



August 24th, 2022

The Honourable Jean-Yves Duclos, P.C., M.P.
Minister of Health
House of Commons
Ottawa, Ontario
K1A 0A6

The Honourable David Lametti, P.C., M.P.
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa, Ontario
K1A 0A6

The Honourable Carla Qualtrough, P.C., M.P.
Minister of Employment, Workforce Development, and Disability Inclusion
House of Commons
Ottawa, Ontario
K1A 0A6

Subject: This is Eugenics - The Report of the Expert Panel on Medical Assistance in Dying (MAiD) and Mental Illness.

Dear Ministers,

Inclusion Canada is a national federation of 13 provincial-territorial associations and over 300 local associations working to advance the full inclusion and human rights of people with an intellectual disability and their families. Inclusion Canada leads the way in building an inclusive Canada by strengthening families, defending rights, and transforming communities into places where everyone belongs.

On behalf of Inclusion Canada, I would like to draw your attention to five (5) concerns that we have with the report of the Expert Panel on MAiD and Mental Illness. We understand from the Interim Report of the Special Joint Committee on MAiD that the committee was tasked with providing an interim report addressing MAiD on the basis of mental illness before the committee's October 17th deadline. We take this as an indication that the development of a framework for providing MAiD on the basis of mental illness may soon be underway. Therefore, we provide our feedback on the Expert Panel's recommendations as adopted by the Special Joint Committee in its interim report, with great concern and expediency.

Ultimately, the recommendations of the Expert Panel on MAiD and Mental Illness must not be adopted as written. To do so, and in particular outside of the intentionality of the legislative process would be dangerous and would rob the most directly affected Canadians from the opportunity to participate meaningfully. Recall that Bill C-7 was not about mental illness initially and only became so secondarily due to a later Senate amendment. This late change made it impossible to anticipate the need to adequately advocate against the use of MAiD on the basis of mental illness.

Every single issue before the Special Joint Committee on MAiD affects persons with disabilities; Canadians with disabilities cannot and must not be considered as occupying some distinct silo separate from what impacts all Canadians. People labeled with a mental illness – or psychosocial disability - fall under the disability umbrella and are protected by the United Nations' Convention on the Rights of Persons

with Disabilities,¹ While people with co-occurring mental illness and intellectual and other disabilities face added barriers to accessing appropriate resources and supports.

And yet, the perspectives of people with disabilities and their organizations were not sufficiently captured in the Special Joint Committee's interim report. It appears that the perspective of those Canadians with disabilities are not included because they were not invited to speak to MAiD for mental illness specifically. This is substantive oversight that must be corrected.

We believe the Expert Panel's report provides further evidence that neither Track 2, nor access solely on the basis of a mental health condition can be justified. We highlight five areas which demonstrate its problematic analysis and conclusions:

1. **Death by MAiD in "Situations of Involuntariness"**: The Expert Panel on MAiD and Mental Illness makes recommendations for how to euthanize people who are being institutionalized against their will. They propose that if a person has been institutionalized for more than 6 months and wants to die by MAiD, they should be assessed by a third party while confined.

The coercion involved in involuntary detention undermines the ability of the individual to make an autonomous choice to die. In British Columbia, for example, a person who is involuntarily detained

¹ Article 1 of the UN CRPD outlines that "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

has no right to refuse psychiatric treatment. In most provinces, any right to refuse treatment can be overridden by doctors or an administrative tribunal. Given the coercive nature of their detention and treatment², in which an individual has no control over the circumstances in which they are being detained, and no choice to end that detention, the Expert Panel's recommendation is a gross pervasion of autonomous and informed choice.

- 2. Death by MAiD through Supported Decision Making:** The Panel asserts that "assessors and providers with experience providing MAiD in Track 2 cases" (death not reasonably foreseeable) are *already* assessing for MAiD eligibility using a "supported decision-making approach." The Panel recommends that Canada collect data on the use of supported decision making in MAiD deaths.

Inclusion Canada is a leader in advocating for supported decision making to be an option for people with intellectual, cognitive, and psychosocial disabilities who are deemed unable to make decisions legally independently. For decisions that would fundamentally affect a person's physical or mental integrity, however, we have been emphatic that where supported decision making is unable to facilitate a person's independent choice and instead requires an

² The UN Special Rapporteur on the Rights of Persons with Disabilities noted that Canada's involuntary hospitalization and treatment of persons with psycho-social disabilities may be akin to torture. Human Rights Council. 2019. Visit to Canada: Report of the Special Rapporteur on the Rights of Persons with Disabilities.

<https://www.ohchr.org/en/documents/country-reports/visit-canada-report-special-rapporteur-rights-persons-disabilities>

interpretive act by a third party, it cannot be used³. No one should ever be authorized to request or consent to MAiD on another's behalf.

To be eligible for MAiD, a person must provide informed consent and re-affirm express consent at the time of euthanasia, unless this requirement is waived due to capacity loss under Track 1. The Panel's report does not explicitly convey whether the "supported decision-making approach" adopted helps the person to *fully satisfy* the tests of informed and express consent. Canada should thoroughly investigate these claims under the current system.

3. Assuming that Fairness can be Secured through Self-Reflection:

The Panel contends that MAiD assessors and providers might encounter "challenging interpersonal dynamics" with people being assessed for MAiD due to mental illness. The Panel proposes that, in the interest of fair access to MAiD, assessors and providers "should be self-reflective and examine their reactions to those they assess" and as necessary withdraw and provide a referral.

It is abhorrent to suggest that in any manner there can be "fairness" in the MAiD system for people on Track 2, including those who request and receive MAiD on the basis of suffering related to mental

³ This position is consistent with the Supreme Court of Canada's decision in the *Eve* case. The court in *E (Mrs) v Eve*, [1986] 2 SCR 388, para 92, states that "The importance of maintaining the physical integrity of a human being ranks high in our scale of values," particularly as it affects the right to life. A court cannot grant approval for serious procedures for purely social or non-therapeutic purposes without a person's informed consent.

illness. Justice as fairness⁴ has three principles: liberty, equality, and ensuring that the most vulnerable, the least advantaged, are not hurt by a policy. Politicians, policy makers and others advocating for MAiD appear to be captivated by the liberty principle alone, willfully rejecting any balancing with the other two principles, as any substantive *Charter*-based analysis would demand.

Where assessors and providers may feel uncomfortable with approving a MAiD request, the Panel suggests the problem is their own inability to respect the liberty of the requester, and that they should withdraw. At least this is consistent. Wherever voices – professional or disability rights – have questioned the MAiD juggernaut, expressed discomfort with the proposals, they have been silenced in the name of the thinnest notion of liberty imaginable. Neither justice nor fairness is at play in these recommendations. Had the Panel attended to these other two basic principles of justice with any seriousness whatsoever, we would have seen a very different report and recommendations.

- 4. Stopping Short of Recommending the Provision of Social Supports and Fault-Finding Case Reviews:** The Panel does recommend that medical professionals add “social supports including housing and income support” to the list of supports that a person should be *informed of* as means to relieve suffering. Further, the Committee does push for case reviews for “quality improvement purposes.” While these recommendations are somewhat encouraging, neither is sufficient to prevent or monitor coercion.

⁴ Rawls, John. 2001. Justice as Fairness.

Social supports are rarely available within the 90-day time frame provided for by Bill C-7. To inform a person that inaccessible social supports exist is meaningless. Supports must be provided. And they must be provided *before* a person requests death by MAiD. The suggestion that otherwise inaccessible resources be made contingent on a MAiD request is coercive and ableist. People should not be reduced to intolerable suffering, with the only other option being death by MAiD, before being able to access necessary support services.

By the time a person has requested to die by MAiD, they may have given up all hope of meaningful support. “Sophia” who died by MAiD spent two years fruitlessly seeking housing that would be safe for someone with Multiple Chemical Sensitivities⁵.

The case review proposal advanced by the Panel would lack transparency and be too limited in scope. Only publicly accessible data will ensure needed scrutiny of complex MAiD cases that are rooted in suffering compounded by unmet human needs. It is our position that only a robust and transparent oversight process can bring to light the human rights violations that are endemic to MAiD practice as presently administered.

5. **Medical Assistance in Dying for People with Intellectual**

Disabilities and/or Autism: The Panel makes clear that intellectual disability and Autism are not to be considered mental illnesses for the purpose of the provision of MAiD. However, the Panel does indicate that “its recommendations for safeguards, protocols, and

⁵ CTV News. April 13, 2022. Woman with Chemical Sensitivities Chose Medically-Assisted Death After Failed Bid to Get Better Housing. <https://www.ctvnews.ca/health/woman-with-chemical-sensitivities-chose-medically-assisted-death-after-failed-bid-to-get-better-housing-1.5860579>

guidance, should apply to all clinical situations in which the specific concerns identified by the federal government arise - incurability, irreversibility, capacity, suicidality, and/or the impact of structural vulnerability - regardless of the requester's diagnosis."

Given that the Panel explicitly indicates that people with intellectual disabilities may be eligible for MAiD under the current legislation **because they have an intellectual disability**, this assertion is dangerous and terrifying.

The panel identifies that one scenario for people with an intellectual disability to request MAiD involves people with a co-existing mental disorder. Given the high prevalence rates of mental illness amongst individuals with an intellectual or developmental disability and the lack of access to adequate mental health services for this population across the country, the risk to people with an intellectual disability is critically high. As mental health conditions are not often addressed – potentially leading to the worsening of mental illness and distress – the Panel's comments suggesting that MAiD is a valid alternative are profoundly alarming.

The consequence of the panel's comments and recommendations would be that a person with an intellectual disability who is confined to an institution or who has a mental disorder that is not adequately addressed by the mental health system, and who may be offered but not provided social support could (and likely will) die by MAiD in Canada.

With the adoption of Track 2 and access based on a mental health condition, the MAiD system in Canada is institutionalizing eugenic based violence against a *Charter*-protected group. The Expert Panel's report is all the evidence needed for why MAiD should not be

provided to people who are not terminally ill. Its normalization of the policy and practice of terminating the lives of Canadians with disabilities who are not dying, is shocking. We do not have the words to express the depth of our abhorrence and revulsion at what is being threaded into the fabric of what we call Canada, into our internationally renowned and respected public health care system. We know that Canada's MAiD legislation is discriminatory on paper, and the report of the Expert Panel on MAiD and Mental Illness makes clear that it is, and will continue to be, discriminatory in practice.

We urge this government to step back, to consider what is at stake, and to change course. Introduce provisions to end Track 2 and remove access based solely on a mental health condition. It's not too late.

Respectfully,



Robin Acton, President, Inclusion Canada

Head Office

Inclusion Canada c/o WeWork
1 University Avenue
Toronto, ON M5J 2P1

Mailing Address

Inclusion Canada
20-850 King Street West
Oshawa, ON L1J 8N5

+1 416-661-9611
info@inclusioncanada.ca
inclusioncanada.ca