

Submission to the House of Commons Standing Committee on Justice and Human Rights

regarding Bill C-7, An Act to amend
the Criminal Code (Medical
Assistance in Dying)

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To: Iqra Khalid, Chair, and the Committee,

First, let me state that I am grateful to live in Canada, where compassionate end-of-life care, including Medical Assistance in Dying (MAiD), is available to those persons who are eligible. Further, it is a profound privilege for me to be able to provide MAiD. This is some of the most rewarding work I have done in my more than 30 years as a physician. My patients teach me each day about strength, courage, resilience, integrity, and they remind me daily of the importance of the right to control one's own life, including one's own death. I applaud the Canadian people for the tenacity in their advocacy for the right to die, and the Canadian government for passing legislation making this significant relief from suffering possible. Supporting the right to die and the availability of MAiD is not advocating for MAiD; nor is it suggesting that the lives of people who choose MAiD are not worth living. The determination of whether or not a life is still worth living or enduring belongs to the person her- or himself. A dignified life includes a dignified death.

I am a family physician, practicing in downtown Toronto. A significant part of my medical practice over the years has been providing psychotherapy and treatment for mental disorders. I have been a MAiD assessor and provider since June 2016, when Bill C-14 came into force, and MAiD is now a significant part of my clinical work.

While I appreciate the government's efforts to amend the current legislation and to clarify the law, and while I support a number of the proposed changes, I have some grave concerns with Bill C-7 as it now stands.

1. I applaud the repeal of the provision that requires a person's natural death be reasonably foreseeable in order for them to be eligible for MAiD. This is appropriate and will benefit many people.

2. However, reinserting the concept of reasonably foreseeable natural death in the safeguards and the creation of two pathways unnecessarily complicates the assessment process, does nothing to clarify the meaning of reasonably foreseeable natural death, and does not provide added safeguard for vulnerable patients.

While Justice Minister Lametti has stated, "The definition of reasonable foreseeability of natural death has not changed in the new legislation. Reasonable foreseeability of natural death is a familiar concept for providers after four years of providing the service. By retaining the same language in Bill C-7, practitioners will be using a standard that is already familiar to them as a means to determine which safeguards to apply.", he also stated in his opening remarks on the day of second reading of the Bill that "having a death several years in the future would not ordinarily meet criteria for natural death being reasonably foreseeable." This apparent contradiction - between current practice and what he believes will meet criteria under C-7 - will lead to uncertainty in how this two-pathway system will be applied.

The courts have consistently been clear that the determination of reasonably foreseeable natural death is a clinical decision, but this still allows for significant variation and uneven application of the law across the country. There will continue to be

differences of opinion about the definition of reasonably foreseeable, assessor to assessor and provider to provider across the country, from imminent death within weeks, to a trajectory towards death 10-15 years out, per Carter and the AB case in ON. This could mean that people who would have been found eligible to receive MAiD under Bill C-14 will be found ineligible or forced to wait and meet other safeguard criteria under Bill C-7.

3. Denying MAiD to people whose sole underlying medical condition is a mental illness/disorder is discriminatory, stigmatizing, and unjust. Mental illnesses are medical disorders and should be treated as such. Please note that MAiD is not suicide, and suicide is not MAiD. Suicide is a significant public health issue that warrants intervention, help, and treatment. MAiD is a personal, conscious, and rational choice in response to an intolerable situation. This choice should be available to those who live with mental illness that causes them intolerable and enduring suffering. This would be assessed on a case-by-case basis by clinicians who would make clinical judgements and come to clinical conclusions.

I agree with Justice Baudoin who wrote in the Truchon decision, “the vulnerability of a person requesting medical assistance in dying must be assessed exclusively on a case-by-case basis, according to the characteristics of the person and not based on a reference group of so-called ‘vulnerable persons’.” The justice also added that: “the patient’s ability to understand and to consent is ultimately the decisive factor, in addition to the other legal criteria.” Mental illness/disorder does not automatically equate with lack of capacity. There are mental disorders that are intractable, unremitting, and untreatable and that are a source of intolerable suffering. People so suffering should be able to access MAiD if they meet the other eligibility criteria.

Further, Bill C-7 does not define mental illness for the purposes of the Bill. Dementia is considered a 'mental illness' and is in the DSM (Diagnostic and Statistical Manual of Mental Disorders). Does this mean people with a primary diagnosis of dementia will be denied access to MAiD? I do not believe this is the intention, but could, indeed, be the outcome. There is no consensus in the medical community re diagnoses like dementia, fibromyalgia, etc. Some consider them mental disorders, others physiological. There will be uneven/inconsistent interpretation and application of this aspect of the Bill across the country. This makes no sense, and will potentially do grievous harm to people who are already suffering. Patients who would be deemed eligible under Bill C-14 might now not be found eligible under Bill C-7.

4. Allowing people who have been assessed and approved for MAiD but who lose capacity to receive MAiD before their planned procedure date is a significant improvement in the legislation and will benefit many people whose greatest fear is loss of capacity and thus inability to receive MAiD. I understand that consent for this should be in writing. I do not agree that a date for MAiD must be specified before this clause is actionable. Requiring this will add to the anxiety of many, rather than relieve it, and would likely result in numerous revisions to the consent if the person reaches the date but is not yet ready to proceed.

The waiver of final consent should be available to all people who have been assessed and approved, whether the risk of loss of capacity is immediately predictable or not. Anyone is at risk of loss of capacity through stroke, cardiac arrest, traumatic brain injury, etc., which may have nothing to do with the condition that lead them to choose MAiD.

5. Further regarding the two-pathway approach, requiring in law that a clinician with expertise be one of the assessors for a person whose death is not reasonably foreseeable is unnecessary and impractical, and is very likely to cause a barrier to access, particularly in rural and remote areas of the country. Not all conditions have 'experts'. Who will define who or what an 'expert' is? And if these experts refuse to participate in MAiD, or have long waiting lists, this will be an impossible criterion to meet, leaving patients to effectively be denied MAiD. In practice, assessors and providers use their own medical knowledge and judgement to do assessments and if we have any questions or concerns we do research ourselves or seek consultation with colleagues, including those with greater expertise, whether we are dealing with MAiD or any other clinical situation. This is standard practice and should not be part of the legislation. It is also important to point out that specialists are difficult enough to access in tertiary care centres, and extremely difficult to access in most of the rest of the country. Again, this criterion will effectively deny MAiD to suffering patients who cannot get access to the experts or specialists required to assess and approve their request for MAiD.

6. People seeking MAiD should absolutely be informed of all of the options available to them to treat their conditions and circumstances. It is important to distinguish between options possible, and options available, as not all possible treatments are, in practice, available. Forcing someone to stay alive and suffer because they should have access to treatment that is not available to them is cruel and inhumane. People make decisions that they deem best and right for themselves, in the context of their lived realities. In a perfect world we would all have access to the things we need, when we need them - good food, safe and comfortable shelter, top-notch medical care, (including palliative care, disability and other supports, counseling and therapy, pain control, etc.), excellent education, great jobs, etc. In a perfect world there would be no intolerable suffering. In a perfect world there would be clear diagnoses for all ailments, and readily available treatments. Unfortunately, many live in their own real worlds where these are theoretically, but not practically, available. Part of obtaining informed consent is to make sure a person is aware of all available treatments they would be refusing by choosing MAiD. Putting this in the Criminal Code with the threat of sanction that this implies, is unnecessary, and will be a deterrent to potential assessors and providers.

Further, including the criterion that the medical practitioner or nurse practitioner must agree that the person has given serious consideration to those means to relieve their suffering requires that the practitioner have powers beyond their control. No one can possibly know with certainty that another person has "given serious consideration" to something: we can, based on our conversations with the person, assume that it is true, we can hope that it is true, we can wish that it is true, but we cannot know it.

7. Removing the 10-day mandatory reflection period for patients whose deaths are reasonably foreseeable is a good change, and appropriate. Patients, by the time they seek MAiD, have already been suffering, in many cases intolerably suffering, for a very long time. People do not choose MAiD lightly or flippantly. The decision to pursue MAiD is a carefully considered decision. Forcing patients whose deaths are deemed not reasonably foreseeable to wait an additional 90 days to receive MAiD is, again, cruel and inhumane, and protects no one. MAiD assessors and providers are diligent, compassionate, and thorough in their assessments. Sometimes assessments do take months to complete, and if this is necessary, that is what we do. Other times the assessment can be completed in a very short time. The time to complete the assessment process should be a clinical not legislated decision, relying on the judgement and experience of the individual assessors and providers.

8. Vulnerable people need to be protected, and this includes people who want MAiD, who would be denied MAiD under severely restrictive criteria and safeguards. Part of the assessors' and providers' responsibility is to assess for the vulnerability of the patient, while also respecting the individual's right to make decisions with which others may not agree. One can be vulnerable in all sorts of ways, and yet be very capable of acting in one's own best interest, according to one's values and principles, including choosing MAiD. Each person and each situation is assessed on a case-by-case basis, and, as the courts have repeatedly reaffirmed, the eligibility assessment is a medical assessment to be determined by a medical practitioner. All Canadians should have access to the care that they need - whether mental health care, disability resources, palliative care, pain control or other kinds of care. All eligible people should have the right to refuse MAiD, as well as the right to choose MAiD. All people should be aware that MAiD is a legal medical procedure and treatment available to them, in addition to all the other treatments for their conditions. No one should be pressured or coerced to choose MAiD, and no one should be pressured or coerced to not choose MAiD. People should be trusted to know their own best interests and to make choices according to their own best interests and in accordance with their personal values and principles. The assessors and providers must assess through consultation with the person that the choice is theirs and theirs alone, and that they are clear that choosing to die is their treatment of choice for their particular condition and circumstances.

Requiring two separate medical assessments means that two experienced MAiD assessors or providers do a thorough medical history and assessment of the request for MAiD, ensuring that the person requesting MAiD is aware of alternative treatments, including MAiD. This is a sufficient safeguard.

People choose MAiD for a variety of reasons, each unique to the person. Likewise, those who do not and would never choose MAiD have their own unique reasons. All people and their choices should be respected. No one who does not seek MAiD should be pressured or coerced or forced to receive it. I take that as a given. Part of my responsibility as an assessor and provider of MAiD is to explore with the patient their reasons for seeking MAiD and to directly assess for any coercion or pressure. In the past 4 1/2 years I have seen many, many patients. I have heard from only one patient that MAiD was not their choice. This person was not eligible on that basis. I have heard

from more than a dozen patients that they were pressured by family or health care providers or friends to NOT pursue or receive MAiD. I have had several patients who were assessed and approved ultimately choose not to proceed with MAiD, but, rather, to continue to suffer, rather than to upset or disappoint their loved ones. This kind of coercion is not prevented by the legislation, is much more common, and is unconscionable.

Following are some patients' comments. These are not the kinds of comments I expected when I first started providing MAiD, but I have become accustomed to them. I hear versions of these comments on a very regular basis.

"Oh My God! I'm so glad you called!" [to make an appointment for a MAiD assessment]

"I will live for that day!" [of the MAiD procedure]

"You're my hero! Thank you so much."

"I am so thankful for finding you."

"This is not about learning to live with disabilities. This is about quality of life."

"I feel terror, absolute terror [at the thought of having to continue to live]."

"You're a godsend."

"It's time for me to go."

"It's not easy for me to ask for [this] help."

"I have been a nice person. I have had a very good life, but now it's time to go. Eventually I have to go, right? Why not go with dignity?"

"I'm not going to get well... If anything, it's going to get worse. So why should I suffer?"

"Now I want it to be done the proper way, so I can really finish."

"If I have to get on my knees, which I can't do, I will beg for this... I want it to be quick, and I want it with dignity."

"I don't want to suffer anymore. I suffered so much in my life. I had enough. Why do I have to go on?... I do everything to help myself and I had enough. At this age, it's enough. How long does a person have to live? People live long today. To 100. I don't want to live so long."

"Wonderful! Isn't that a wonderful way to die?... Comparing to I have to die on my own, and who knows how much I have to suffer, right?"

I hope that the proposed amendments will help ensure that people experiencing intolerable suffering will have greater access to the dignified death that MAiD can provide, if that is their choice, but I do not have confidence that this is going to be the case. There are too many problems with Bill C-7; some patients who would be eligible now, under C-14, will have a harder time under the new regime; some current providers and assessors are likely to drop out due to the added complexities and additional steps; it may be harder to recruit new assessors and providers for the same reasons.

Based on my clinical experience with MAiD, my recommendations for amending Bill C-7 are:

- 1) Remove the concept of reasonably foreseeable natural death from the legislation altogether - both from the eligibility criteria and the safeguards - and in so doing remove the proposed two-pathway system.
- 2) Allow for a waiver of final consent for any patient who has been assessed and approved for MAiD, with no requirement that a date for MAiD be set, and no requirement that the person must be recognized to be at risk of loss of capacity.
- 3) Remove the exclusion of people whose sole underlying medical condition is mental illness.
- 4) Remove the requirement that one of the assessors in the 'not reasonably foreseeable natural death' pathway (if the two-pathway system is maintained) have expertise in the condition being assessed.
- 5) Remove the waiting period altogether and allow assessments to take as much or as little time as is necessary for the assessors and providers to come to a clinical decision about the person's eligibility.

Thank you for considering my thoughts and recommendations on this very important piece of legislation. My patients' lives depend on your decisions.