

The “safeguards” in Canada’s MAiD law are a mockery to vulnerable Canadians like me

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A Submission to the Special Joint Committee on Medical Assistance in Dying Regarding the Statutory Review – Medical Assistance in Dying

By James Schutten, with the assistance of André Schutten

As a person living with severe disabilities due to Spinal Muscular Atrophy, the government’s Bill C-14 (2016) and C-7 (2021) has left me very apprehensive and concerned both for myself and for fellow Canadians living with disabilities.

Imagine what it would be like to go to the hospital due to illness and hear medical staff question whether or not extreme measures to keep you alive were “worth it”. Would that make you feel like a valued member of society, or an inconvenient burden? It’s not a fictional scenario – I have experienced this, even before the government made it legal for us to die at the hands of a physician. If I was anxious before, how much more now that C-14 (2016) and C-7 (2021) are law?

These bills are fatally flawed. Terms are vague, misleading and euphemistic. Palliative care is undermined. Safeguards are limited and have massive gaps and loopholes. And the law legalizes, and thus normalizes, the idea that suicide is a public good when the ill and disabled are the ones dying. Our society can do better than this. What follows are some practical suggestions to improve the safeguards in the Criminal law, to give me just a little bit more confidence that my life still matters to you.

Prohibit Inducing Suicide

One major concern is the possibility of patients being offered MAiD without requesting it. The United Nations Special Rapporteur on the rights of persons with disabilities cited this issue, stating, “I am extremely concerned about the implementation of the legislation on medical assistance in dying from a disability perspective... there is no protocol in place to demonstrate that persons with disabilities have been provided with viable alternatives when eligible for assisted dying.”¹

Counseling a person to consider suicide remains a crime. However, it is difficult to prove that a doctor who informed his patient about MAiD did not actually counsel the patient to choose

¹ “[End of Mission Statement](#) by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada,” *United Nations*, (April 12, 2019). See also the story of a mother told by her doctor that refusing MAiD was selfish. Geoff Bartlett, “Mother says doctor brought up assisted suicide option as sick daughter was within earshot,” *CBC News*, (July 24, 2017).

MAiD. Giving a professional recommendation to a patient to consider MAiD and counseling a patient to consider suicide are ethically indistinguishable, and legally nearly impossible to differentiate. Thus, counselling or encouraging a person to seek a “medically assisted death” should be prohibited, and medical personnel should be prohibited from discussing MAiD with a patient unless the patient first asks.

Recommendation:

- clarify in section 241(a) that medical professionals may only provide information about the provision of medical assistance in dying ***upon request***.
- amend Section 241(5.1) to state: “For greater certainty, no ... health care professional commits an offence if they provide information to a person on the lawful provision of medical assistance in dying ***upon the person’s request***.”

Enhance Witness Safeguards and Accountability

The sole independent witness is only required to be present for the MAiD request, and *not for the actual procedure*.² This negates the supposed “safeguards” that ensure a patient can withdraw their request and must give consent immediately before the lethal dose is administered.³ If a patient’s family or loved ones believe that MAiD was improperly administered and that a doctor acted inappropriately, there is little legal recourse. It’s the word of the euthanizing doctor vs a dead patient.⁴

The judicial inquiry into Elizabeth Wettlaufer should be a warning for us. Wettlaufer worked as a registered nurse in Woodstock, Ontario, where she killed at least fourteen long-term care residents by injecting them with insulin overdoses. The inquiry found that 90 serial killers have been convicted since 1970 worldwide, and estimated the total number of suspicious deaths attributed to them exceeds 2,600. The Inquiry also notes that the harm extends to victims’ families and loved ones, communities, and the broader community.⁵ This story took place *before* MAiD was legalized in Canada. However, it shows the possibility and extent of harm that can go unnoticed within healthcare and long-term care. MAiD is a type of legal homicide, and Parliament has a duty to reduce possible abuses in the administration of MAiD. Most medical professionals will follow specified guidelines, but additional safeguards are needed to protect patients against abuse by the small percentage of health care professionals that harm their patients.

² *Criminal Code*, s. 241.2(3)(c).

³ *Criminal Code*, s. 241.2(3)(d) and (h).

⁴ Concerned family members who have asked the police to investigate have been referred to the Ministry of Health and have had difficulty getting answers about suspicious situations Avis Favaro, Elizabeth St. Philip, and Graham Slaughter, “[Family says B.C. man with history of depression wasn’t fit for assisted death](#),” *CTV News*, (September 24, 2019).

⁵ The Honourable Eileen E. Gillese, Commissioner, [Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System](#), Volume 1 – Executive Summary and Consolidated Recommendations (July 31, 2019), 1-8.

Recommendation:

- Reinststate the two independent witnesses requirement in section 241.2(3)(c) and 241.2(3.1)(c).
- To give meaningful effect to the safeguards in s. 241.2(3)(d) and (h) and s. 241.2(3.1)(d), (g), (h), and (k), and s. 241.2(3.2)(b), (c), and (d), (3.3), and (3.4), Parliament must amend those sections to require two independent witnesses to be present when MAiD is performed (not only when a written request is made).
- The final discussion and administration of the lethal substance process ought to be audio-video recorded to allow for judicial scrutiny and verification that *all* safeguards were followed. Subsections 241.2(3), (3.1), and (3.2) should be amended accordingly in a way that balances privacy concerns with ensuring safeguards for the vulnerable.

Conclusion

Through Bill C-7 (2021), safeguards were removed rather than improved, and MAiD access was opened more broadly. The number of deaths by MAiD in Canada has been rapidly increasing, reaching 7,595 in 2020.⁶ Parliament has a duty to protect vulnerable Canadians who do not wish to access MAiD but might feel like there is no other option or be pressured into it. Additionally, further safeguards are necessary to protect against various abuses where patients are euthanized against their wishes. I respectfully submit that the amendments recommended in this brief will address some of the many issues within the *Criminal Code* surrounding MAiD in Canada and will be a step towards further protection for vulnerable Canadians.

James Schutten

André Schutten, Hon.B.A., LL.B., LL.M

Word count: 965 words.

⁶ [“Second Annual Report on Medical Assistance in Dying In Canada 2020,”](#) Government of Canada.