

Standing Committee on Justice and Human Rights
House of Commons – Parliament of Canada

Bill C-7, *An Act to Amend the Criminal Code (medical assistance in dying)*, 2nd Sess, 43rd Parl, 2020

**Parliament's Constitutional Responsibilities under the Canadian Charter;
Mental Disorders
as an Additional Underlying Condition; and
Women Victims of Sexual Abuse and Domestic Violence**

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Purpose:

- (1) To provide an in-depth analysis of Parliament's constitutional responsibilities under the Canadian Charter and the Supreme Court decision in *Carter*;
- (2) To present a critical analysis of the proposed policy under which “persons whose sole underlying medical condition is a mental illness” would not be eligible to medical assistance in dying, **but persons** whose death is not reasonably foreseeable, and **who are suffering from a mental illness and an additional underlying “grievous and irremediable medical condition”** under section 241.2 of the *Criminal Code* **would be eligible**;
- (3) To analyze whether the proposed bill could be unconstitutional and challenged on the basis that it affects **the rights to life, liberty, security, and substantive equality of the more vulnerable, in particular women victims of sexual abuse and domestic violence**.

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This brief is based on a major research project funded by the Social Sciences and Humanities Research Council (\$156 000) on the novel legal issues faced by parliaments and courts in the contemporary context of “waivers of constitutional rights”, with a specific focus on medical assistance in dying.

SUMMARY:

In *Truchon*, the Superior Court of Quebec ruled that limiting access to medical aid in dying (MAID) to people whose deaths are reasonably foreseeable was too restrictive. **No court has, however, ever held that MAID should be expanded to the most vulnerable, including women victims of sexual abuse and domestic violence.**

(1) Parliament has the constitutional responsibility **(i) to adopt legislation protecting the human rights affected by MAID that are specifically guaranteed in the Canadian Charter.** These include the rights to life, liberty, and security of the person, as well as the equal value of all lives, including those of the more vulnerable. In *Carter*, the Supreme Court expressly held that there is no “right to die” with dignity as the right to life is limited to a “right not to die”. **Individuals may waive their “right not to die” to the extent that such individual waivers are reasonable limits of the right equally protecting the value of all lives, including those of the most vulnerable.**

Parliament must **(ii)** implement the Supreme Court conclusions and **(iii)** ensure the equal protection of all the rights involved. The constitutional framework set out in *Carter* does not represent the “minimal conditions” for access to MAID, conditions that are necessarily to be extended. **Parliament could be in breach of its constitutional duties if it fails to ensure a just and fair balancing of all the rights at stake.**

(iv) Legislation must reasonably delimit the protection of all the rights at stake. Any limitation to a Charter’s right – including waivers – must be reasonable and demonstrably justified under section 1. **MAID’s legal framework could be unconstitutional and challenged on such a basis if:**

- **the outcomes** of the implemented policy, whether voluntary or involuntary, **create a regime where all the human rights at stake are not protected equally;**
- **the rights to life, liberty, security and/or equality of vulnerable persons are violated since those people are at risk of requesting MAID in a context of “limited choices” or systemic inequality.**

(2) The exclusion of **grievous mental illness** as an underlying condition justifying MAID requests is supported by research and other relevant evidence identified as such by the Government. The proposed bill precludes persons “whose sole underlying medical condition is a mental illness” to receive MAID. However, persons **who are suffering from a mental disorder and an additional underlying medical condition** covered by section 241.2 of the Criminal Code **could be eligible.** As a result, **vulnerable patients** suffering from multiple grievous conditions **may be less protected by the law** than those “only” suffering from mental disorders. **This outcome is not only at odds with the Government’s own thinking; it could also be found unconstitutional.**

(3) **Women victims of sexual abuse and domestic violence** suffering from a mental disorder such as post-traumatic stress disorder (PTSD) could be eligible to request MAID under the proposed bill if they also have one of the listed additional conditions. In the Netherlands and Belgium **euthanasia on the basis of mental disorders is twice as common amongst women.** Many of them were suffering from PTSD and mood disorders. **Parliament must be particularly vigilant about the adverse effects of its policies on disadvantaged groups and adopt policies based on sex and gender-based analysis (SGBA).** The Supreme Court has been clear that governments cannot escape their duty to adopt regulatory regimes protecting the life and security of vulnerable people by arguing that those individuals are responsible for their “so-called voluntary choices”. **Choices are shaped by systemic inequality.**

PROPOSED AMENDMENT: The law will no longer limit MAID to persons whose natural death is reasonably foreseeable. MAID should not be accessible to patients whose death is not reasonably foreseeable, and **who are suffering from mental disorders, including post-traumatic stress disorders (PTSD), and an additional “grievous and irremediable condition”.**

1. Parliament's Constitutional Responsibilities under the Canadian Charter

Parliament has the following constitutional responsibilities: (i) to adopt legislation protecting the rights affected by medical assistance in dying (MAID), rights that are specifically safeguarded under the Canadian Charter; (ii) to implement the relevant conclusions reached by the Supreme Court in *Carter*; (iii) to ensure the equal protection of all the human rights involved; and (iv) to reasonably delimit the protection of all the Charter rights in question. Legislative limitations to constitutional rights must be demonstrably justified under section 1 of the Charter. Otherwise, they could be declared unconstitutional.

- (i) **Parliament must adopt legislation protecting the rights and values that are specifically guaranteed under the Canadian Charter.** These include the rights to personal autonomy, and security, the right to life as a “right not to die”, and the equal value of all lives, including those of the most vulnerable.¹

The rights to personal autonomy and security

While liberty and security are two distinct rights protected by section 7 of the Charter, they can be discussed together.² The right to liberty encompasses the right to personal autonomy “to make fundamental personal choices free from state interference³”. Requesting MAID is one of those important choices. The legal prohibition of MAID may also impinge on the security of patients by condemning them “to endure intolerable suffering⁴”.

The previous blanket prohibition of MAID infringed on the rights to security and autonomy of competent adults suffering intolerably as a result of a grievous and irremediable medical condition. Section 7 of the Charter “recognizes the value of life, but it also honours the role that autonomy and dignity play at the end of that life⁵”.

Waiver of the “right to life” in the context of MAID must meet a robust standard of “free and informed consent”. Such consent is not genuinely “free” if the person does not have a “real choice” among different options.⁶ Patients choosing MAID do so autonomously if their choice is rational and reflects a standard of equal human dignity. Protecting autonomy demands legal and ethical requirements going beyond simple notions of “free choice” or “free consent”, no matter the context in which consent is given.⁷ **Freedom of choice must be interpreted in light of the constitutional right to substantive equality, and the principle that “choices are themselves shaped by systemic inequality⁸”.**

The right to life as a “right not to die” and the possibility to waive it in the context of MAID

The modern era of human rights arose from the recognition of the Second World War’s devastating consequences for humanity. The right to life is accordingly only engaged “where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly⁹”.

Whether the right to life protects a “right to die” (or a “right to die with dignity”) has been analyzed in *Carter*, and the Supreme Court has expressly rejected such claim:

[59] The appellants and a number of the interveners urge us to adopt a broader, qualitative approach to the right to life. Some argue that the right to life is not restricted to the preservation of life, but protects quality of life and therefore a right to die with dignity. Others argue that the right to life protects personal autonomy and fundamental notions of self-determination and dignity, and therefore includes the right to determine whether to take one’s own life.

[61] [However,] the right to life is only engaged when there is a threat of death as a result of government action or laws. In [other] words, **the right to life is limited to a “right not to die”** (para. 1322).

The scope of some Charter guarantees comprehends “positive” as well as “negative” dimensions. For example, the freedom to religion protects the “freedom to believe” and the “freedom not to believe” (or the refusal to participate in religious practice)¹⁰, and the freedom of expression guarantees free speech as well as the refusal to express a message¹¹. Both the “positive” and the “negative” dimensions of those constitutional guarantees are equally protected, and they must be promoted and respected accordingly by the legislator.

Other rights, however, by their very nature, do not possess any such “negative” dimensions. The “right to security¹²” of the person does not protect a “right to insecurity”, the “right not to be subjected to any cruel and unusual treatment or punishment¹³” does not include a “right to be tortured”, and the “right to physical liberty¹⁴” does not encompass a “right to voluntary servitude”. Similarly, **the right to life is neither a “right to die” nor a “freedom to choose to live or die”.**

This distinction is of crucial importance. **Parliament does not have to protect any “right to die”, and its legislation could not be challenged on such a basis. Individuals who autonomously choose to request MAID waive their “right to life”.** Without such waiver, the “right not to die” is enforceable against any actions by the State that might cause the person’s death. **Parliament must therefore safeguard the “right not to die” and the equal value of all lives, including those of the most vulnerable, in the same way that it must guarantee personal autonomy.**

- (ii) **Legislation must respect and implement the distinction carefully specified by the Supreme Court by adopting objective limitations to MAID ensuring the “right not to die”, which protects all lives equally, including those of the most vulnerable.**

While a “right to die” with dignity would be considered a “subjective right”, the “right not to die” is an “objective right” that must be implemented as such by Parliament. The right to life is engaged by a state’s action imposing death or a risk of death. Such risk is assessed objectively, that is by objective facts and evidence. **Whether the right to life is engaged is not dependent on “the [subjective] way a person values his or her lived experience¹⁵”.**

The previous blanket prohibition of MAID engaged the right to life since it “had the effect of forcing some individuals to take their own lives prematurely¹⁶”. **There is, however, no “violation” of the right to life that could be legally grounded on any will “to take one’s own life¹⁷”.** MAID should not be provided to any “consenting patient” wishing to choose such an option. Such claims are based on misunderstandings both of *Carter*’s nuanced reasoning, as well as the inherent equilibrium of the human rights framework entrenched in our Constitution.

Like two sides of the same coin, requesting MAID is a *subjective* fundamental life-choice grounded in personal autonomy and a waiver of the *objective* right not to die. **Legislation must accordingly respect autonomous choices to the extent that those choices do not override the respect of the objective “right not to die”, equally protecting all lives, including those of the most vulnerable.**

- (iii) **Parliament must ensure the equal protection of all the rights engaged.**

Human rights must be interpreted “holistically, as an indivisible structure of rights¹⁸”. There is “a functional relation between rights: they interact with one another to produce a whole that is more than the sum of its parts¹⁹”. It is therefore incorrect to oppose autonomy with the equal value of all lives or to conclude that one outweighs the other. The constitutional framework provided in *Carter* represents the “minimal conditions” for access to MAID, conditions that are necessarily to be extended by the courts and Parliament. On the contrary, **Parliament could be in breach of its constitutional duties if it fails to ensure a just and fair balancing of all the constitutional rights and values at stake.**

- (iv) **Legislation must reasonably delimit the protection of the Charter rights engaged. Any limitation to constitutional rights – including waivers – must be “demonstrably justified” under section 1. Otherwise, it could be declared unconstitutional by the courts.**

Section 1 of the Charter guarantees “the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

Limitations to rights are usually involuntary. Those limitations are “restrictions” of rights. For example, a blanket prohibition of MAID is a *restriction* of the right to autonomy of competent adults who are suffering intolerably as a result of a grievous and irremediable medical condition. This limitation of the right to autonomy is *involuntary* from the perspective of the right holder.

Limitations to rights can also be voluntary. Such voluntary (de)limitations of rights are “waivers”. A person *waives* their right to life when they request MAID, or when they challenge the constitutionality of a legal rule prohibiting them from receiving MAID. **Without a waiver resulting from a genuinely autonomous choice, the “right not to die” is enforceable** against any action by the State that might cause the person’s death. In this context, the waiver is a “voluntary limitation” of the right to life.²⁰

Any limitation to rights – including waivers – must be justified under section 1.²¹ To justify a limitation, “Canada must show that the law has a pressing and substantial object and that the means chosen are proportional to that object”. Any limitation to the Charter rights at stake must comply with the “proportionality test” carefully designed by the Supreme Court in *Oakes*.²²

Take the example of a legal provision limiting the “liberty” of certain vulnerable patients who have a mental illness or a post-traumatic stress disorder to request MAID in a manner that infringes section 7 of the Charter. Such limitation will be constitutional under section 1 if (1) it is rationally connected to a legitimate objective; (2) it is necessary to achieve the objective, that is, minimally impairing the right to liberty, taking into account all the human rights engaged; and (3) the beneficial effects of the limitation outweigh the deleterious effects of the limitation.²³

In *Carter*, the Supreme Court held that “the protection of the vulnerable²⁴” is a legitimate objective that is rationally connected to the legal prohibition of MAID.

As for the other criteria, **the limitation of one’s liberty to choose MAID does not have to be strictly “minimal” to be reasonable as Parliament has the constitutional responsibility to protect all the rights engaged equally.** A provision limiting the liberty of a few individuals may protect and promote the *shared* values underpinning the very same constitutional right that the plaintiff has *individually* chosen to waive – the equal protection of all lives. As pointed out by the Supreme Court, “in cases such as this where the competing societal interests are themselves protected under the *Charter*, a restriction on s. 7 rights may in the end be found to be proportionate to its objective²⁵”.

Conversely, a legal framework seeking to favour the protection of individual liberty over the equal protection of all lives could be found disproportionate under section 1.

MAID’s legal framework could be unconstitutional and challenged on such basis if:

- **the outcome of the implemented policy, whether voluntary or involuntary, would create a regime where all human rights engaged are not protected equally, for instance by favouring individual liberty at the expense of substantive equality and the protection of the most vulnerable; and/or**
- **the rights to life, liberty, security and/or equality of vulnerable persons are violated, for instance, if vulnerable people are at risk of requesting MAID in a context of limited choices or systemic inequality.**

2. Mental disorders as an additional grievous underlying condition

Bill C-7 aims to amend the *Criminal Code* “to, among other things, [...] (b) specify that persons whose sole underlying medical condition is a mental illness are not eligible for medical assistance in dying”.

Section 241.2 of the *Criminal Code* currently provides:

241.2 (1) A person may receive medical assistance in dying only if they meet all of the following criteria:

[...]

(c) they have a grievous and irremediable medical condition;

[...]

(2) A person has a grievous and irremediable medical condition only if they meet all of the following criteria:

(a) they have a serious and incurable illness, disease or disability;

Bill C-7 proposes to amend section 241.2 by adding the following after subsection (2): (2.1) For paragraph (2)(a), a mental illness is not considered to be an illness, disease or disability.

Persons suffering from mental illnesses and an additional “illness, disease or disability” constituting a “grievous and irremediable medical condition” under section 241.2 could consequently be eligible for MAID. The exclusion of **grievous mental illness** as an underlying condition justifying MAID requests is supported by research and other relevant evidence identified as such by the Government:

Charter Statement, Bill C-7, Justice Canada, House of Commons, October 21, 2020 [excerpt]:

First, evidence suggests that **screening for decision-making capacity is particularly difficult, and subject to a high degree of error**, in relation to persons **who suffer from a mental illness serious enough** to ground a request for MAID. Second, **mental illness is generally less predictable** than physical illness in terms of the course the illness will take over time. Finally, recent experience in the few countries that permit MAID for people whose sole medical condition is a mental illness (Belgium, Netherlands and Luxembourg) has raised concerns. The concerns relate to both the increasing numbers of these cases and **the wide range of mental illnesses** in respect of which MAID has been provided. **As the practice of MAID in Canada is relatively new, the body of evidence and research on current and potential future practice, including in relation to mental illness, is still developing.**²⁶

Research findings supporting the proposed bill indicate that legislation would fail to comply with the Canadian Charter if it were to allow access to MAID for patients who seek to base their wish to die on mental illness. **Patients who may – officially or unofficially – base their wish to die on more than one condition, one of which is a mental illness, are no less vulnerable. On the contrary, those patients may thus be all the more vulnerable.**

The proposed bill may not protect vulnerable patients suffering from multiple grievous conditions as much as vulnerable patients “only” suffering from mental illness. **Not only is this outcome at odds with the Government’s own reasoning** for the exclusion of mental illness as the sole basis for MAID, **but it may also be unconstitutional and open to challenge as such.** In constitutional challenges of regulatory frameworks such as MAID, the burden on plaintiffs to prove that specific legal rules engage their constitutional rights is a heavy one. In this case, the burden of proof would be far less onerous given the Government’s admission that “screening for decision-making capacity is particularly difficult, and subject to a high degree of error, in relation to persons who suffer from a mental illness serious enough to ground a request for MAID”.

The current law does not expressly provide that patients suffering from mental illnesses are excluded from the regime²⁷. However, the requirement for “natural death to be reasonably foreseeable” precludes a

number of people suffering from mental issues. With the removal of that criterion, there would be an increased likelihood that patients suffering from grievous mental health illness, with the concomitant feelings of worthlessness, would request MAID. It is one thing to say that mental issues may be incidental to a dying patient's decision to choose the manner and timing of his or her death, **it is quite another to conclude that a patient living with a mental illness, who may have a long life ahead, would not be influenced by such condition – even if the request to die is not officially based on said condition.**

3. Substantive equality, and the protection of the most vulnerable, including women victims of sexual and domestic violence

In *Carter*, the Supreme Court held that the Canadian Charter protects the equal autonomy of persons to make fundamental end-of-life choices grounded in their dignity. **A person's sense of dignity is, however, profoundly connected to the social and systemic context in which that person is living.** Marginalized groups and victims of discrimination may conclude that their lives are of lesser value.

There are many scenarios of vulnerable persons suffering from both mental disorders and physical medical conditions set out in section 241.2 conditions under the proposed bill. The purpose of this analysis is to highlight one of them: **women victims of sexual and domestic violence suffering from mental disorders, such as post-traumatic stress disorders (PTSD), and an additional grievous and irremediable medical condition.**

The Council of Canadian Academies has documented the available data on euthanasia and assisted dying for people with mental disorders in the Netherlands and Belgium. **More than twice as many women as men underwent euthanasia on those grounds in the Netherlands.** Those women had “complex as well as chronic psychiatric and medical histories²⁸”. Similarly, 77% of patients in Belgium receiving MAID on the grounds of mental disorders are women. In both countries, mood disorders are common conditions. **“In a Belgian case series of 100 consecutive requests [...] 13 [patients presented] with PTSD, 11 with anxiety disorders, 10 with eating disorders, 10 with substance use disorders, 9 with somatoform disorders²⁹”.**

The media have also reported stories highlighting the complex social, ethical, and legal issues underlying a policy that would provide MAID to women victims of sexual abuse and violence. Fatima Gossa, a woman of Algerian origin, had been living in Quebec for about three years when a violent conjugal assault left her seriously handicapped. Convinced that her life was meaningless, she asked for MAID, but she did not qualify under the current law.³⁰ In the Netherlands, a young woman in her early twenties, who had been abused between the age of 5 and 15, “chose” euthanasia to end her “irremediable” suffering.³¹

The Supreme Court case law insists that governments must be particularly vigilant about the adverse effects of their policies on disadvantaged groups. The Canadian Government is also committed to adopting policies informed by “Sex and gender-based analysis (SGBA)³²” In its recent *Fraser* decision, the Supreme Court held that systemic discrimination based on sex may result from an apparently neutral regulatory regime formally offering equal “options” to men and women if one option mostly chosen by women creates a disadvantage. The fact that women have made a “voluntary” choice is irrelevant as **“choices are themselves shaped by systemic inequality³³”.**

The evidence from the Netherlands and Belgium demonstrates that a critical number of women who request euthanasia **while they are suffering from mental disorders** are suffering from a condition that may be caused by violence and sexual abuse. Official testimonies supporting this hypothesis have not been recorded for research purposes. There is also a lack of research explaining the disparity between men and women. However, the Supreme Court held that “[i]f there are clear and consistent statistical

disparities in how a law affects a claimant's group, [there is] no reason for requiring the claimant to bear the additional burden of explaining *why* the law has such an effect³⁴”.

In contrast to formal equality, substantive equality requires full consideration of the context in which a “choice” is expressed. Systemic inequality may result from “a unique constellation of physical, economic and social barriers³⁵”. The Supreme Court has been clear that governments can not escape their duty to adopt regulatory regimes protecting the life and security of vulnerable people by arguing that those individuals are responsible for their “so-called voluntary choices”. For example, the causal connection between the State's action infringing on the rights to life and security of persons who “chose” to engage in prostitution³⁶ or the injection of drugs³⁷ is not negated by the “free consent” of those people

Similarly, a law that would infringe on vulnerable persons' rights to life, liberty, security, and possibly equality, could not be salvaged under section 1 of the Charter by the argument that MAID is a “choice”. While some persons may fit the description of persons who freely choose MAID, the more vulnerable persons of our society may have no meaningful freedom of choice.

The Government has highlighted that surveys indicate public support for Bill C-7. It is impossible to know in advance if the proposed amendments will affect many victims of violence or other particularly vulnerable people. Perhaps they will form only a voiceless minority within the minority of those who choose MAID. Human rights have, however, been entrenched in the Canadian Charter primarily to protect minorities. **The opinion of the majority is of no relevance – and may even be dangerous – when it comes to deciding whether the rights of the most vulnerable are threatened.**

Conclusion

In *Truchon*, the Superior Court of Quebec ruled that the Criminal Code provision limiting access to medical aid in dying to people whose deaths are reasonably foreseeable was too restrictive. No court has, however, ever held that medical assistance in dying should be expanded to the most vulnerable, in particular women victims of sexual abuse and domestic violence. **Parliament may be in breach of its constitutional responsibilities under the Canadian Charter if it adopts a policy with such potential outcomes. MAID's legal framework could be unconstitutional and challenged on such basis if:**

- **the outcome of the implemented policy, whether voluntary or involuntary, create a regime where all human rights engaged are not protected equally, for instance by favouring individual liberty at the expense of substantive equality and the protection of the most vulnerable; and/or**
- **the rights to life, liberty, security and/or equality of vulnerable persons are violated, for instance, if vulnerable people are at risk of requesting MAID in a context of limited choices or systemic inequality.**

In order to avoid such outcomes and constitutional challenges, and while there is a clear need for further research on the human rights issues arising out of MAID for women victims of sexual abuse and domestic violence, the application of the precautionary principle is urged.

MAID should not be accessible to patients whose death is not reasonably foreseeable, and **who are suffering from mental disorders, including post-traumatic stress disorders (PTSD), and an additional “grievous and irremediable condition”.**

NOTES

- ¹ In *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331 [*Carter*], the Supreme Court held that the legislation on MAID may engage section 7 of the Canadian Charter, which states that “[e]veryone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” Having concluded that section 7 was infringed, the Court found unnecessary to consider whether the prohibition of assisted suicide violate the right to equality protected by section 15.
- ² *Carter* at par 64.
- ³ *Blencoe v BC (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307 at para. 54, cited in *Carter* at par 64.
- ⁴ *Carter* at par 66.
- ⁵ *Ibid* at par 68.
- ⁶ Karine Millaire. “La renonciation aux droits et libertés et le consentement « libre et éclairé » : Fondements, exigences et incertitudes” (2019) 78 *Revue du Barreau* 39.
- ⁷ Karine Millaire. “Le concept d’autonomie dans l’arrêt *Carter c. Canada* : Au-delà du libre-choix”, (2017) 63:2 *McGill L Rev* 283.
- ⁸ *Fraser v Canada (Attorney General)*, 2020 SCC 28 (decision rendered on October 16, 2020) [*Fraser*] at par 90.
- ⁹ *Carter* SCC at par 62.
- ¹⁰ *Big M*, at pp. 346-47; *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3 at par 70.
- ¹¹ *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 SCR 610, 2007 SCC 30.
- ¹² Section 7 of the Canadian Charter.
- ¹³ Section 12 of the Canadian Charter.
- ¹⁴ Section 7 of the Canadian Charter.
- ¹⁵ *Ibid* at par 60.
- ¹⁶ *Carter* at par 57.
- ¹⁷ *Ibid* at par 59.
- ¹⁸ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd ed (Ithaca: Cornell University Press, 2013) at p 31.
- ¹⁹ *Ibid*.
- ²⁰ Karine Millaire. “Waiver of Constitutional Rights and Section 1 of the Canadian Charter” (2020) (forthcoming); Karine Millaire. “La renonciation aux droits et libertés constitutionnels” (PhD Thesis: University of Ottawa), July 31, 2020. See also Karine Millaire. “Les droits et libertés fondamentaux susceptibles de renonciation : Une approche à repenser” (2019) 60:4 *Les Cahiers de droit* 991.
- ²¹ *Ibid*.
- ²² *Carter* SCC at par 94; *R v Oakes*, [1986] 1 SCR 103; *Frank v Canada (Attorney General)*, 2019 SCC 1, [2019] 1 SCR 3.
- ²³ *R v Oakes*, [1986] 1 SCR 103
- ²⁴ *Carter* at par 76.
- ²⁵ *Carter* at par 95.
- ²⁶ “Charter Statement. Bill C-7: *An Act to amend the Criminal Code (medical assistance in dying)*”, tabled in the House of Commons, Justice Canada, October 21, 2020.
- ²⁷ As stated by the Department of Justice in the “Legislative Background: Medical Assistance in Dying (Bill C-14)”: “people with a mental illness or physical disability would not be excluded from the regime but would [...] be able to access medical assistance in dying [only] if they met all of the eligibility criteria”.
- ²⁸ Kwame McKenzie (working group chair) and al, “The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder is the Sole Underlying Medical Condition” in Hon Maire Deschamps (chair), “State of Knowledge on Medical Assistance in Dying for Mature Minors, Advance Requests, and Where a Mental Disorder Is the Sole Underlying Medical Condition”, Council of Canadian Academies (Ottawa, 2018) at p 129.
- ²⁹ *Ibid* at p 130.
- ³⁰ Philippe Teisceira-Lessard, “A “cruel” end for a paralyzed woman”, *La Presse/Press*, August 20, 2020 [Online: <https://thecanadian.news/2020/08/20/a-cruel-end-for-a-paralyzed-woman/>]
- ³¹ Matt Payton, “Sex abuse victim in her 20s allowed by doctors to choose euthanasia due to 'incurable' PTSD”, *The Independent*, May 11 2016 [Online: <https://www.independent.co.uk/news/world/europe/sex-abuse-victim-her-20s-allowed-dutch-doctors-undergo-euthanasia-due-severe-ptsd-a7023666.html/>]
- ³² For example, see “Health Portfolio Sex and Gender-Based Analysis Policy – Policy Statement”, Health Canada <https://www.canada.ca/en/health-canada/corporate/transparency/corporate-management-reporting/health-portfolio-sex-gender-based-analysis-policy.html>
- ³³ *Fraser* at par 90.
- ³⁴ *Ibid* at par 63.
- ³⁵ *Ibid* at par 34.
- ³⁶ *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101.
- ³⁷ *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44, [2011] 3 SCR 134.