



Date: November 15, 2023

Subject: Brief for the Special Joint Committee on Physician-Assisted Dying

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(Full footnotes available on request)

This submission opposes any extension of physician-assisted dying to persons whose sole underlying condition is mental illness.

People do not die from mental illness, but from other vulnerabilities often in combination.

1. “**increased likelihood** of experiencing disability and premature mortality, stigma and discrimination, social exclusion and impoverishment” (WHO, August 27, 2012)
2. “greatly increased **risks of homicidal death**” (BMJ 2013), including police-involved homicide (CBC, April 5, 2018)
3. “high level of **physical and sexual abuse**” and “higher risk of being a **victim of crime**, in particular violent crime” (Rosenberg, 2018)
4. “Restrictions in the **exercise of their political and civil rights**” and “**barriers to healthcare access**” (WHO... “Targeting People with Mental Health Conditions...”)
5. “Overwhelming majority... **poverty, poor physical health**, and are subject to **human rights violations**” (WHO, “MH, poverty and development”); poverty is “both the cause of mental disorders and the result” (Psychology Matters)

Overlap of identities: mental illness, intellectual disability and substance use disorders.

1. Often, the same person may have features of several potentially disabling conditions. **This intersectional reality compounds the slippery slope problem in extending PAD.**
2. **Dual Diagnosis-Intellectual/Developmental Disability and Mental Illness:** “individuals with developmental disabilities are three to four times more likely to develop emotional, behavioural and psychiatric difficulties...” (CMHA, Ont.); “3-6 times” (CAMH); “higher rates of suicidality for PWID” (Inclusion Canada, 2020)
3. **Concurrent Disorders- Substance Use and Mental Health Problems:** “people with mental illness have much higher rates of addiction” (CMHA, Ont.); “30% of people diagnosed with a mental health disorder will also have a substance use disorder” (CAMH, “Concurrent substance use...”)

People with disabilities and particularly those with mental health problems are *already* at greater risk of suicide: access to MAiD will inevitably increase the number of potentially preventable deaths.

1. “People with various types of functional disabilities had an **elevated risk for suicide**-related outcomes, compared with people without disabilities. The more limitations a person had

- progressively increased their risk” (Marlow et al, US, “Association Between Disability and Suicide-Related Outcomes...”)
2. “Disabled people had **higher rates of dying by suicide** than non- disabled people.” (Office for National Statistics, UK, 2021); “three times more likely to report suicidal ideation...compared to people without disabilities” (US, CDC, “Disparities in Suicide”)
 3. “46% of people who died by suicide had a known mental health condition” (NAMI); “**diagnosable mental disorders are present in approximately 90% of suicide cases**” (Maung, “MD and Suicide...”)
 4. “all categories of **SUD are associated with an increased risk of suicide mortality**” (Lynch et al, “SUD and risk of suicide”); “**increases further when psychiatric disorders are comorbid with SUD**” (Esang, 2018)
 5. Canadians in general who are not dying are the subject of suicide prevention measures, whereas persons with disabilities being offered state authorized death creates a cruel and discriminatory irony.

Discrimination against persons with disabilities is widespread in Canada, still a force that corrodes human right, according to the Supreme Court

1. “The mentally ill have **historically** been the subjects of **abuse, neglect, and discrimination** in our society.” (Swain, SCC)
2. “history of disabled persons...is largely one of **exclusion and marginalization**...denied access to opportunities for social interaction and advancement, subject to **invidious stereotyping**” (Eldridge, SCC)
3. “**Stigmatising attitudes persist** in Canadian society to this day; central to...support for coercive treatments, legislative solutions and justifications for social inequities and injustices” (A.G.O., SCC, 2020)

Parliament has an ongoing role to supervise the compass of the Criminal Law

- Sometimes the debate seems to lose sight of the fact that **what is an issue here is the compass of the criminal law**, given that everyone agrees that the field represents a valid exercise of the criminal law power (*Carter*, 49) :the question being whether under s.222 (4) of the *Criminal Code*, physician assisted death will be seen as culpable homicide; whether s. 241.1 can provide a justification; whether the crime under s.241 of counseling or aiding suicide should qualify for the exemption under s.241(2); whether the normal prohibition against consent to death being a defence under s.14 is overridden for the person causing death in the particular application of MAiD.
- What remains for **Parliament** to decide is how they continue their responsibility to ensure that the proper societal role of the criminal law is preserved, **to protect vulnerable Canadians and to avoid the downgrading of this essential role to being a gatekeeper for what is depicted as a mere treatment or service issue.**
- The concern of the Law Reform Commission of Canada in its 1983 Report #20, (Euthanasia ,Aiding Suicide and Cessation of Treatment , 53-54) remains dominant in construing the parameters of the criminal law: “**There is reason to fear that homicide of the terminally ill for ignoble motives may readily be disguised as aiding suicide.**” With the legitimate invocation of any current or prospective *Criminal Code* justification, individual culpability is extinguished, but the whole issue of “**ignoble motives**” for society remains, showing the precariousness for people with disabilities of expanding MAiD.
- In terms of **individual deterrence, MAiD must never be routinized** or seen as anything else other than a possible justification for what would otherwise be viewed as culpable homicide.

Compliance with the justificatory framework may be readily established in many circumstances, but **intentional causation of death by anyone, even under s. 241.1 et seq must always be seen as on the margins of moral and legal tolerability.**

Extending MAiD to persons with disabilities and mental illness is NOT an equality issue

- It is **incontrovertible** that persons with disabilities and mental illness in particular have been historically and remain the **victims of discrimination.**
- The **extension of MAiD** to persons with disabilities and the further stretching the boundaries to persons with mental illness **is a source of ongoing marginalization**, which has been condemned: “If the law reinforces, perpetuates, or exacerbates [a group’s] disadvantage, it violates the equality guarantee and **thereby gives discrimination the force of law.**” (ON (AG), SCC 2020, 38)
- Discrimination is of course both direct and indirect or systemic or producing an adverse impact. **Enhanced accessibility of PAD would be directed at a particular group, persons with disabilities and mental illness, but would also have pervasive systemic effects in law, policy and services.**
- The decriminalization of intentionally causing death for persons with disability and mental illness **reinforces the notion that for people with such impairments, death becomes a rational even preferred choice, despite the pervasive discrimination that has led to despair.**
- **Having access to MAiD cannot be considered a benefit for persons with disabilities and mental illness.** This stretches credulity to the breaking point. If a person is not dying, if a person has never been given the comprehensive range of individual protections and societal benefits guaranteed by the *CRPD*, **how can offering death possibly be styled as a societal good or an individual betterment or blessing?**
- **The extension of MAiD to persons with disabilities and mental illness just adds insult to injury, furthering inequality and discrimination.**

The UN Convention on the Rights of Persons with Disabilities (CRPD): Canada has not fulfilled its promises, especially regarding MAiD.

1. The values of this treaty inform “statutory interpretation and judicial review” (*Baker*, SCC) and “the interpretation of the content of the rights guaranteed by the Charter” (*Slaight*, SCC)
2. Under Art. 4, Canada is obliged to: **adopt legislative measures** for the implementation of CRPD rights; **abolish laws** “that constitute discrimination against persons with disabilities”; “take into account the **protection and promotion of the human rights** of persons with disabilities”; “**closely consult with and actively involve persons with disabilities.**”
3. Art. 10 requires measures to ensure the “effective enjoyment of the **inherent right to life** by persons with disabilities on an equal basis with others”
4. Art. 25 recognizes that “persons with disabilities have the right to the enjoyment of the **highest attainable standard of health without discrimination**”
5. The CRPD also recognizes collective rights: “the right of persons with disabilities to education” Art. 24; the right “to work on equal basis with others” Art. 27; “the right to an adequate standard of living...including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Art. 28; the right to “effectively and fully participate in the conduct of public affairs without discrimination” Art .29
6. **Although Canada has made progress, it has failed to live up to its full CRPD obligations and particularly here concerning the possible extension of PAD to persons with disabilities and mental illness. The whole current debate shows that Canada is**

comprehensively ignoring its Art. 4 responsibilities: Canada has a duty to reject the extension of MAiD and to create the conditions favouring equality and inclusion instead.

Canada continues to ignore the protests of people with disabilities: how can this be in a supposedly human rights promoting society?

1. **MPs “have stubbornly ignored the concerns expressed by the disability community... This is a fight for our lives.”** (Council of Canadians with Disabilities, March 12, 2021)
2. **“people with disabilities are being forced to choose death in the face of an ableist system that is perpetually refusing to provide the support they need to live... The impending expansion to include mental illness...will compound its damage”** (Disability Alliance BC, June 24, 2022)
3. **“CMHA strongly opposes MAID for those with mental illness as the sole underlying cause... Mental illness should not be a death sentence”** (CMHA, February 24, 2021)
4. **Inclusion Canada: MAID must be restricted** “to those at the end of their natural life whose suffering is intolerable” (“Position on MAID, 2020); Canada has failed to live up to its CRPD obligations “ by removing the end of life criterion” “an essential line in the sand”; **“No other Canadian group...is considered expendable because of its personal characteristics”** (October 22, 2020)
5. **People First of Canada: demands that proposed changes “be killed immediately”;** “Makes it easier than ever to cancel us out”; “dangerous and discriminatory”; “disability should not be a criteria to give a person access to medical assistance in dying”; “could be **deadly to Canadians with disabilities**” (PFC, February 24, 2021); “a lot of things... can and should be made easier for people with an intellectual and/or developmental disability.... But making it easier to use the medical assistance in dying laws to end our lives is **not** one of them. **Please vote to kill the bill- not us!** “(Kory Earle, PFC President,2012)
6. **ARCH Disability Law Centre:** “would result in more **persons with disabilities receiving MAID** not because they are near the end of life and want to die but **because the social inequality and deprivation they experience is so dehumanizing that they no longer wish to live** in those social conditions.... Such a result would be a devaluing of the lives of persons with disabilities.” (Senate Submission, November 25, 2020)

Canada continues to ignore the United Nations on MAiD, creating shame in the international community.

1. **Special Rapporteur on the rights of person with disabilities,** December 19, 2019: “extremely concerned” about the original legislation “from a disability perspective”; “worrisome information about persons with disabilities in institutions being pressured to seek medical assistance in dying”; persons with disabilities “are being offered the ‘choice’ between a nursing home and medical assistance in dying”; **“ensure that persons with disabilities do not request assistive dying simply because there are no community-based alternatives”**
2. **Three UN Envoys reject the extension of MAiD:** Special Rapporteur on the **rights of persons with disabilities;** Independent Expert on the enjoyment of all **human rights by older persons;** Special Rapporteur on **extreme poverty and human rights,** February 3, 2021: “grave concern... a **social assumption** might follow (or be subtly reinforced) that it is **better to be dead than to live with a disability**”; persons with a disability “may opt too readily for assisted dying, based on **the internalization of prejudices, fears and lower expectations of living with a disability**”; “may decide to **end their lives because of broader social factors, including loneliness, social isolation and lack of access to quality support services**”; “would result in a **two-tiered system** in which some would get **suicide prevention**”

and others suicide assistance, based on their disability status and specific vulnerabilities.”

3. **UN Committee on the Rights of Persons with Disabilities**, May 8, 2017: “**concerned** about the adoption of legislation that provides **for medical assistance in dying, including on the grounds of disability**”
4. **UN Committee on the Rights of Persons with Disabilities**, November 5, 2019: Canada to **provide information** on measures taken to “**provide alternative courses of action** and appropriate palliative care, disability support, home care and other social measures for persons with disabilities who seek an assisted death.”
5. **Canada’s Second and Third Periodic reports on the CRPD, August, 2022**: On MAID “**Some disability organizations were concerned** that removing the eligibility criterion requiring a foreseeable natural death would allow a **disability or illness to serve as a justification for the termination of life in a way that no other personal characteristics could** and argued that legislation that equates significant disability with eligibility for MAID would be subject to challenge for violation of section 15 of the Charter (equality rights).”
Canada did not answer these arguments.

Conclusion: Canada is at the crossroads, and it must decide to protect the human rights of persons with disabilities and mental illness rather than extending state authorized death

1. **People with disabilities** and mental illness will justifiably feel **devalued, betrayed and abandoned** by Parliament and Canada with any extension of MAiD.
2. **Canada should demonstrate a singular dedication to promote the moral compass of the CRPD in Art. 3** :(a)dignity, autonomy and independence; (b) non-discrimination; (c) participation and inclusion; (d)respect for difference and acceptance; (e) equality of opportunity; (f) accessibility; (g) equality between men and women
3. **The embrace of expanded access to MAiD as a substitute for its moral and legal obligations undermines Canada’s commitment to international human rights and the values of the Charter.**