



Crucial Amendments Needed to Bill C-7

**to Protect the Equality Rights of People with Disabilities
in the Medical Assistance in Dying System in Canada**

October 22, 2020



Introduction

The Government of Canada prides itself on championing inclusion and accessibility and has demonstrated this by signing and ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities, committing to apply a disability lens to government decisions, and introducing a National Disability Inclusion Plan in the fall 2020 throne speech.

Yet, by removing the end of life criterion for access to Medical Assistance in Dying (MAiD), the government has failed to uphold this vision.

By proposing to provide MAiD beyond end of life circumstances to Canadians with disabilities, Canada signals that these Canadians are expendable and threatens their lives, dignity and belonging. No other Canadian group, irrespective of the suffering of its members, is considered expendable because of its personal characteristics. An end of life criterion is an essential line in the sand to provide dying persons (including those with disabilities) with the ability to choose a painless death while ensuring that the lives of all Canadians are deemed essential:

- It would avoid making assessments of what is a disposable life.
- It would prevent MAiD from being provided as an alternative when what a person requires is disability-related personal supports, housing, income or other assistance, without which they are stripped of their dignity and unable to live a decent life.
- It would enjoin governments to treat the suffering of persons with disabilities, like the suffering of any other group, as a crisis situation worthy of mobilization and intervention.
- It would guard against undermining the fundamental principle animating Canada's *Criminal Code* prohibitions against homicide: i.e., that all lives have equal value and require equal protection in law. Indeed, removing the end of life criterion would signal the very opposite: that unlike other persons who suffer, the life of a person with a disability is not worth living.

Without meaningful amendments, the legislation will remain subject to constitutional challenge, because it discriminates against persons with disabilities by treating them as less capable or worthy of recognition, respect, and consideration than other Canadians. We divide proposed amendments into two sections: A) proposed amendments to the provisions of bill C-7; and, B) proposed additional amendments to the current statute.

Further, because Bill C-7 constitutes a delicate exercise attempting to balance the equality

rights of persons with disabilities with the autonomy rights of Canadians, it should referred in its final form to the Supreme Court of Canada to ensure its constitutionality.

A. Proposed amendments to the provisions of Bill C-7:

- 1) **Preamble:** The government’s previous MAiD legislation was struck down because its objective of protecting vulnerable persons from being induced to end their lives in a moment of weakness was found to be overbroad and grossly disproportionate in its effect on non-vulnerable individuals. The preamble should articulate a different, clear, and precise objective of balancing autonomy and equality rights for persons with disabilities in Canada to avoid stereotypes about the quality and value of their lives and to refuse to terminate their lives on the basis of their personal characteristics. This objective would recognize that inclusion is not possible without equal respect. Establishing that a personal characteristic like disability (a protected ground under s. 15 of the *Charter*) is a reason to terminate a life undermines equal respect and therefore equality rights. We recommend:
 - a) **Delete paragraph 2** – This paragraph establishes at the outset that it is “appropriate” to withdraw protections for the right to life of people based on a protected ground under s. 15. This would be an appalling position for Parliament to adopt, and completely contradictory to its recognition in subsequent paragraphs of respect for the right to equality and to the right to life.
 - b) **Amend paragraph 5** - to add the following language: “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, which requires balancing the autonomy and equality rights of persons with disabilities, avoiding stereotypes about the quality and value of their lives, and refusing to terminate their lives on the basis of their personal characteristics”;
- 2) **s. 1(1) – which repeals the reasonably foreseeable natural death criterion and s. 1(3) – which references s. 241.2(3)** Re-write a new, more precise, requirement to replace the reasonable foreseeability of natural death criterion. The requirement should be that the person be considered, based on a balance of medical opinion, to be at the end of their life, without the requirement of a specific prognosis.
- 3) **s. 1(7) – which amends 241.2 by adding a sub-section (3.1) on “Safeguards – death not reasonably foreseeable.”**
 - a) **This section must be removed.** These provisions violate the equality rights of persons with disability and long-term health conditions, by providing for the termination of their lives based on personal characteristics protected under s. 15 of the *Charter*, fueling longstanding stereotypes that persons with disabilities are better off dead, that they are a burden on the state and their loved ones, that they have an unacceptable quality of life, that their lives have less value than the lives of

others, and that they are and will remain unhappy.

- b) **Maintain sub-section (g) as a safeguard for those whose death is reasonably foreseeable.** This sub-section references ‘informing’ a person of alternatives including supports, community services, etc. and ensuring that the person has been “offered consultations with relevant professionals who provide those services or that care.” However, *offering* consultations is not enough. Sub-section (g) should be amended to require that the MAiD practitioner “ensure that the person has been informed of the means available to relieve their suffering, including, where appropriate, counselling services, mental health and disability support services, community services and palliative care” and further, that the MAiD practitioner proactively facilitate and prioritize engagement with other professionals who have relevant experience in these domains.
 - c) **Maintain sub-section (h) as a safeguard in all cases.**
- 4) In addition, an accessibility and inclusion advocate should be required to participate in the process of identifying and reviewing alternate means available to relieve suffering, in order to ensure that all options are proactively explored. Before the health care system is used to terminate a person’s life based on their personal assessment that they are suffering intolerably, we should be assured that all alternatives have actually been considered and explored with experts who are knowledgeable about those alternatives.

B. Additional Amendments

- 1) **Amend s. 241(2)(2)(c) of the *Criminal Code*** – To safeguard that the enduring suffering experienced by the person is actually caused by the illness, disease or disability or state of decline (the ‘objective’ side of the ‘suffering’ test as it currently stands), and not by deprivation or disadvantage, amend this sub-section as follows:
 - “they experience enduring suffering that:
 - (i) is caused by the illness, disease or disability or that state of decline;
 - (ii) is intolerable to them and cannot be relieved under conditions that they consider acceptable;
 - (iii) is not the result of deprivation, social disadvantage, lack of needed support or perceived discrimination;”
- 2) **Introduce a legislated requirement for reporting:** [<Learn about reporting here>](#).
 - MAiD Practitioners must be required by the law to:
 - a) report the factors in a patient’s living conditions or life circumstances that may be causing or compounding their suffering and any treatments or interventions, including but not limited to palliative care, disability supports, income assistance, counselling, assistive technology, communication supports and environmental accommodations that were offered to relieve their patient’s suffering, and the steps taken to make them available;

- b) invite and permit any practitioner who has been directly involved in the care of a patient who requests MAiD, or who has been involved in the MAiD assessment process for the patient, and any persons who made a request for MAiD, to contribute voluntarily to a data collection system, either federally or provincially administered.

The Minister must be required, in order to safeguard against the MAiD system being used by persons who are vulnerable to being induced to commit suicide, to:

- a) collect the information (in 1 above) and to report it to Parliament at regular intervals and with appropriate detail;
- b) make the data available to researchers;

3) Shared responsibility for Monitoring and Reporting between Minister of Health and a Minister responsible for the Status of Persons with Disabilities

The experience to date with the MAiD system demonstrates disadvantage, deprivation, and discrimination account for motivating the requests of at least some of those who have requested and received MAiD. The Minister responsible for the Status of Persons with Disabilities and the Office for Disability Issues should be mandated to share in the responsibility for monitoring and reporting to Parliament on the MAiD system, given the clear objectives stated in the Preamble related to protecting the human rights and inclusion of people with disabilities, in respect of the *Charter* and the *UN Convention on the Rights of Persons with Disabilities*.

4) Explicit commitment to address areas of urgent concern evident from publicly reported individual cases since 2016 [\[Reference data in our Monitoring submission\]](#)

The scope of the legislated review of medical assistance in dying scheduled for June 2020 must explicitly include three urgent and serious areas of concern that have arisen in the implementation of MAiD since 2016:

- a) The ways in which people can be induced, in moments of weakness, to end their lives including how mental health and environmental factors may be operating in such moments, and the implications of these findings for enhancing safeguards in the legislation.
- b) Critical examination of the correlations and linkages between requests for MAiD and access to the social determinants of health. Experience with the MAiD system so far clearly demonstrates people are being motivated to request MAiD because of a lack of social determinants of health. It is imperative that we better understand the nature and scale of this issue and how to address it, if the equal right to life of people who are vulnerable to being induced to use the MAiD system to commit suicide is to be protected;
- c) The appropriate role of families in the MAiD assessment process, taking account of both privacy rights and autonomy, as well as the insights and knowledge that family

members may have, including but not limited to: 1) the factors underlying a person's experience of suffering; 2) the ways that suffering could be ameliorated; and, 3) the possibility that the person may be being induced to make a MAiD request and decision in a moment of weakness.

For more information, please contact Kurt Goddard, Director of Legal and Public Affairs, kgoddard@inclusioncanada.ca / 416-661-9611x225