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DIGNITY IN LIFE – DIGNITY IN DEATH

*A brief for the Special Joint Committee on Medical Assistance in Dying:
Statutory Review of the Provisions of the Criminal Code Relating
to Medical Assistance in Dying and their Application*

May 2, 2022

In 2015, the BC Humanist Association called for access to medical assistance in death (MAID) for all who freely choose it.¹ *Carter v Canada* set a floor, not a ceiling, for who should qualify for MAID; nevertheless, through Bills C-14 and C-7, Parliament has sought to curtail the hard-won rights of Canadians to choose a dignified death.

Since 1984, the BC Humanist Association has provided a community and a voice for Humanists, atheists, agnostics and the non-religious in BC. Humanism is a worldview that promotes human dignity without belief in a higher power. We promote progressive and secular values and challenge religious privilege.

THE CHILL OF CRIMINALIZATION

Unlike any other medical procedure, access to MAID is prescribed through a complex set of exemptions to the *Criminal Code*. This means that medical professionals risk criminal charges and up to 14 years in prison if they choose to provide MAID. This is not just a hypothetical scenario as two medical practitioners are currently under RCMP investigation for their involvement in the medically assisted death of an Abbotsford woman.² Abortion, by contrast, has become a routine medical procedure with safeguards and standards of practice to prevent abuse since criminal prohibitions were struck down by the courts.

Recommendation 1: Treat MAID as a health care issue, not a criminal one.

¹ https://www.bchumanist.ca/allow_assisted_dying_for_all_who_choose_it

² <https://www.ctvnews.ca/health/police-investigating-medically-assisted-death-of-b-c-woman-1.5877288>

DIGNITY FOR CANADIANS WITH DISABILITIES

We reject the paternalistic and ableist framework that Canadians with disabilities need to be protected from MAID. Continued or increased restrictions to accessing MAID do not serve to protect the disabled but rather perpetuate a paternalistic relationship between the government and those individuals. To ensure the equal dignity of all people, we must afford everyone choice in life and choice in death. We commend the voices of disability activists in drawing a spotlight to the chronic underfunding and broken promises to provide the supports necessary to live a life with dignity. Among these, the Canada Disability Benefit offers particular hope to bring many people with disabilities out of poverty, affording them the choice to live in dignity.

Recommendation 2: Immediately enact a Canada Disability Benefit.

STATE OF PALLIATIVE CARE

We support investments in expanding access to and improving the quality of end-of-life care. More than anything, COVID-19 exposed the dismal state of Canada's long-term care facilities. Our society should be judged by how it treats its most vulnerable. We commend the government's commitment to work with the NDP to enact a "Safe Long-Term Care Act." We would emphasize that national standards should apply to all facilities and that public funds should be pulled from sectarian organizations and those that refuse to offer MAID on site.

Recommendation 3: Enact the promised Safe Long-Term Care Act with protections for access to MAID and the state's duty of religious neutrality.

MATURE MINORS

There is no moral or ethical distinction between a mature minor and a young adult. As such we support provisions to allow equal access to MAID for any young person who has the capability to consent. Allowing mature minors this right would bring our MAID regime in line with other medical treatments for which medical professionals regularly must assess their competency.

Recommendation 4: Allow MAID for mature minors following a competency assessment.

ADVANCE REQUESTS

We support the enactment of legislation allowing competent adult Canadians to create an advance request for MAID with or without a diagnosis of a grievous and irremediable medical condition. This request could include a personal statement describing the circumstances they themselves would consider to be intolerable suffering, but where they find themselves lacking the capacity to communicate this suffering or consent to receive MAID. Already Belgium, Colombia, Luxembourg and the Netherlands permit some form of advance request.

Recommendation 5: Allow individuals to make an advance request for MAID.

MENTAL ILLNESS

The Supreme Court of Canada's language of "a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition" did not differentiate between physical or mental illnesses. To do so perpetuates stigma and discrimination against the many Canadians suffering from mental illnesses. It ultimately falls upon free, informed and capable adults, including those living with a mental illness, to decide what is best for themselves, including sometimes a medically assisted death.

Recommendation 6: Allow those whose sole underlying condition is a mental illness to access MAID.

CONTINUED BARRIERS TO ACCESS

Beyond the limitations above, Bill C-7 did not solve many other issues with Canada's assisted dying regime. Principally among them is the still undefined language of what deaths are "reasonably foreseeable." Rather the bill created a split stream where those whose deaths are not foreseeable face significant and paternalistic barriers. Most notably the "90 clear days" waiting period between an initial assessment and access to MAID is granted sentences those who've deemed their suffering to be intolerable to continue to suffer for an entire season.³

Recommendation 7: Remove the 90-day waiting period and permit all patients to waive final consent.

Additionally, in most provinces at least some amount of healthcare is still delivered in partnership with faith-based organizations. A large subset of these, particularly Catholic facilities, have taken strict policy of refusing to provide MAID onsite. This means Canadians seeking to exercise their rights are often forced to undergo excruciating transfers to accommodating facilities. Federal healthcare funding should remain in secular facilities that welcome and support all patients and their legal healthcare choices.

Recommendation 8: Ensure access to healthcare services at all publicly funded facilities by ending the funding of sectarian healthcare delivery.

³ https://www.bchumanist.ca/government_tables_bill_to_expand_maid
https://www.bchumanist.ca/bc_humanist_association_welcomes_proposed_legislation_to_expand_access_to_medical_assistance_in_dying