53. Prosecutors have sole responsibility and discretion over the prosecution of criminal charges, including deciding whether to continue with a prosecution.
54. Both parties exercise discretion independently and objectively.
55. A charge may only proceed if there is a reasonable prospect of conviction and it is in the public interest. The appropriate exercise of prosecutorial discretion is fundamental to the proper application of the charge screening standard.
56. The charge screening obligation is ongoing as prosecutors receive new information in preparation for and during the conduct of bail hearings, pre-trials, preliminary hearings, trials and appeals.
57. The reasonable prospect of conviction standard is higher than a prima facie case, which merely requires evidence on which a properly instructed jury could convict. On the other hand, the standard does not require a conclusion that a conviction is more likely than not. The term reasonable prospect of conviction denotes a middle ground between these two

standards. It requires the exercise of prosecutorial judgment and discretion based on objective indicators found in the case itself.

58. In applying the standard, prosecutors should consider:

- i. the availability of evidence;
- ii. the admissibility of evidence implicating the accused;
- iii. an assessment of credibility and competence of witnesses, without taking on the role of the trier of fact; and
- iv. the availability of any evidence supporting any defences that should be known or that have come to the attention of the Prosecutor.

59. If there is no reasonable prospect of conviction, the prosecutor is duty bound to withdraw the charges.

60. If there is a reasonable prospect of conviction, the prosecutor must then consider whether it is in the public interest. No public interest, however compelling, can warrant the prosecution of an individual if there is no reasonable prospect of conviction.

61. When deciding whether to prosecute or discontinue the prosecution, some public interest factors should be considered. No one factor is determinative when assessing the public interest, but consideration should be given to:

- i. the gravity or relative seriousness of the incident;
- ii. circumstances and views of the victim including any safety concerns.
- iii. the age, physical health, mental health or special vulnerability of an accused, victim or witness;
- iv. the prevalence of the type of offence and the actual or potential impact of the offence on the community and/or victim;
- v. the criminal history of the accused;
- vi. whether the consequences of any resulting conviction would be unduly harsh or oppressive to the accused;
- vii. whether the accused is willing to co-operate or has already co-operated in the investigation or prosecution of others;
- viii. the degree of culpability of the accused, particularly in relation to other alleged parties to the offence;
- ix. the likely outcome in the event of a finding of guilt, having regard to the sentencing options;
- x. the length and expense of a trial when considered in relation to the seriousness of the offence; and
- xi. the availability of any alternatives to prosecution such as diversion and civil remedies.

62. In Mr. Foley's case, the charges were withdrawn by the prosecutor.

Information concerning measures that have been taken to ensure Mr. Foley's access to healthcare to manage his medical condition

63. Ontario has no knowledge of the health care measures that have been taken at the hospital in London, Ontario where Mr. Foley is currently a patient. As discussed above, hospitals are responsible for governing their own operations and are answerable to courts in their own right for any Charter breaches.

64. Mr. Foley has brought a claim against the hospital seeking damages under the Charter with respect to the treatment he has received. The allegations in Mr. Foley's claim have not been proven and are the subject of ongoing litigation, as discussed above.

Information concerning community support services provided to Mr. Foley to prevent his institutionalization at the hospital

65. The *Home Care and Community Services Act, 1994* (HCCSA)¹⁶ governs the provision of home care and community services in Ontario.

66. Under the HCCSA, home care and community services are generally provided by approved agencies, including LHINs, directly or indirectly through contracted service providers. The HCCSA also provides for a Bill of Rights for those receiving services and for the powers of the Minister with respect to the direct provision of services, the funding of service providers, the approval of agencies, and the approval of LHINs to provide community services.

67. The criteria for eligibility for personal support and homemaking services are provided by regulation, as are the maximum number of hours for which an individual can receive these services, subject to certain exemptions. LHINs and approved agencies are responsible for the implementation of these criteria and services and the HCCSA requires that they establish a complaints process. If a LHIN determines that extraordinary circumstances exist that justify the provision of additional services, the LHIN may provide more than the maximum amount of nursing services, personal support services and home-making services set out in the regulation:

- (a) to a person who is in the last stages of life;
- (b) to a person who is awaiting admission to a long-term care home, and who has been placed on a waiting list by a placement coordinator under regulations made under the *Long-Term Care Homes Act, 2007* and is currently on that list;
- (c) to a person with complex care needs; or
- (d) for no more than 30 days in any 12-month period, to any other person.

¹⁶ <https://www.ontario.ca/laws/statute/94126>

68. Prior to February 2018, funding for self-directed home care services (i.e., services for which the individual selects and manages the service provider) was not available under the HCCSA. However, it was available through a “Direct Funding Program” established under the *Ministry of Community and Social Services Act*. The Direct Funding Program provides funding to eligible persons with physical disabilities to hire and manage their own attendants to provide attendant care services. It is funded by the Ministry of Health but administered by CILT under a service accountability agreement with Toronto Central LHIN.
69. Applicants for the Direct Funding Program apply to CILT directly. CILT is responsible for considering new applications and for assessing eligibility. CILT is also an approved agency under the HCCSA and is required to comply with the HCCSA. Under the HCCSA, persons may appeal certain decisions of approved agencies to the Health Services Appeal and Review Board.
70. In February 2018, a new model of home care was operationalized under HCCSA. This model authorized LHINs to enter into agreements to provide funding to or on behalf of persons for self-directed home care services.
71. Through this new program, LHINs have discretion to provide self-directed care funding to or on behalf of eligible clients in four cohorts. The four cohorts are: (1) children with complex medical needs, (2) adults with acquired brain injuries, (3) eligible home-schooled children, and (4) clients for whom “extraordinary circumstances” exist to justify the provision of the funding. LHINs decide whether a potential client is eligible for this program, whether to enroll the client in the program, whether to provide funding for some or all of the services in the client’s plan of service, and the amount of funding to be provided.
72. The factual allegations referenced by the Special Rapporteurs indicate that Mr. Foley applied to CILT for Direct Funding and that CILT determined that he was not eligible for this program.
73. The factual allegations referenced by the Special Rapporteurs do not indicate whether Mr. Foley has applied to the LHIN for the new self-directed care funding that has been available under HCCSA since February 2018. The Joint Urgent Appeal from the Special Rapporteurs, however, states that “On 29 March 2019, the South-West Local Health Integration Network (SW LHIN) finally confirmed his eligibility and offered to put him on a waiting list. However, following a re-structuring of Ontario’s health system, the Local Health Networks have been abolished, and currently there is uncertainty as to who will take responsibly [sic] for and ensure delivery of necessary home and community based healthcare and support that Mr. Foley requires.”
74. It should be noted that per the above description, the Direct Funding Program administered by CILT and the Self-Directed Care Program administered by the LHINs are separate programs. The factual allegations of the Special Rapporteurs indicate that

the SW LHIN confirmed Mr. Foley's eligibility for the Self-Directed Care Program on March 29, 2019.

75. That means that if he wished, Mr. Foley could participate in the Self-Directed Care Program administered by the LHINs. Contrary to the factual allegations, the LHINs have not been abolished. On June 6, 2019, in support of planned health system reforms, the Ontario Government proclaimed into force Schedule 1 of Bill 74 – *The People's Health Care Act, 2019*, which enacted a new statute entitled the *Connecting Care Act, 2019* (CCA). Under the CCA, a new Crown agency named Ontario Health will be assuming most of the functions, assets and liabilities of 20 of the province's health agencies, including the health system funding and planning operations of the fourteen LHINs. It is contemplated that, at some point in the future, the LHINs' direct service delivery functions, including their responsibilities for home care coordination and service delivery, will be transferred into frontline, integrated service delivery organizations known as Ontario Health Teams, following which the LHINs will be dissolved. The government plans to implement these reforms using a phased approach, but a precise timeline has not been set.
76. Despite these recent changes, the Self-Directed Care Program established under the HCCSA continues to exist. Mr. Foley has had the opportunity to participate in the program since the spring of 2019 after being accepted for enrolment by the SW LHIN (see paragraphs 74-75, above).

Information concerning any investigation conducted into the allegations of physical and verbal abuse perpetrated against Mr. Foley

77. As set out above, hospitals are independent of government. Ontario does not have any information about any investigation undertaken by the hospital into Mr. Foley's circumstances.
78. Ontario also does not have any information concerning any investigation conducted in relation to Mr. Foley by any police service.
79. In Ontario, there are slightly fewer than 50 distinct police services. These include the Ontario Provincial Police (OPP) and municipal police services. Only the OPP forms part of the Government of Ontario. Each municipal police service in Ontario is maintained by a police services board constituted under the *Police Services Act*, which is its own legal entity. While police services share various kinds of information, each service has information that is uniquely in its custody or control.
80. Since the alleged events occurred in the City of London, any investigation concerning the allegations of assault against Mr. Foley would have been conducted by London Police Service, the police service for the jurisdiction of the City of London. Ontario has no information concerning any investigation by London Police Service.

Information about any investigation conducted into allegations of pressure exerted to Mr. Foley to consider medically assisted dying

81. Ontario does not have information regarding what investigations the hospital may have conducted in response to Mr. Foley's allegations. Hospitals in Ontario are responsible for governing their own operations and are answerable to courts in their own right for any Charter breaches. Ontario does not have a supervisory relationship over them.
82. As discussed above, Mr. Foley has brought a civil claim against the hospital alleging that his treatment by hospital staff violates his rights under sections 7, 12, and 15(1) of the Charter.
83. Mr. Foley's claim is currently under case management by the Ontario Superior Court of Justice and will be adjudicated by this Court. This Court has jurisdiction to determine whether the treatment of Mr. Foley in hospital violated his rights under the Charter.
84. Ontario does not have standalone legislation related to eligibility requirements for and safeguards related to MAID. As described above, provisions related to eligibility and safeguards are set out in the federal *Criminal Code*. Ontario passed the omnibus *Medical Assistance in Dying Statute Law Amendment Act, 2017* on May 10, 2017. That Act amended several Ontario statutes including the *Coroners Act*, the *Excellent Care for All Act, 2010*, the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, the *Vital Statistics Act* and the *Workplace Safety and Insurance Act, 1997* to respond to the new MAID provisions in the *Criminal Code*.

CONCLUSION

85. The rights of persons with disabilities, including the right to life, the right to equality and the right not to be subject to cruel and unusual punishment or treatment, are protected, respected and recognized in Canada, and are subject to a robust framework of protections and remedial mechanisms. The allegations that are the subject of the Joint Urgent Appeal are currently before the Ontario Superior Court, which has jurisdiction to adjudicate the compliance of the law and the conduct of government entities with the Charter and to grant appropriate remedies where appropriate.
86. Canada reiterates its support for the important work of the Special Procedures of the UN Human Rights Council, and its steadfast commitment to constructive dialogue.

Ottawa
March 4, 2020