



**Note No.: GENEV-7208**

**Reference:** Canada's response to JOL CAN 2/2021

The Permanent Mission of Canada of the United Nations and World Trade Organization 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 OL CAN 2/2021 dated 3 February 2021. 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 and World Trade Organization 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.



*Julie E. Norton*  
Geneva, 17 May 2021

# **RESPONSE OF CANADA TO THE JOINT COMMUNICATION FROM THE SPECIAL RAPPORTEUR ON THE RIGHTS OF PERSONS WITH DISABILITIES, THE INDEPENDENT EXPERT ON THE ENJOYMENT OF ALL HUMAN RIGHTS BY OLDER PERSONS, AND THE SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS**

## **INTRODUCTION**

1. On February 3, 2021, the Special Rapporteur on the rights of persons with disabilities, the Independent Expert on the enjoyment of all human rights by older persons, and the Special Rapporteur on extreme poverty and human rights (referred to in this note as the “UN Special Procedures mandate holders”) sent Canada a Joint Communication (Ref: OL Can 2/2021). This Joint Communication expressed concerns in relation to Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)*, specifically the proposal to expand access to medical assistance in dying to persons with disabilities (MAID) whose natural death is not reasonably foreseeable, and invited Canada to respond to three questions in relation to this proposal.
2. The Government of Canada welcomes the opportunity to respond to this Joint 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 Communication.

## **BACKGROUND**

### **Legal framework for the protection of human rights in Canada**

4. The rights of persons with disabilities and older persons, including the right to life and the right to equality and non-discrimination, are recognized, protected and respected in Canada, and are subject to a robust framework of legal protections and remedial mechanisms.
5. 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.
6. Domestic human rights protections begin with the *Canadian Charter of Rights and Freedoms* (Charter), which is part of Canada’s Constitution and its supreme law. The 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 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”.<sup>1</sup>

7. 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 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.
8. In addition to these constitutional and legislative protections, Canada has implemented a broad range of policies, programs and services aimed at providing financial and other supports to persons with disabilities and older persons, as well as reducing barriers to their full participation in Canadian society. Examples of such policies and programs will be provided in paragraphs 63-74 of this response.

### **Redress for human rights violations**

9. 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.
10. 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.
11. 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.
12. 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

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<sup>1</sup> *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c.11, section 1.*

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.

### **Medical Assistance in Dying Regime in Canada**

13. Under Canada's constitutional framework, responsibility for MAID is shared by federal and provincial levels of government.
14. The Government of Canada is responsible for the criminal law, which was amended in 2016 through Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* to permit MAID through the creation of an exemption for certain medical practitioners from the criminal offences of culpable homicide (i.e. murder, manslaughter, or infanticide) and assisting suicide. The Government of Canada is also responsible for the overall monitoring of MAID within Canada.
15. 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.
16. The Government of Canada's introduction of Bill C-14 in 2016 followed a Supreme Court of Canada ruling that the blanket prohibition on MAID in Canada's *Criminal Code* was unconstitutional (contrary to the Charter),<sup>2</sup> as, among other things, it was found interfere with the right to liberty by constraining the ability of such individuals to make decisions concerning their bodily integrity and medical care and the right to security of the person by leaving such individuals to endure intolerable suffering. The Bill was based on extensive consultation with experts, stakeholders and other Canadians. The Bill was enacted on June 17, 2016 after extensive debate and consideration by the Parliament of Canada.
17. As noted above, the legislation created an exemption to the general criminal prohibitions on culpable homicide and assisting suicide, which would allow a person to receive MAID only if they met 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;

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<sup>2</sup> *Carter v Canada (Attorney General)*, [2015 SCC 5](#), [2015] 1 S.C.R. 331.

- (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.
18. The legislation stipulated that a person has a “grievous and irremediable medical condition” if they meet the following criteria (*Criminal Code*, s. 241.2(2)):
- (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.
19. In addition, the legislation set out a number of procedural safeguards (*Criminal Code*, s. 241.2(3)). In particular, the legislation stipulated that before providing MAID, the medical or nurse practitioner must be satisfied that: a request for MAID had been made in writing; the person meets the eligibility criteria prescribed under s. 241.2(1); the opinion on eligibility is shared by at least one additional and independent practitioner; and that at least 10 calendar days had elapsed between the day the written request was signed and the day that MAID was provided. The practitioner was also required to ensure that, immediately before MAID is provided, the patient had been given an opportunity to withdraw their consent, and expressly confirmed their consent to receive MAID.
20. 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 was and remains a distinct criminal offence to knowingly fail to comply with these requirements,<sup>3</sup> as well as to counsel or abet (i.e. encourage) a person to die by suicide.<sup>4</sup>
21. While federal legislation establishes the eligibility criteria and safeguards related to MAID that are in force throughout Canada, the provinces and territories are responsible for the delivery of health care services and the administration of justice. The practical implication of this division of powers is that, the federal legislation ensures all Canadians have access to and are protected by the same legal MAID framework while the provinces and territories can create specific policies and processes related to the implementation and monitoring of medical assistance in dying. These policies can vary to reflect the unique

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<sup>3</sup> *Criminal Code*, s. 241.3.

<sup>4</sup> *Criminal Code*, s. 241(1)(a).

geographic, regulatory and cultural contexts of individual jurisdictions; however, they cannot permit actions that are prohibited under the *Criminal Code*.

### ***Truchon v Canada (Attorney General)***

22. In 2017, Nicole Gladu and Jean Truchon, who lived with incurable degenerative disabilities (post-polio syndrome and cerebral palsy, respectively) but who were not near the end of life, brought a legal challenge to the “reasonable foreseeability of natural death” eligibility criterion. They argued that the prohibition on MAID for persons whose natural death was not reasonably foreseeable, but who were suffering intolerably as a result of their medical condition, unjustifiably infringed their right to life, liberty and security of the person and the right to equality, which are guaranteed by sections 7 and 15 of the Charter.
23. On September 11, 2019, the Superior Court of Québec accepted their arguments and declared unconstitutional (i.e. contrary to the Charter) the “reasonable foreseeability of natural death” eligibility criterion in the federal MAID legislation.
24. The Government of Canada decided not to appeal this decision, as it agreed that medical assistance in dying should be available as a means to address intolerable suffering outside of the end-of-life context.

### **Expanding eligibility for MAID for persons whose natural death is not reasonably foreseeable**

25. In response to the *Truchon* decision, on October 5, 2020, the Minister of Justice introduced Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)* in Parliament.<sup>5</sup> The legislation was adopted by Parliament and was enacted on March 17, 2021. Among other amendments to the MAID regime, the bill removed the “reasonable foreseeability of natural death” (RFND) criterion from the list of eligibility criteria. The legal effect of removing RFND is that both persons whose natural death is reasonably foreseeable and persons whose natural death is not reasonably foreseeable can now be found eligible for MAID if they meet all other eligibility criteria.
26. However, individuals whose sole medical condition is a mental illness are excluded from eligibility for 24 months after enactment. Paragraph 241.2(2)(a) provides that a person must have a “serious and incurable illness, disease or disability”. The recent amendments state that a mental illness is not an illness, disease or disability for the purpose of paragraph 241.2(2)(a). This provision will expire on March 17, 2023, at which point individuals whose only medical condition is a mental illness and who otherwise meet all eligibility criteria will become eligible for MAID. This temporary exclusion will provide the Government of Canada with more time to study how MAID on the basis of a mental illness can safely be provided and to ensure appropriate safeguards are in place to protect

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<sup>5</sup> It should be noted that an identical version of the Bill was previously introduced in February 2020. However, as Parliament was prorogued (i.e. the session was terminated) in August 2020, it was necessary to re-introduce the Bill once Parliament was back in session.

those persons. To support this work, the law requires the Ministers of Justice and Health to initiate a review by independent experts, who will be tasked with considering protocols, guidance and safeguards for MAID for persons suffering from mental illness, and to make recommendations within the next year (by March 17, 2022).

27. The law now includes a two-track system of safeguards. The first set of safeguards is tailored to persons whose natural death is reasonably foreseeable, where the risks associated with prematurely ending a life are reduced and where the potential sources of suffering are most likely linked to the dying process itself.
28. The second set of safeguards is tailored to persons whose death is not reasonably foreseeable, and therefore reflects the more serious consequences of error in these cases (for example, providing MAID to a person who could have grown more comfortable with their medical situation, or found a treatment that alleviates their suffering). The new law incorporates additional safeguards, beyond those included in the previous law, to address elevated risks associated with the diverse sources of suffering and vulnerability that could lead a person whose death is not reasonably foreseeable to seek access to MAID. This could include loneliness or isolation, lack of adequate supports, hopelessness, and the experience of stigma and discrimination because of disability or other personal characteristics. Such sources of suffering and vulnerability may be remediable to different degrees.
29. The safeguards that apply to persons whose natural death is not reasonably foreseeable are set out below (new subsection 241.2(3.1) of the *Criminal Code*).

#### *Witness requirement*

30. A request for MAID must be made in writing and witnessed and signed by one independent witness. Individuals who are beneficiaries under the person's will or who would receive a financial benefit from the person's death may not act as witnesses (paragraph 241.2(5)(a)). The law also provides, for greater certainty, that a medical provider who is involved in the assessment of the person for MAID eligibility or in providing MAID to the person may not act as an independent witness.

#### *Mandatory 90-day assessment period*

31. The first new safeguard for persons whose natural death is not reasonably foreseeable is the requirement that a minimum of 90 days be taken for the assessments of the person's eligibility. This assessment period may be shortened if the assessing practitioners agree that loss of capacity is imminent, but only if they are able to complete their assessments in a shorter period of time.
32. This safeguard responds to the additional challenges and concerns that may arise in the context of MAID assessments for persons whose natural death is not reasonably foreseeable, including whether their unbearable suffering is caused by factors other than the medical condition, and whether there are ways of addressing the suffering other than

MAID. The requirement for a minimum of 90 days for such assessments seeks to ensure that enough time is devoted to exploring all the relevant aspects of the person's situation and the sources and nature of their suffering, including whether there are treatments or services that could help reduce the person's suffering, such as counselling services, mental health and disability support services, community services and palliative care.

*Two Eligibility Assessments and Involvement of Practitioner with Expertise*

33. Two independent practitioners must confirm that all eligibility criteria are met. These include the requirements that the person has made a voluntary request for MAID, that they have decision-making capacity, and that they have given informed consent to receive it.
34. In addition, the second new safeguard for persons whose death is not reasonably foreseeable requires that either (1) one of the two mandatory eligibility assessments be conducted by a practitioner with expertise in the condition that is causing the person's unbearable suffering, or that (2) the practitioners undertaking the eligibility assessment consult with a practitioner with such expertise. Involving an assessor with expertise in the medical source of the person's suffering will help to ensure that all treatment options are identified and explored, while at the same time avoiding the need for specialist involvement in the full eligibility assessments, which could pose a barrier in remote and rural areas where specialists may be in short supply.

*Information on Available Supports (Clarification of Informed Consent)*

35. A third new safeguard for persons whose death is not reasonably foreseeable is a clarification of informed consent that expressly requires that the person be informed of available counselling services, mental health and disability support services, community services and palliative care, as appropriate to the individual's situation, and be offered consultation with relevant professionals. Most practitioners explore appropriate supports and available treatments in discussions with their patients as part of good medical practice, so this proposed safeguard would reinforce the importance of these discussions. It would also support the final new requirement (see immediately below).

*Serious Consideration of Reasonable Means to Alleviate Suffering (Clarification of Informed Consent)*

36. The final enhanced safeguard is a clarification of informed consent that requires the person and the practitioners to agree that reasonable means to alleviate the person's suffering have been discussed and seriously considered before MAID could be provided. This safeguard requires the practitioner to explore reasonable treatment options with the patient and be satisfied that the patient has fully explored and weighed the risks and benefits of available treatment options. At the same time, patients are not required to undertake treatments that may be unacceptable to them.



### *Final consent*

37. Immediately before MAID is provided, the affected person must be given opportunity to withdraw consent, and must confirm consent to receive MAID.

### **RESPONSES TO QUESTIONS POSED BY THE UN SPECIAL PROCEDURES MANDATE HOLDERS**

38. In the joint Communication, the UN Special Procedures mandate holders request information in response to the three following questions:
  - a. Please explain how the current Bill, configured as it is, does not subtly or indirectly reinforce ableist assumptions contrary to Article 8 combined with Articles 4 and 5 of the UN Convention on the Rights of Persons with Disabilities?
  - b. Please indicate how or whether you have considered alternative approaches/wording to avoid imparting or reinforcing ableist and ageist assumptions contrary to the above provisions?
  - c. Please indicate measures taken in order to consult closely with representative organization of people with disabilities and older persons, when developing, adopting and implementing the new national policy on medical assistance in dying.
39. Canada's response to these questions begins with a discussion of the principles underlying Bill C-7, and how these are reflected in the legislative text. The response also provides information on the safeguards put in place through Bill C-7 in instances where the natural death of the individual seeking MAID is not reasonably foreseeable, and the role these play in protecting vulnerable persons with disabilities, while preserving individual choice. The response then provides information on the monitoring mechanisms that will be put in place, as well as information on the consultations that took place with persons with disabilities, older persons, and their representative organizations when developing Bill C-7. The response concludes with information on measures taken to promote and protect the rights of persons with disabilities and older persons in Canada.

### **Preserving Individual Choice While Protecting Vulnerable Persons**

40. The Government of Canada supports the equality of all Canadians without exception and categorically rejects any notion that a life with a disability is one that is not worth living or worse than death itself. MAID is a human rights issue. The legislation recognizes the equality rights of personal autonomy as well as the inherent and equal value of every life. Persons with disabilities in Canada and around the world have long fought for the right to be able to make decisions about one's own life. The legislation explicitly recognizes equality rights and, as will be discussed below, the preamble refers to the Charter, as well as to Canada's obligations as a State party to the UN *Convention on the Rights of Persons with Disabilities* (CRPD).
41. Eligibility for MAID under the expanded law is not based on negative stereotypes equating disability with loss of dignity or quality of life, but on the respect for the autonomy of all persons with a serious and incurable illness, disease or disability to

choose MAID as a response to intolerable suffering that cannot be alleviated by means acceptable to them. Importantly, MAID is only permitted in circumstances where an individual has made a voluntary request, which was not the result of external pressure, after having been fully informed of the means available to relieve their suffering.

42. The revised law balances a number of competing interests and societal values, specifically to recognize the autonomy of individuals to choose MAID as a means for relieving intolerable suffering, regardless of the foreseeability of their natural death, while at the same time protecting vulnerable persons, recognizing that suicide is an important public health issue and affirming the inherent and equal value of every person's life.
43. This balance is reflected in the preamble:

Whereas Parliament considers that it is appropriate to no longer limit eligibility for medical assistance in dying to persons whose natural death is reasonably foreseeable and to provide additional safeguards for those persons whose natural death is not reasonably foreseeable;

Whereas under the Canadian Charter of Rights and Freedoms every individual has the right to life, liberty and security of the person without being deprived of them except in accordance with the principles of fundamental justice and has the right to the equal protection and equal benefit of the law without discrimination;

Whereas Canada is a State Party to the United Nations Convention on the Rights of Persons with Disabilities and recognizes its obligations under it, including in respect of the right to life;

Whereas Parliament affirms the inherent and equal value of every person's life and the importance of taking a human rights-based approach to disability inclusion;

Whereas Parliament recognizes the need to balance several interests and societal values, including the autonomy of persons who are eligible to receive medical assistance in dying, the protection of vulnerable persons from being induced to end their lives and the important public health issue that suicide represents;

44. The particular balance struck by the new law was informed by the Superior Court of Québec's decision in *Truchon*, as well as the views and concerns raised by persons with disabilities and older persons and the organizations representing them, along with experts, practitioners, stakeholders, Indigenous groups, provincial and territorial governments, and the Canadian public during the January and February 2020 consultations. It was also informed by the past four years of experience with MAID in Canada that culminated in the release of the Canadian government's First Annual Report on MAID in Canada (2019),<sup>6</sup> as well as by the experience of existing MAID regimes in other countries.

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<sup>6</sup> <https://www.canada.ca/en/health-canada/services/medical-assistance-dying-annual-report-2019.html>

## **Role of safeguards in ensuring the protection of the rights of persons with disabilities and older persons**

45. The incorporation of two-track system, with enhanced safeguards for persons whose death is not reasonably foreseeable, responds to the concerns that were raised during the consultation process about the elevated risks that MAID poses in such circumstances.
46. As noted above, the enhanced safeguards that apply in this context include a mandatory 90-day assessment period, a requirement that a practitioner with expertise in the condition that is causing the suffering be consulted as part of the eligibility assessment, and two clarifications of the requirements of informed consent in this context.
47. The minimum 90-day assessment period helps to ensure that there is adequate time to explore all the relevant aspects of the person's situation, including whether there are treatments or services that could help reduce the person's suffering.
48. The requirement that a practitioner with expertise in the person's medical condition be consulted during the assessments helps to ensure that all treatment options have been identified and explored, and that the other eligibility criteria have been satisfied.
49. Finally, the clarifications of informed consent, requiring that an individual seeking MAID be informed of the available supports and services (such as social, mental health, disability, and community support services), and that reasonable means of alleviating suffering be discussed and seriously considered, reinforce the importance of carefully assessing informed consent in this context.
50. Taken together, these safeguards reflect the seriousness of ending the life of someone who is not nearing death, the importance of protecting vulnerable individuals who may seek MAID and support a fully informed decision in this regard.

## **Enhanced federal monitoring regime**

51. The *Regulations for the Monitoring of Medical Assistance in Dying*, which came into force on November 1, 2018, support the collection of consistent, comprehensive information on MAID across the country by setting out reporting requirements for physicians and nurse practitioners who provide MAID, as well as pharmacists who dispense the necessary drugs. The current regulations require information to be provided in respect of eligibility and safeguards as they were before the law was recently amended.
52. The new legislation has also expanded the framework for the federal monitoring regime. Specifically, the new legislation authorizes the Minister of Health, in consultation with the Minister responsible for the status of persons with disabilities where appropriate, to develop regulations to align with the new legislative regime on MAID, including its eligibility requirements and the procedural safeguards that must be followed under the law. The new legislation also requires that the federal regulations on the MAID

monitoring system collect data on race, Indigenous identity, and disability, and seek to determine the presence of individual or systemic inequality or disadvantage.

53. The MAID monitoring regulations will need to be amended to reflect the changes in the new legislation. The process for amending the regulations will involve extensive consultations and is expected to take up to two years (by spring 2023) before they are developed, come into force and enhanced data collection begins. Reporting on these data will likely be released in 2024 or more fully in 2025, once data from a full year of data are available. The existing regulations will continue to apply in the interim.
54. Since the implementation of the federal MAID monitoring regime in 2018, it has become clear that capturing information based solely on the “written requests” for MAID, as was set out under the previous law, has resulted in an incomplete picture on who is requesting MAID across the country. Various provincial and territorial MAID coordination systems have been set up to triage the intake of MAID requests, which means that some requests do not meet the written request requirement of the current legislation and are thus not reported. This could include, for example, health sector personnel who have the responsibility to conduct preliminary assessments of MAID requests for care-coordination purposes.
55. The new legislation allows for the collection of certain information from practitioners who assess MAID eligibility (without yet having received a written request), from other health sector personnel who have the responsibility to conduct preliminary assessments of MAID requests for care-coordination purposes, as well as from pharmacy technicians who may provide MAID substances to medical practitioners.
56. The amendments enacted through Bill C-7 will address these reporting gaps in the law, and provide a fuller understanding of the MAID landscape in Canada through published federal annual reports. The collection of expanded information including that on race, Indigenous identity and disability will help to further inform the determination of any forms of inequality or disadvantage present within the MAID regime and help to address issues through future policy changes.

### **Parliamentary review of MAID law**

57. Subsection 5(1) of the new Act requires that a comprehensive Parliamentary review of the provisions of the *Criminal Code* relating to MAID and its application be conducted. The Act provides that this review must commence within 30 days of the Bill becoming law. Among other things, this review is required to consider “the protections of Canadians with disabilities”.

### **Consultations with persons with disabilities and the groups that represent them**

58. The Government of Canada conducted an extensive consultation process prior to introducing Bill C-7.

59. During the month of January 2020 and early February 2020, the Government of Canada engaged with disability rights groups, as well as the Canadian public, provincial and territorial governments, Indigenous groups, health care providers, experts and key stakeholders to receive their feedback on expanding Canada's MAID legislation in response to the *Truchon* decision:
- Over 300,000 Canadians participated in the online public consultations between January 13 and 27, 2020.
  - Minister of Justice and Attorney General of Canada, David Lametti, Minister of Health, Patty Hajdu, and Minister of Employment, Workforce Development and Disability Inclusion, Carla Qualtrough, met with experts, health care providers, health professional associations and regulatory bodies, representatives of disability organizations, leading disability scholars, Indigenous organizations and other key stakeholders (over 125 participants in total) to consult with them directly on revising Canada's federal MAID legislation.
  - Ministers and senior officials also sought input from their provincial and territorial counterparts on responding to the *Truchon* ruling.
60. Some respondents to the online public consultations were of the view that the eligibility criterion requiring a reasonably foreseeable natural death protects vulnerable persons and persons with disabilities, and that its removal could result in MAID being seen as a cheaper alternative to treating individuals with chronic illnesses and disabilities. Other respondents, however, were of the view that this eligibility criterion restricted individuals' access to MAID, and prolonged suffering. Many of the respondents who provided written comments felt that with better social support, counselling and disability support, individuals could have an improved quality of life, thereby reducing the need for MAID.
61. Representatives of disability rights organizations participated in the January and February 2020 roundtables, including representatives of the Council of Canadians with Disabilities, the DisAbleD Women's Network of Canada, the British Columbia Aboriginal Network on Disability Society, Inclusion Alberta, and Inclusion Canada (formerly the Canadian Association for Community Living). Individuals with disabilities also participated, including the plaintiffs in a second legal challenge to the former eligibility criterion requiring a reasonably foreseeable death, Ms. Julia Lamb and the British Columbia Civil Liberties Association.
62. Disability rights organizations were concerned with the decision to expand MAID eligibility outside end of life circumstances, and the societal harm that could result from disability being a reason to terminate life, in a way that no other personal characteristic can. Conversely, some participants representing disability groups, or with disabilities themselves expressed concern that people potentially at risk or viewed as vulnerable, should not be excluded as a group because of their disabilities, but assessed on an individual basis. The option of different MAID safeguards, depending on a person's situation (for example, dying versus non-dying) was discussed, and some disability rights organizations felt this approach may help protect vulnerable persons while avoiding additional safeguards for persons who are dying.

## **Additional measures to promote and protect the rights of persons with disabilities and older persons in Canada**

63. As noted above, this new legislation recognizes the significant role that social, mental health, disability and community support services play in the full realization of equality rights. This is reflected in the safeguards discussed above, which makes it a responsibility of the medical practitioner to ensure that an individual seeking MAID is made aware of the supports available to them.
64. Provincial and territorial governments have the primary role in direct services for persons with disabilities, and provide a number of support programs and initiatives. However, recognizing the need for quality and appropriate palliative care, the Government of Canada developed a Framework on Palliative Care in Canada.<sup>7</sup> It provides a common vision and guiding principles for palliative care in Canada, as well as a blueprint to help governments, caregivers and communities shape planning, decision making, and organizational change. Building on the Framework, the Government of Canada released an Action Plan on Palliative Care,<sup>8</sup> which lays out planned activities over five years to support those areas identified in the Framework that fall under federal responsibility (as opposed to provincial and territorial roles and responsibilities). In addition, the Government of Canada is providing \$6 billion in federal funding directly to provinces and territories to support better home and community care, including palliative care.
65. As noted above, all jurisdictions in Canada have a broad range of policies, programs and initiatives aimed at providing support to persons with disabilities and older persons and promoting their inclusion and full participation in Canadian society.
66. At the federal level, in the September 23, 2020 Speech from the Throne, the Government of Canada recognized that “COVID-19 has disproportionately affected Canadians with disabilities, and highlighted long-standing challenges”. The Government also made a mandate commitment to bring forward a Canada Disability Benefit modelled after the Guaranteed Income Supplement for low-income seniors (discussed in the Background Section of this response), a robust employment strategy for Canadians with disabilities, and a better process to determine eligibility for Government disability programs and benefits.
67. The Disability Inclusion Action Plan builds on the steps the Government of Canada has taken to date, including the landmark *Accessible Canada Act* that was passed in June 2019 and the establishment of Accessible Standards Canada. In 2018, Canada also acceded to the *Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities*. The Convention remains our compass as the Government of Canada undertakes this work.

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<sup>7</sup> <https://www.canada.ca/en/health-canada/services/health-care-system/reports-publications/palliative-care/framework-palliative-care-canada.html>

<sup>8</sup> <https://www.canada.ca/en/health-canada/services/health-care-system/reports-publications/palliative-care/action-plan-palliative-care.html>

68. The Disability Inclusion Action Plan is an important next step in advancing the rights and inclusion of persons with disabilities. With enhanced direct income support, Canada will be lifting many working-age Canadians with disabilities out of poverty. By removing barriers to employment, this brings about dignity, independence and self-sufficiency; and, by modernizing the Government of Canada's approach to disability supports and programs, Canada is broadening and enhancing its ability to meaningfully deliver directly to citizens with disabilities. In working to meet this commitment, the Government of Canada will be engaging with persons with disabilities and provincial and territorial governments to obtain their views.
69. In addition, to ensure an inclusive approach to its pandemic response and overall decision-making, the Government of Canada established the COVID-19 Disability Advisory Group (CDAG) in April 2020. The CDAG is comprised of experts in disability inclusion with a mandate to provide advice on: lived experiences of persons with disabilities during the COVID-19 crisis; disability-specific issues, challenges and systemic gaps; and strategies, measures and steps to be taken in response.
70. In December 2020, the CDAG presented the Minister of Employment, Workforce Development and Disability Inclusion with its final report on the key areas of its work. Also in December 2020, the mandate of the CDAG was renewed. Based on its renewed mandate, the CDAG will focus on:
  - promoting disability inclusion and targeting barriers to the full participation of Canadians with disabilities in specific areas, based on Government of Canada priorities and the Minister's mandate; and
  - the implementation of Government of Canada programs and initiatives related to the Minister's disability inclusion and accessibility mandate.
71. The Government of Canada also provides ongoing support to persons with disabilities through a number of programs and initiatives which promote and support their economic and social inclusion in Canadian society, such as tax-based savings, post-secondary education supports and earnings replacement. For example, these include the Registered Disability Savings Program, the Canada Student Loans Program, the Disability Tax Credit and other tax measures. In 2019, this included the implementation of the *Accessible Canada Act* within federal jurisdiction and funding to support accessible infrastructure projects, as well as targeted employment and social development supports.
72. In addition, to promote the rights of persons with disabilities and build capacity of the disability community to participate in the monitoring and implementation of the CRPD, the Government of Canada has provided funding to disability organizations to undertake projects to identify best practices and barriers faced by persons with disabilities. Projects include engaging in the monitoring and implementation of the CRPD, working on intersectional approaches to disability, and studying legal capacity provisions and supported decision-making, as well as supporting national Indigenous organizations to develop parallel reports for the CRPD.

73. Canada has also been working to advance a number of policy objectives to improve the social and economic inclusion of older persons, such as: improving seniors' access to affordable housing; improving the income security of seniors; and fostering the social inclusion and engagement of seniors. Past initiatives supporting these policy objectives include:
- investments to build at least 7,000 new affordable housing units for seniors under the National Housing Strategy, as well as investing in much needed renovations;
  - as part of the Strategy, the creation of at least 2,400 new affordable units for people with developmental disabilities, and a minimum of 20% of units must meet accessibility standards to promote universal design and visitability;
  - providing more generous and flexible leave for caregivers as well as a number of measures to provide tax relief to Canada's seniors receiving care, and to their caregivers; and
  - various measures put in place to strengthen Canada's public pension system, such as restoring the age of eligibility to 65 from 67 and increasing the Guaranteed Income Supplement for the most vulnerable single seniors;
74. In addition, the Government of Canada has made additional investments in the New Horizons for Seniors Program (NHSP), and introduced greater flexibility for organizations to use funding received through this program to respond to COVID-19 and its impact on seniors, including to help strengthen social inclusion of seniors during physical distancing. The NHSP is a federal Grants and Contributions program created in 2004 to help ensure that seniors can benefit from, and contribute to, the quality of life in their communities. With an annual budget of \$70 million, it is the single largest funding program to combat social isolation among seniors in Canada.
75. The NHSP has taken four steps to respond to COVID-19 and its impact on seniors:
- In the spring of 2020, the Department of Employment and Social Development provided all funded organizations with flexibilities to adapt their current project activities to support seniors impacted by COVID-19;
  - On March 29, 2020, the Prime Minister announced \$9 million in funds for community organizations serving seniors. The NHSP worked with United Way Centraide Canada to deliver those funds to community organizations. Over 900 organizations were funded;
  - On May 12, 2020, the Government of Canada announced an additional investment of \$20 million to the NHSP to support organizations that offer community-based projects that reduce isolation and help seniors maintain a social support network. Over 1000 organizations were funded; and
  - Finally, the Department of Employment and Social Development designed the annual community-based Call for Proposals held in the fall of 2020 to account for



the challenges facing seniors-service community organizations during the pandemic.

76. The Government of Canada released Budget 2021 on April 21, 2021. It reflects the disability inclusive approach the Government of Canada has taken, with both targeted investments and broad measures that also benefit persons with disabilities. Targeted measures include expanding the eligibility of the Disability Tax Credit, and tripling the Enabling Accessibility Fund that makes communities and workplaces in Canada more accessible. Broader measures include investments in more affordable and accessible housing, inclusive and accessible early learning and child care, strengthening long-term care and expanded financial support to seniors.
77. Budget 2021 also included funding to ensure appropriate access and safeguards for MAID. This funding will support training and the development of guidance materials for practitioners, as well as support research to guide the evolution of medical assistance in dying in Canada. This training will expand on existing measures to ensure that patients receive information and guidance on disability supports that are available to them.

## CONCLUSION

78. The rights of persons with disabilities and older persons, including the right to life and the right to equality, are protected, respected and recognized in Canada, and are subject to a robust framework of protections and remedial mechanisms.
79. The expansion of Canada's MAID regime to permit MAID for persons whose natural death is not reasonably foreseeable respects the rights to life and equality in Canada's *Charter* and international human rights law. The new law does not reflect ableist assumptions about the lives of persons with disabilities. Rather, the expanded law is based on respect for human rights, including the autonomy of all persons with a serious and incurable illness, disease or disability to choose MAID as a response to intolerable suffering that cannot be alleviated by means acceptable to them. The law protects vulnerable individuals through the incorporation of enhanced safeguards designed to ensure that MAID is only provided in circumstances where the person seeking it has made a voluntary and fully informed choice, after having given serious consideration to reasonable means of alleviating their suffering. The upcoming revisions to the federal monitoring regulations, coupled with the Parliamentary Review required under subsection 5(1) of the new legislation, foster transparency in relation to the operation of the MAID regime and will contribute to better understanding of the circumstances under which MAID is sought and administered and the application of the eligibility criteria and safeguards, including with respect to persons with disabilities.
80. The Government of Canada also notes that it is currently working with provincial and territorial governments to develop Canada's combined second and third report on implementation of the CRPD. The reporting process offers an opportunity for federal, provincial and territorial governments to reflect on how jurisdictions work together in a

complementary manner, and to assess our implementation of the CRPD. This report will include the latest available information on the changes to the MAID regime.

81. Canada reiterates its support for the important work of the UN Special Procedures mandate holders, and its steadfast commitment to constructive dialogue.

Ottawa, Canada  
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