

Dear Honourable Committee Members:

I write you some of my brief submissions to assist you in your work, and to allow my client Roger Foley to speak to you more fully about his evidence.

My name is Ken Berger, I am Roger Foley's lawyer. I am both a physician and lawyer. I am Secretary General of the World Association for Medical Law and I am currently an Expert for the World Health Organization helping develop guidelines for physician death examination.

I have 40 years of combined experience in law and medicine on the actual practical ground level issues with Assisted Dying and see things from many different perspectives.

I am not a MAiD assessor, as in my opinion, I do not believe the practice is safe.

I connected with the disabled community very early on in my life, prior to medical school, at the Hugh MacMillan Rehab Hospital, as a volunteer, playing sports with disabled children and after that, becoming a physician, volunteering at the Special Olympics World Winter Games, helping care for the athletes.

Persons who have overcome disability to live are heroes and have been a true inspiration to me and have motivated me to try to do better in my life.

Elderly persons, whether clients or patients, have always shared their own life experiences with me and we need them as elder and wise members of society.

I speak for the disabled, elderly and vulnerable persons in Canada, as it is difficult to really hear their voices.

I want to focus my evidence on 3 key issues:

1. The lack of accurate evidence for Assisted Dying and expanding the eligibility criteria
2. The clear and present dangers of Confirmatory Bias and,
3. the grave Consequences of errors as wrongful deaths result.

1. What type of evidence do we have here to justify Bill C-7?

Extremely weak and unreliable evidence-

a) Anecdotal reports of some individuals claiming they have reached subjective conclusions on a wish to seek MAiD— subject to possible influence or their personal circumstances.

b) Government questionnaire or surveys often with leading questions

This is not scientific evidence, nor is it valid, reliable or reproducible.

2. The Dangers of Confirmatory Bias

Confirmation bias is the tendency to search for, interpret, favor, and recall information in a way that confirms or supports one's prior beliefs or values. ... The effect is strongest for desired outcomes, for emotionally charged issues, and for deeply entrenched beliefs.

Person that support MAiD believe every-thing is good and that they are doing something heroic and that they are thinking they are respecting autonomy.

They are more likely to support expanding Assisted Dying, err that patients do have capacity and will not identify patients that are being coerced, they have a confirmative bias, because they believe that assisted dying is the humane thing to do and should be done.

Assessors are in a disadvantageous position to actually know the longitudinal history of the patient and the complex background of possible circumstances of coercion as it is a limited assessment. They often limit their focus on MAiD, rather than advocating for other services to alleviate a patients suffering, where a patient could be in a better mental state to make voluntary informed decisions. Assessors are not even required to actually obtain the services the patient needs or ensure proper and necessary care to relieve their suffering first before conducting the assessment to facilitate an Assisted Death to ensure a valid informed consent.

4. Risk of Errors and consequences

The risk errors are very serious, as wrongful death results and there is exploitation of the vulnerable.

The higher the risk of such errors the greater the need for robust oversight and safeguards.

If there is any risk for a serious outcomes or any possibility of mistakes the practice should stop or at least take a pause.

Eg. Capital punishment – because of fear of wrongful convictions, even with jury trials with potential forensic evidence and cross examination to test the case, the practice ended.

There is nothing here to prevent wrongful deaths of innocent persons with disability, the vulnerable or the elderly and they committed no crime.

We should not further remove safeguards and adopt any of the Truchon or Audrey Parker amendments, as you are further increasing the likelihood of mistakes and errors with catastrophic consequences.

Honourable Committee Members, Law Makers you have lots of options including the Notwithstanding clause if you do not agree with Truchon after full consideration and hearing from the witnesses.

Your role is to protect Canadians not put vulnerable Canadians in danger.

Thank you for your attention and consideration and for the opportunity to speak.

A handwritten signature in blue ink, appearing to read 'Ken Berger', with a stylized, flowing script.

Ken Berger MD JD CCFP(EM,COE,SEM,PC) FCFP, FALM

Counsel, Mr. Roger Foley

(Written Submission to allow my client Roger Foley the time to speak to you)