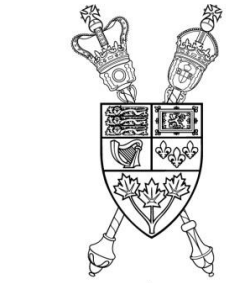

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MAID AND MENTAL DISORDERS: THE ROAD AHEAD

Report of the Special Joint Committee on Medical Assistance in Dying

René Arseneault & Honourable Yonah Martin
Joint Chairs

JANUARY 2024

44th PARLIAMENT, 1st SESSION

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SPECIAL JOINT COMMITTEE ON MEDICAL ASSISTANCE IN DYING

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THE SPECIAL JOINT COMMITTEE ON MEDICAL ASSISTANCE IN DYING

has the honour to present its

THIRD REPORT

Pursuant to its orders of reference from the Senate of Tuesday, October 24, 2023 and from the House of Commons of Wednesday, October 18, 2023, the committee has completed its study of the degree of preparedness attained for a safe and adequate application of medical assistance in dying where mental disorder is the sole underlying medical condition, in accordance with Recommendation 13 in the second report of the Special Joint Committee on Medical Assistance in Dying, and has agreed to report the following:

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LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

WHEREAS the Committee concludes that the medical system in Canada is not prepared for medical assistance in dying where mental disorder is the sole underlying medical condition (hereinafter "MAID MD-SUMC"), the committee recommends:

a. **That MAID MD-SUMC should not be made available in Canada until the Minister of Health and the Minister of Justice are satisfied, based on recommendations from their respective departments and in consultation with their provincial and territorial counterparts and with Indigenous Peoples, that it can be safely and adequately provided; and**

b. **That one year prior to the date on which it is anticipated that the law will permit MAID MD-SUMC, pursuant to subparagraph (a), the House of Commons and the Senate re-establish the Special Joint Committee on Medical Assistance In Dying in order to verify the degree of preparedness attained for a safe and adequate application of MAID MD-SUMC. 17**

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MAID AND MENTAL DISORDERS: THE ROAD AHEAD

INTRODUCTION

Canada has permitted medical assistance in dying (MAID) since 2016, provided that certain legal criteria and conditions are met. In February 2023, the Special Joint Committee on Medical Assistance in Dying (the committee) tabled its report, *Medical Assistance in Dying in Canada: Choices for Canadians*, which included the following recommendation:[1]

> Recommendation 13
>
> That, five months prior to the coming into force of eligibility for MAID where a mental disorder is the sole underlying medical condition, a Special Joint Committee on Medical Assistance in Dying be re-established by the House of Commons and the Senate in order to verify the degree of preparedness attained for a safe and adequate application of MAID (in MD-SUMC situations). Following this assessment, the Special Joint Committee will make its final recommendation to the House of Commons and the Senate.

In October 2023, the committee was re-established in accordance with this recommendation. MAID where mental disorder is the sole underlying medical condition (MAID MD-SUMC) will be included in the exemption for MAID in the *Criminal Code* as of 17 March 2024.

The committee heard testimony from 21 witnesses, including legal and medical experts, practitioners, representatives of professional associations, mental health organizations, and regulators, as well as representatives of Health Canada and the Department of Justice. The committee also received hundreds of written submissions, including briefs and written opinions, which demonstrates the great interest of Canadians in the difficult issue of MAID. The committee is grateful to all who shared their views and experiences regarding MAID. Those submissions for which we have permission to do so from the authors will be made available on the committee's website, and will undoubtedly be

1 Parliament of Canada, Special Joint Committee on Medical Assistance in Dying, *Medical Assistance in Dying in Canada: Choices for Canadians*, 1st Session, 44th Parliament, February 2023.

invaluable to future parliamentary committees studying this topic. The committee's sincere appreciation to all who participated cannot be overstated.

This report reflects the narrow scope of the committee's mandate; it is not a full review of MAID in Canada. The committee, which based its report and recommendations solely on witness testimony, heard conflicting views about Canada's readiness for MAID MD-SUMC. While some witnesses said Canada is clearly ready, others stated that preparations are still in progress, or that the state of the country's readiness for 17 March 2024 is difficult to ascertain. Still others felt that readiness for MAID MD-SUMC will never be attained.

The evidence heard by the committee clearly demonstrates that governments, regulators, professional associations, and practitioners have worked very hard to prepare for MAID MD-SUMC and have made significant progress. The federal government has responded to the call to support the development of both model practice standards and an accredited training program for MAID assessors and providers. Data collection requirements are in place at the federal level. At the provincial level, the model practice standards are being adopted or adapted, and work on clinical practice guidelines, research, professional development opportunities, and oversight mechanisms is ongoing.

Nevertheless, the committee also heard significant testimony that some stakeholders perceive a lack of readiness to proceed with MAID MD-SUMC at this time. Many practitioners remain concerned, particularly regarding the challenges of assessing irremediability, distinguishing requests for MAID MD-SUMC from suicidality, and protecting the most vulnerable in our society.

The committee agrees with the many witnesses who emphasized that the suffering of individuals with mental disorders is no less important than the suffering of those with physical conditions, and is deserving of relief.[2] However, for the reasons outlined in this report, the committee has concluded that Canada is not yet ready to proceed with MAID MD-SUMC.

BACKGROUND

In 2021, the passage of Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), provided a pathway to MAID for those whose natural death is not reasonably

2 Parliament of Canada, Special Joint Committee on Medical Assistance in Dying (AMAD), *Evidence*, 7 November 2023 (Shelley Birenbaum, Chair, End of Life Working Group, The Canadian Bar Association); AMAD, *Evidence*, 28 November 2023 (Dr. Tarek Rajji, Chair, Medical Advisory Committee, Centre for Addiction and Mental Health; Dr. Mauril Gaudreault, President, Collège des médecins du Québec).

foreseeable, commonly referred to as "track two."[3] Bill C-7 included a provision prohibiting MAID where mental disorder is the sole underlying medical condition (MAID MD-SUMC) for a period of two years—until 17 March 2023. During the two-year period, the presence of a mental disorder did not prevent a person from accessing MAID, provided that they also had a qualifying condition.

Bill C-7 required that an independent expert review be carried out "respecting recommended protocols, guidance and safeguards to apply to requests made for medical assistance in dying by persons who have a mental illness" (clause 3.1). That review was carried out by the Expert Panel on MAiD and Mental Illness, which released its final report in May 2022.[4]

Bill C-7 also required the establishment of this committee to review the *Criminal Code*'s MAID provisions and their application, as well as various MAID-related issues, including mental illness. The committee's interim report of June 2022 focused on MAID MD-SUMC. While it did not contain recommendations, it concluded that:[5]

> We must have standards of practice, clear guidelines, adequate training for practitioners, comprehensive patient assessments and meaningful oversight in place for the case of MAID MD-SUMC. This task will require the efforts and collaboration of regulators, professional associations, institutional committees and all levels of government and these actors need to be engaged and supported in this important work.

The committee's final report for that review, tabled in February 2023, also emphasized the importance of standards of practice being in place prior to MAID MD-SUMC being permitted:[6]

> While the committee supports MAID MD-SUMC, it is concerned that there has not been sufficient time to develop the standards of practice referred to by the Expert Panel [on MAID and Mental Illness]. Witnesses were clear that these standards are key to ensuring a thoughtful, consistent approach to MAID MD-SUMC.

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3 Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), 43rd Parliament, 2nd Session (S.C. 2021, c. 2). For more information about Bill C-7, see Julia Nicol and Marlisa Tiedemann, *Legislative Summary of Bill C-7: An Act to amend the Criminal Code (medical assistance in dying)*, Publication no. 43-2-C7-E, Library of Parliament, 19 April 2021.

4 Health Canada, *Final Report of the Expert Panel on MAiD and Mental Illness*, 13 May 2022.

5 Parliament of Canada, Special Joint Committee on Medical Assistance in Dying, *Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report*, 1st Session, 44th Parliament, June 2022, p. 20.

6 Parliament of Canada, Special Joint Committee on Medical Assistance in Dying, *Medical Assistance in Dying in Canada: Choices for Canadians*, 1st Session, 44th Parliament, February 2023, p. 53.

While the committee's review was ongoing, stakeholders raised concerns that the health care system would not be prepared to safely and consistently provide MAID MD-SUMC by the 17 March 2023 deadline set out in Bill C-7. To address those concerns, the law was amended by Bill C-39, An Act to amend An Act to amend the Criminal Code (medical assistance in dying), to delay the availability of MAID MD-SUMC until 17 March 2024.[7]

In June 2023, Quebec amended its assisted dying law, the *Act respecting end-of-life care*, to prohibit requests for MAID based on a mental disorder other than a neurocognitive disorder, among other changes.[8]

EVIDENCE OF READINESS

Practice Standards

Model Practice Standard for Medical Assistance in Dying

The first recommendation of the Expert Panel on MAiD and Mental Illness (Expert Panel) in its 2022 report called for the development of "Standards of Practice for physicians and nurse practitioners for the assessment of MAiD requests in situations that raise questions about incurability, irreversibility, capacity, suicidality, and the impact of structural vulnerabilities."[9]

As mentioned above, this committee previously recognized the need for these standards to be in place before proceeding with MAID MD-SUMC.

Health Canada established the MAID Practice Standards Task Group (Task Group) to "create resources that could be used by regulators to operationalize the Expert Panel's guidance with respect to … challenging MAID requests."[10]

The Task Group published the Model Practice Standard for MAID (the Model Practice Standard),[11] a non-binding template for provinces and territories, in March 2023. Both

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7 Bill C-39, An Act to amend An Act to amend the Criminal Code (medical assistance in dying), 44th Parliament, 1st Session (S.C. 2023, c.1).

8 Quebec, *Act respecting end-of-life care*, c. S-32.0001, sections 26(4) and 29.1(2)(d)(ii), amended by Assemblée nationale du Québec, Bill 11, An Act to amend the Act respecting end-of-life care and other legislative provisions, 43rd Legislature, 1st Session (S.Q. 2023, c. 15).

9 Health Canada, *Final Report of the Expert Panel on MAiD and Mental Illness*, 13 May 2022.

10 Health Canada, *Background Document: The Work of the Medical Assistance in Dying (MAID) Practice Standards Task Group*.

11 Health Canada, *Model Practice Standard for Medical Assistance in Dying (MAID)*, March 2023.

the Task Group's chair, Dr. Mona Gupta, Psychiatrist and Researcher, Centre hospitalier de l'Université de Montréal, who appeared before the committee as an individual, and Dr. Douglas Grant, Registrar and Chief Executive Officer of the Federation of Medical Regulatory Authorities of Canada (FMRAC), who represented FRMAC on the Task Group, confirmed that regulators had reviewed the Model Practice Standard and were either adopting it or adapting it within their jurisdiction.[12]

A number of aspects of the Model Practice Standard come from the *Criminal Code* provisions on MAID, such as the requirements to have two independent assessors and to ensure that the request for MAID is voluntary. The Model Practice Standard also sets out guidance relating to suicidality, including that

> [a]ssessors and providers must take steps to ensure that the person's request for MAID is consistent with the person's values and beliefs, and is unambiguous, and enduring. They must ensure it is rationally considered during a period of stability, and not during a period of crisis. This may require serial assessments.[13]

Describing it as "the best synthesis of the law with the input of all necessary stakeholder voices," Dr. Grant explained that the Model Practice Standard contemplates MAID MD-SUMC cases and provides guidance for cases where an individual's natural death is not reasonably foreseeable.[14] Dr. Grant expects that there will be substantial consistency of standards between provinces and territories.[15]

Dr. Alison Freeland, Chair of the Board of Directors and Co-Chair of MAID Working Group for the Canadian Psychiatric Association, told the committee that the Model Practice Standard and the associated *Advice to the Profession*[16] document "clearly articulate some of the things that need to be carefully considered as part of an assessment,"[17] and that "there's been a lot of thought and attention to build those standards, disseminate them and provide advice."[18]

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12 AMAD, *Evidence*, 7 November 2023 (Dr. Mona Gupta, Psychiatrist and Researcher, Centre hospitalier de l'Université de Montréal, As an individual; Dr. Douglas Grant, Registrar and Chief Executive Officer, Federation of Medical Regulatory Authorities of Canada).

13 Health Canada, *Model Practice Standard for Medical Assistance in Dying (MAID)*, March 2023.

14 AMAD, *Evidence*, 7 November 2023 (Grant).

15 Ibid.

16 Health Canada, *Advice to the Profession: Medical Assistance in Dying (MAID)*.

17 AMAD, *Evidence*, 7 November 2023 (Dr. Alison Freeland, Chair of the Board of Directors and Co-Chair of MAID Working Group, Canadian Psychiatric Association).

18 Ibid.

However, Dr. Jitender Sareen, Physician, Department of Psychiatry from the University of Manitoba, who was appearing on behalf of eight chairs of psychiatry, expressed concern that the Model Practice Standard does not require a psychiatrist to be involved in the assessment of requests for MAID MD-SUMC.[19] Both Dr. Sareen and Dr. K. Sonu Gaind, Chief, Department of Psychiatry at Sunnybrook Health Sciences Centre (appearing as an individual) were concerned that the Model Practice Standard does not specify how many treatments an individual should receive;[20] Dr. Gaind was also concerned that it does not specify the length or type of treatment that should be required.[21]

Provincial and Territorial Standards Relating to Medical Assistance in Dying

While the committee recognizes that the regulation of the medical profession falls clearly within provincial jurisdiction, it also recognizes that practice standards are key to ensuring the safe and adequate application of MAID MD-SUMC. While witnesses provided information to the committee in relation to practice standards, the committee emphasizes that it did not review all provincial or territorial practice standards or provincial readiness more generally. Instead, it focused its study on the leadership role that the federal government has played in supporting the development of such standards.

While discussing how the Model Practice Standard will be fully adopted in the Atlantic provinces, Dr. Grant asserted that regulators are ready to safely provide MAID MD-SUMC.[22]

Dr. Stefanie Green, MAID Practitioner and Advisor to BC Ministry of Health, who appeared as an individual, told the committee that clinical teams in a number of provinces have confirmed that they are prepared for MAID MD-SUMC.[23]

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19 AMAD, *Evidence*, 21 November 2023 (Dr. Jitender Sareen, Physician, Department of Psychiatry, University of Manitoba).

20 AMAD, *Evidence*, 21 November 2023 (Sareen); AMAD, *Evidence*, 28 November 2023 (Dr. K. Sonu Gaind, Chief, Department of Psychiatry, Sunnybrook Health Sciences Centre, As an individual).

21 AMAD, *Evidence*, 28 November 2023 (Gaind).

22 AMAD, *Evidence*, 7 November 2023 (Grant).

23 AMAD, *Evidence*, 21 November 2023 (Dr. Stefanie Green, MAID Practitioner, Advisor to BC Ministry of Health).

In contrast, Dr. Mauril Gaudreault, President of the Collège des médecins du Québec, explained that while guidelines were being developed and five criteria relating to MAID MD-SUMC had been identified, more work was needed.[24]

Need for Guidelines

Dr. Tarek Rajji, Chair of the Medical Advisory Committee of the Centre for Addiction and Mental Health (CAMH) told the committee that while "the federal model practice standards are a good first step," health care professionals also need access to clinical practice guidelines (CPGs), which currently do not exist for MAID MD-SUMC.[25] While CAMH has been working with partners to develop CPGs, the limited evidence on which to base their work and the lack of consensus is challenging.[26] Dr. Rajji indicated that more time and funding for collaboration was needed, but could not provide a timeline on when the necessary guidance and resources would be ready to provide MAID MD-SUMC.[27]

Training and Professional Development

Canadian MAiD Curriculum

The Canadian Association of MAiD Assessors and Providers (CAMAP) has developed a nationally accredited, evidence-based training program to support the practice of MAID. Nurse practitioner and vice-president of CAMAP Julie Campbell explained that "CAMAP does not take a position on MAID MD-SUMC."[28] Launched in August 2023, the curriculum has eight topics, including one on "MAiD & Mental Disorders." The curriculum includes an online component and facilitated discussions of case reviews. The curriculum's development included input from experts and individuals with lived experience, an assessment of training needs, and a review of other jurisdictions. The Canadian Psychiatric Association was part of the curriculum steering committee. The curriculum was piloted for feedback before its broader release.

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24 AMAD, *Evidence*, 28 November 2023 (Gaudreault).

25 AMAD, *Evidence*, 28 November 2023 (Rajji).

26 Ibid.

27 Ibid.

28 AMAD, *Evidence*, 21 November 2023 (Julie Campbell, Nurse Practitioner, Canadian Association of MAiD Assessors and Providers).

Jocelyne Voisin, Assistant Deputy Minister, Strategic Policy Branch, Health Canada, told the committee that as of 17 November 2023, 490 physicians, 132 psychiatrists and 279 nurse practitioners had registered for the CAMAP curriculum, and that the number of registrants was increasing.[29]

Dr. Gaind critiqued the CAMAP training program. In his opinion, it is not evidence-based and includes misinformation and gaps: "The CAMAP curriculum dangerously doesn't teach assessors how to distinguish suicidality from psychiatric MAID requests, but convinces them that they can … Remarkably, the CAMAP suicide module neglects mentioning known risks to marginalized populations."[30]

Eleanor Gittens from the Canadian Psychological Association indicated that the Canadian Psychological Association was not included in the development of the training modules, nor have they been able to review them.[31]

Other Professional Development Initiatives and Guidance to the Profession

In addition to the Model Practice Standard, standards that have been established by different regulatory authorities, and the CAMAP nationally accredited training program, the committee heard that there are numerous opportunities for sharing knowledge and expertise about MAID assessments. Dr. Freeland spoke about a conference which included discussions of suicide versus MAID, research published in the peer-reviewed Canadian Journal of Psychiatry, and information exchanged through various networks, including the Council of Psychiatric Associations and coordinated hospital working groups.[32] Dr. Gupta mentioned a national MAID MD-SUMC preparatory workshop.[33] Julie Campbell referred to CAMAP's clinical guidance documents, knowledge exchange workshops on clinician readiness and system readiness, and a fall symposium on assessing MAID MD-SUMC requests.[34] Dr. Claire Gamache, psychiatrist with the

29 AMAD, *Evidence*, 21 November 2023 (Jocelyne Voisin, Assistant Deputy Minister, Strategic Policy Branch, Department of Health).

30 AMAD, *Evidence*, 28 November 2023 (Gaind).

31 AMAD, *Evidence*, 28 November 2023 (Dr. Eleanor Gittens, Member, Canadian Psychological Association).

32 AMAD, *Evidence*, 7 November 2023 (Freeland).

33 AMAD, *Evidence*, 7 November 2023 (Gupta).

34 AMAD, *Evidence*, 21 November 2023 (Campbell).

Association des médecins psychiatres du Québec, noted that the Association's annual conference would include a session on MAID MD-SUMC.[35]

Oversight

Provincial Oversight

Oversight of MAID cases falls to the provinces and territories, and there is variation in the mechanisms used in different jurisdictions. Dr. Gupta indicated that 90% of MAID cases take place in a jurisdiction with a formal oversight process.[36] Dr. Green told the committee that the working group in British Columbia has proposed establishing a case review committee for all MAID MD-SUMC cases, and that one of the regional health authorities in British Columbia already has a similar system in place.[37]

Jocelyne Voisin from Health Canada also advised the committee that the department is working with provinces and territories to share views on oversight mechanism consistency and best practices.[38]

The Federal *Regulations for the Monitoring of Medical Assistance in Dying*

Data is also collected at the federal level under the *Regulations for the Monitoring of Medical Assistance in Dying*,[39] which Jocelyne Voisin indicated has been enhanced "to help determine the presence of any inequalities or disadvantages in requests for the delivery of MAID."[40] Dr. Gaind emphasized that socioeconomic data should also be collected to protect marginalized groups.[41]

35 AMAD, *Evidence*, 7 November 2023 (Dr. Claire Gamache, Psychiatrist, Association des médecins psychiatres du Québec).

36 AMAD, *Evidence*, 7 November 2023 (Gupta).

37 AMAD, *Evidence*, 21 November 2023 (Green).

38 AMAD, *Evidence*, 21 November 2023 (Voisin).

39 *Regulations for the Monitoring of Medical Assistance in Dying*, SOR/2018-166.

40 AMAD, *Evidence*, 21 November 2023 (Voisin).

41 AMAD, *Evidence*, 28 November 2023 (Gaind).

ONGOING CONCERNS

Assessing Irremediability

To be eligible for MAID under the *Criminal Code*, a person must have a "grievous and irremediable medical condition," which is defined as "a serious and incurable illness, disease or disability" that has led to an "advanced state of irreversible decline" and intolerable suffering.[42]

The Model Practice Standard for MAID provides the following definitions of "incurable" and "irreversible:"

> 9.5.2 'Incurable' means there are no reasonable treatments remaining where reasonable is determined by the clinician and person together exploring the recognized, available, and potentially effective treatments in light of the person's overall state of health, beliefs, values, and goals of care.
>
> 9.6.4 'Irreversible' means there are no reasonable interventions remaining where reasonable is determined by the clinician and person together exploring the recognized, available, and potentially effective interventions in light of the person's overall state of health, beliefs, values, and goals of care.[43]

The committee heard that it is difficult, if not impossible, to accurately predict the long-term prognosis of a person with a mental disorder. Some witnesses took this to mean that irremediability cannot be assessed with certainty, thereby indicating a lack of readiness for MAID MD-SUMC.[44] In addition, some witnesses opined that adequate criteria have not been established for determining irremediability.[45] According to Dr. Gaind, there is evidence that clinicians' predictions are wrong over half the time.[46]

On the other hand, Dr. Gupta pointed out that the difficulty of predicting a person's long-term prognosis is not unique to mental disorders, and applies to current track two cases as well:

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42 *Criminal Code*, R.S.C. 1985, c. C-46, s. 241.2(2).

43 Health Canada, *Model Practice Standard for Medical Assistance in Dying (MAID)*, March 2023.

44 AMAD, *Evidence*, 21 November 2023 (Sareen); AMAD, *Evidence*, 28 November 2023 (Gaind).

45 AMAD, *Evidence*, 21 November 2023 (Sareen); AMAD, *Evidence*, 28 November 2023 (Gaind; Rajji; H. Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Faculty of Medicine, As an individual).

46 AMAD, *Evidence*, 28 November 2023 (Gaind).

> There are many medical conditions for which prognostication is "difficult, if not impossible", to borrow the same language of the expert panel report, and yet we reason clinically about these cases in full respect of the Criminal Code requirements.[47]

The committee heard that, in practice, a person would need to have a long, documented history of failed treatment attempts in order to be found eligible for MAID MD-SUMC.[48] Several witnesses underscored that individuals in crisis would not be eligible.[49] However, some witnesses noted that Canada's eligibility criteria do not require a person to exhaust all reasonable treatments, in contrast to other countries.[50]

Distinguishing MAID Requests from Suicidality

Some witnesses told the committee that there is no way to distinguish requests for MAID MD-SUMC from suicidality,[51] while others asserted that there is a clear distinction between the two.[52]

Dr. Gupta acknowledged that suicidality is one symptom of "a small number of specific conditions," but believed there would be a subset of people capable of making an informed decision to seek MAID despite having struggled with suicidality.[53] Several witnesses noted that assessing suicidality is already part of the MAID assessment process,[54] and clinical medical practice generally.[55] By contrast, Dr. Gaind told the committee that the training medical practitioners receive to assess suicidality does not equip them to distinguish requests for MAID from suicidality.[56]

Dr. Gordon Gubitz, Division of Neurology, Department of Medicine, Nova Scotia Health, told the committee that training and other resources are available to help MAID

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47 AMAD, *Evidence*, 7 November 2023 (Gupta).

48 AMAD, *Evidence*, 7 November 2023 (Gupta; Gamache); AMAD, *Evidence*, 21 November 2023 (Green; Dr. Gordon Gubitz, Division of Neurology, Department of Medicine, Nova Scotia Health).

49 AMAD, *Evidence*, 7 November 2023 (Gupta; Gamache); AMAD, *Evidence*, 21 November 2023 (Green).

50 AMAD, *Evidence*, 21 November 2023 (Dr. Trudo Lemmens, Professor, Scholl Chair, Health Law and Policy, Faculty of Law, University of Toronto, As an individual; Sareen).

51 AMAD, *Evidence*, 21 November 2023 (Sareen); AMAD, *Evidence*, 28 November 2023 (Gaind; Rajji).

52 AMAD, *Evidence*, 21 November 2023 (Green; Gubitz).

53 AMAD, *Evidence*, 7 November 2023 (Gupta).

54 AMAD, *Evidence*, 7 November 2023 (Gupta; Gamache).

55 AMAD, *Evidence*, 7 November 2023 (Birenbaum; Gupta; Gamache); AMAD, *Evidence*, 21 November 2023 (Green).

56 AMAD, *Evidence*, 28 November 2023 (Gaind).

assessors understand the difference between suicidality and "a reasoned wish to die."[57] However, as noted above, other witnesses described the available resources as inadequate or problematic.[58]

Lack of Professional Consensus

The committee heard that many psychiatrists do not support the practice of MAID MD-SUMC. A range of statistics were put forward on this point, with some suggesting that the majority of psychiatrists are not in favour of MAID MD-SUMC.[59] However, some witnesses also pointed out that there is no consensus on many existing medical practices,[60] and that this is not generally considered a justification for prohibition.[61]

Protecting the Vulnerable

Some witnesses expressed concern regarding the potential impacts of MAID MD-SUMC on vulnerable groups, including women, Indigenous people, people with disabilities, people living in poverty, and people in geographically underserved areas.[62] According to Dr. Sareen, "there are inadequate safeguards to protect vulnerable groups that are disproportionately affected by mental disorders."[63] On the other hand, Shelley Birenbaum, Chair of the End of Life Working Group for the Canadian Bar Association, opined that there are already significant protections for the vulnerable built into the legal framework for MAID.[64]

The committee heard that people who have not received adequate treatment, or whose treatment was not adequately documented, would not be eligible for MAID MD-SUMC.[65]

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57 AMAD, *Evidence*, 21 November 2023 (Gubitz).

58 AMAD, *Evidence*, 28 November 2023 (Gaind; Rajji).

59 AMAD, *Evidence*, 21 November 2023 (Sareen); AMAD, *Evidence*, 28 November 2023 (Gaind).

60 AMAD, *Evidence*, 7 November 2023 (Freeland); AMAD, *Evidence*, 21 November 2023 (Green).

61 AMAD, *Evidence*, 21 November 2023 (Green).

62 AMAD, *Evidence*, 21 November 2023 (Lemmens; Sareen); AMAD, *Evidence*, 28 November 2023 (Kaiser; Gaind).

63 AMAD, *Evidence*, 21 November 2023 (Sareen).

64 AMAD, *Evidence*, 7 November 2023 (Birenbaum).

65 AMAD, *Evidence*, 7 November 2023 (Gamache); AMAD, *Evidence*, 21 November 2023 (Green).

Dr. Rajji noted that the delivery of MAID MD-SUMC at this time risks exacerbating health inequities.[66]

Some witnesses expressed concern about how socio-economic or psychosocial vulnerabilities may contribute to requests for MAID MD-SUMC.[67] Dr. Green underscored that people would not be eligible for MAID MD-SUMC on the basis of socio-economic vulnerabilities, but acknowledged that "people are quite complicated and it's hard sometimes to discern which factors are involved."[68]

As in previous studies, the committee heard about a lack of consultation with Indigenous Peoples on MAID, and MAID MD-SUMC specifically.[69] Jocelyne Voisin, however, told the committee that consultation with Indigenous Peoples on MAID is ongoing.[70]

Charter Considerations

Legal experts' opinions differed regarding the constitutional issues raised by MAID MD-SUMC. According to some, the ongoing exclusion from MAID of people suffering solely from a mental disorder risks violating the rights to equality, liberty and security of the person protected by the *Canadian Charter of Rights and Freedoms* (the *Charter*).[71] Others believed that the failure to afford *Criminal Code* protections against death to the most vulnerable, including people with disabilities and mental disorders, is itself discriminatory and unconstitutional.[72]

Myriam Wills, Counsel, Criminal Law Policy Section, Department of Justice told the committee that there are *Charter* considerations supporting the constitutionality of both prohibiting and permitting MAID MD-SUMC, as evidenced in the *Charter* statements for Bill C-7 and Bill C-39.[73]

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66 AMAD, *Evidence*, 28 November 2023 (Rajji).

67 AMAD, *Evidence*, 28 November 2023 (Kaiser; Rajji; Gaind).

68 AMAD, *Evidence*, 21 November 2023 (Green).

69 AMAD, *Evidence*, 28 November 2023 (Kaiser).

70 AMAD, *Evidence*, 21 November 2023 (Voisin).

71 AMAD, *Evidence*, 7 November 2023 (Birenbaum); AMAD, *Evidence*, 21 November 2023 (Dr. Jocelyn Downie, Professor Emeritus, Health Law Institute, Dalhousie University, As an individual).

72 AMAD, *Evidence*, 21 November 2023 (Lemmens); AMAD, *Evidence*, 28 November 2023 (Kaiser).

73 AMAD, *Evidence*, 21 November 2023 (Myriam Wills, Counsel, Criminal Law Policy Section, Department of Justice).

Availability of Trained Practitioners

The committee heard differing views as to whether there are enough properly trained practitioners—psychiatrists in particular—to safely and adequately provide MAID MD-SUMC.

As Sam Mikail, a psychologist with the Canadian Psychological Association, pointed out, the answer to this question depends in part on the number of expected cases, about which there was conflicting testimony.[74] While several witnesses were of the view that very few people would in fact be eligible for MAID MD-SUMC,[75] others disagreed, noting that there has been increasing demand in countries where MAID MD-SUMC has become available, and that approval rates in Canada will be higher due to more relaxed eligibility criteria.[76]

Several witnesses indicated that the role of psychiatrists in the MAID process is primarily to provide expert consultations, rather than to undertake assessments.[77] The committee heard that psychiatrists already have the skills and training necessary to act as expert consultants for MAID requests involving mental illness, and have already been doing so for track two cases.[78] It also heard that "the complexities so often attributed to mental disorders are not, in fact, unique to mental disorders and are already being handled in our MAID system today."[79]

Jocelyne Voisin from Health Canada agreed, but noted that some provinces and territories have expressed concerns about having enough trained professionals with mental health expertise for track two assessments. Dr. Rajji affirmed the lack of such professionals for track two cases in Ontario, stating that more time is needed to build a "community of practice."[80]

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74 AMAD, *Evidence*, 28 November 2023 (Dr. Sam Mikail, Psychologist, Canadian Psychological Association).

75 AMAD, *Evidence*, 7 November 2023 (Freeland; Gupta; Gamache); AMAD, *Evidence*, 21 November 2023 (Downie; Voisin).

76 AMAD, *Evidence*, 21 November 2023 (Lemmens); AMAD, *Evidence*, 28 November 2023 (Gaind).

77 AMAD, *Evidence*, 7 November 2023 (Freeland; Gupta); AMAD, *Evidence*, 21 November 2023 (Green).

78 AMAD, *Evidence*, 7 November 2023 (Freeland; Gupta; Gamache); AMAD, *Evidence*, 21 November 2023 (Green, Campbell).

79 AMAD, *Evidence*, 7 November 2023 (Gupta); See also: AMAD, *Evidence*, 21 November 2023 (Voisin; Campbell).

80 AMAD, *Evidence*, 28 November 2023 (Rajji).

The committee heard that a little over 100 psychiatrists out of 5000 in Canada (approximately 2%) have signed up for the Canadian MAiD Curriculum.[81] Some witnesses pointed out that, while this seems like a small percentage, only 2% of Canadian physicians are MAID providers.[82] Furthermore, it is normal for an innovative area of practice to begin with a small number of experts, who then train and mentor others.[83]

Others disagreed that only a small number of psychiatrists will be needed for MAID MD-SUMC.[84] In Dr. Sareen's opinion, all psychiatrists will need training on how to address suicidality in the context of mental disorder if MAID MD-SUMC is permitted.[85]

Dr. Freeland noted that being able to provide appropriate care to those who are found ineligible for MAID is also an important aspect of readiness.[86]

CONCLUSION

As mentioned at the outset of this report, given the conflicting testimony before this committee about whether Canada is ready to safely and adequately provide MAID MD-SUMC, the committee makes the following recommendation:

Recommendation 1

WHEREAS the Committee concludes that the medical system in Canada is not prepared for medical assistance in dying where mental disorder is the sole underlying medical condition (hereinafter "MAID MD-SUMC"), the committee recommends:

a. That MAID MD-SUMC should not be made available in Canada until the Minister of Health and the Minister of Justice are satisfied, based on recommendations from their respective departments and in consultation with their provincial and territorial counterparts and with Indigenous Peoples, that it can be safely and adequately provided; and

81 AMAD, *Evidence*, 21 November 2023 (Voisin).

82 AMAD, *Evidence*, 7 November 2023 (Gupta); AMAD, *Evidence*, 21 November 2023 (Green).

83 AMAD, *Evidence*, 7 November 2023 (Freeland; Gupta; Gamache); AMAD, *Evidence*, 21 November 2023 (Green).

84 AMAD, *Evidence*, 21 November 2023 (Lemmens; Sareen).

85 AMAD, *Evidence*, 21 November 2023 (Sareen).

86 AMAD, *Evidence*, 7 November 2023 (Freeland); See also: AMAD, *Evidence*, 21 November 2023 (Gubitz).

b. That one year prior to the date on which it is anticipated that the law will permit MAID MD-SUMC, pursuant to subparagraph (a), the House of Commons and the Senate re-establish the Special Joint Committee on Medical Assistance In Dying in order to verify the degree of preparedness attained for a safe and adequate application of MAID MD-SUMC.

APPENDIX A:
LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's webpage for this study.

Organizations and Individuals	Date	Meeting
As an individual	2023/11/07	38
Dr. Mona Gupta, Psychiatrist and Researcher, Centre hospitalier de l'Université de Montréal		
Association des médecins psychiatres du Québec	2023/11/07	38
Dr. Claire Gamache, Psychiatrist		
Canadian Psychiatric Association	2023/11/07	38
Dr. Alison Freeland, Chair of the Board of Directors and Co-Chair of MAID Working Group		
Federation of Medical Regulatory Authorities of Canada	2023/11/07	38
Dr. Douglas Grant, Registrar and Chief Executive Officer		
The Canadian Bar Association	2023/11/07	38
Shelley Birenbaum, Chair, End of Life Working Group		
As an individual	2023/11/21	39
Dr. Jocelyn Downie, Professor Emeritus, Health Law Institute, Dalhousie University		
Dr. Pierre Gagnon, Director of Department of Psychiatry and Neurosciences, Université Laval		
Dr. Stefanie Green, President, MAID Practitioner, Advisor to BC Ministry of Health		
Dr. Trudo Lemmens, Professor, Scholl Chair, Health Law and Policy, Faculty of Law, University of Toronto		
Canadian Association of MAiD Assessors and Providers	2023/11/21	39
Julie Campbell, Nurse Practitioner		

Organizations and Individuals	Date	Meeting
Department of Health	2023/11/21	39
Jocelyne Voisin, Assistant Deputy Minister, Strategic Policy Branch		
Department of Justice	2023/11/21	39
Myriam Wills, Counsel, Criminal Law Policy Section		
Nova Scotia Health	2023/11/21	39
Dr. Gordon Gubitz , Division of Neurology, Department of Medicine		
University of Manitoba	2023/11/21	39
Dr. Jitender Sareen, Physician, Department of Psychiatry		
As an individual	2023/11/28	40
Dr. K. Sonu Gaind, Chief, Department of Psychiatry, Sunnybrook Health Sciences Centre		
H. Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Faculty of Medicine (Cross-Appointment), Dalhousie University		
Canadian Psychological Association	2023/11/28	40
Dr. Eleanor Gittens, Member		
Dr. Sam Mikail, Psychologist		
Centre for Addiction and Mental Health	2023/11/28	40
Dr. Tarek Rajji, Chair, Medical Advisory Committee		
Collège des médecins du Québec	2023/11/28	40
Dr. Mauril Gaudreault, President		
Dr. André Luyet, Psychiatrist		

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 37 to 42) is tabled.

Respectfully submitted,

René Arseneault and Hon. Yonah Martin
Joint Chairs

Dissenting Opinion

The Special Joint Committee on Medical Assistance in Dying

January 24, 2024

We are submitting this dissenting opinion because we believe that all levels of healthcare, including the choice of end-of-life care, should be safe and equitable for all Canadians.

This dissenting opinion addresses the mandate given to the Special Joint Committee on Medical Assistance in Dying (AMAD, October 2023), evaluating the Government of Canada criteria for MAID MD-SUMC preparedness. We are aware that different Provinces and Territories may choose to make other stipulations related to their responsibilities in the delivery of end-of-life health care in their jurisdiction. This committee was not mandated to address such possibilities. We believe that the committee did not appropriately fulfill its mandate.

Our Recommendation

That the majority report of Special Joint Committee on Medical Assistance in Dying (AMAD) not be accepted by the Government of Canada.

Introduction

The following dissenting opinion is authored by three independent senators of the total five senator members of the AMAD committee from October 2023 until December 2023. This dissenting opinion is supported by two additional independent senators who participated in some meetings. Four of these Senators are medical doctors with personal and professional expertise in medical training and the delivery of medical care.

This dissenting opinion focuses on the medical and procedural aspects of the deliberations. We are supportive of an additional dissenting report that focuses on legal and constitutional aspects.

Background

On February 15, 2023, the Special Joint Committee on Medical Assistance in Dying (AMAD) tabled its final report, which addressed numerous topics related to medical assistance in dying (MAiD) in Canada, including, but not limited to, advance requests, mature minors, and mental disorders. This report recognized that some mental disorders were irremediable and intolerable, and that persons whose sole underlying condition was a mental disorder (MD-SUMC) should not be excluded from applying for MAiD should they meet the criteria that applies to all other Canadians. It did not challenge the court decisions related to MAID MD-SUMC (including Carter, Alberta, and Truchon), and it acknowledged the Expert Panel Report on MAiD and Mental Illness and the four preparedness criteria that comprised the Federal Government's commitment to MAiD MD-SUMC.

The federal government undertook four activities to address preparedness for MAiD MD-SUMC. These preparedness criteria are outlined in the October 20, 2022 Government Response to AMAD's interim report, presented to the house on June 22, 2022:

1. **The Expert Panel Report** on MAiD and Mental Illness was commissioned and issued its report on May 13, 2022.
2. **Monitoring and reporting** on MAiD in Canada**:** that revised reporting regulations be developed for data collection.
3. **Training**: that an accredited training program addressing MAiD for physicians and nurse practitioners be developed and available across Canada.
4. **Developmental Practice Standards**: that model MAiD practice standards be developed for physician and nurse regulators across the country.

As only one of these criteria had been realized as of February 2023 (criteria one) the committee recommended that MAiD MD-SUMC be delayed for one year to allow the completion of the other three criteria.

Subsequently, Bill C-39 (passed on March 9, 2023) provided an extension period for MAiD MD-SUMC until March 17, 2024, so that the three remaining criteria could be completed.

Additionally, the February 2023 report recommended that the committee be re-established five months before the March 2024 deadline to determine if the three remaining preparedness criteria had been completed. On October 31, 2023, the committee was reconvened. It was mandated to determine the **degree of preparedness attained for a safe and adequate application of MAiD MD-SUMC**. The committee's scope was circumscribed and specific: to determine if the federal government had met its obligation in completing the three remaining preparedness criteria. The committee was not mandated to revisit arguments against MAiD MD-SUMC or relitigate MAiD MD-SUMC.

The Criminal Code of Canada falls under the jurisdiction of the Federal Government, and changes to the Code have decriminalized the application of MAiD in regulated health care settings in Canada. Health care provision is primarily a provincial and territorial jurisdiction, and as such, provinces and territories are responsible for implementation and delivery of health services, including end of life care. This includes the application of MAiD-related health system regulation and care delivery standards. This has been demonstrated in the province of Quebec where the government has brought forward legislation in relation to MAiD provision.

The committee failed to address its mandate.

1. The committee did not properly evaluate whether the three remaining Government of Canada defined preparedness criteria had been completed:
    a. It only held three meetings to hear from witnesses regarding the achievement of the preparedness criteria and in those hearings heard from witnesses that had no knowledge about completion of these preparedness criteria.
    b. It did not invite medical regulators and MAiD providers from all provinces and territories to speak about health system preparedness in terms of the preparedness criteria.

c. It invited 23 individuals[1] who represented themselves or organizations.
    i. Of the 21 witnesses that spoke during committee meetings, 15 had extensive knowledge of the preparedness criteria and preparedness activities.
    ii. Of the 21 witnesses that spoke during committee meetings, five did not have extensive knowledge of preparedness activities, and were not involved in any preparedness activities.
d. The committee heard from five witnesses that used previous arguments against MAiD track two, and MAiD MD-SUMC in general—not on the mandated topic of realization of the preparedness criteria.

2. The majority report recommended "that the medical system in Canada is not prepared for MAiD where mental disorder is the sole underlying medical condition… based on recommendations from their respective departments and in consultation with their respective provincial and territorial counterparts and with Indigenous peoples" but this recommendation could not be made based on the evidence it heard. Such a recommendation should be invalid, because:
    a. The committee did not study "Canada's medical system."
    b. The committee did not hear from all provincial and/or territorial regulators or MAiD providers.
    c. The committee did not hear from Indigenous peoples.

The majority report made errors in weighing evidence.

The committee heard testimony from 21 individuals and organizations who spoke as witnesses over the course of three meetings. The committee heard from 15 witnesses who had fulsome knowledge of the completion of the preparedness criteria and each witness testified that all the preparedness criteria had been met. However, the majority report disregarded this testimony and instead chose to prioritize the testimony of five witnesses who either opposed MAiD MD-SUMC or had little or no knowledge of the preparedness criteria. Therefore, the majority report chose to ignore the most pertinent and compelling evidence regarding the federal government's own criteria for preparedness.

[1] 23 individuals who represented either themselves or organizations appeared as witnesses before the AMAD committee between October and December 2023. Each of these individuals are listed below. However, only 21 individuals spoke at committee meetings. Section 1 (c) (ii) on page three describes the positions of the 21 witnesses that spoke. The table below lists the positions of all 23 witnesses based on their testimony and/or submissions made to the committee.

Witnesses	Asserted Preparedness Criteria Completed	Said Canada wasn't ready
Canadian Psychiatric Association (Dr. Alison Freeland)	✓	
Canadian Bar Association (Shelley Birenbaum)	✓	
Dr. Mona Gupta	✓	
Association des médecins psychiatres du Québec (Dr. Claire Gamache)	✓	
Federation of Medical Regulatory Authorities of Canada (Dr. Douglas Grant)	✓	
Dr. Jocelyn Downie	✓	
Trudo Lemmens		✗
Dr. Stefanie Green	✓	
Dr. Pierre Gagnon		✗
Department of Justice (Myriam Wills)	✓	
Department of Health (Jocelyne Voisin) (+ 2 other witnesses who did not speak)	✓	
University of Manitoba (Dr. Jitender Sareen)		✗
Nova Scotia Health (Dr. Gordon Gubitz)	✓	
The Canadian Association of MAiD Assessors and Providers (Julie Campbell, NP)	✓	
H. Archibald Kaiser		✗
Dr. K. Sonu Gaind		✗
Canadian Psychological Association (Dr. Eleanor Gittens and Dr. Sam Mikail)		✗
Centre for Addiction and Mental Health	*	*

(Dr. Tarek Rajji)[2]		
Collège des médecins du Québec (Dr. André Luyet and Dr. Mauril Gaudreault)	✓	

For example, Dr. Mona Gupta chaired the Expert Panel on MAiD and Mental Illness, was involved in provincial MAiD MD-SUMC protocol development, the development of the Model MAiD practice standards, and the development of the accredited national training program by CAMAP. She asserted that "the activities to allow the safe and adequate assessment and provision of MAiD MD-SUMC, within federal jurisdiction, have been underway for almost three years and are now complete."

Dr. Jocelyn Downie, who was involved in the development of Model MAiD practice standards and the CAMAP training program, told the committee that "robust statutory, monitoring, regulatory, and clinical preparedness has been demonstrated" and reminded members that political preparedness is not a justification for limiting the charter rights of those intolerably suffering from a mental disorder.

Nurse Practitioner Julie Campbell, who represented CAMAP, indicated that "all of the federal government's activities indicative of readiness for MAiD MD-SUMC have been completed."

Dr. Douglas Grant, the registrar of the college of physicians in Nova Scotia who represented the Federation of Medical Regulatory Authorities of Canada, said "all readiness must be built on regulatory readiness" and affirmed that "regulators are ready for this. We don't need any more time…we have a solemn and legal duty to be ready."

Dr. Stefanie Green, an experienced MAiD provider and founding president of CAMAP, assured the committee that "very clearly, there is a high degree of preparedness…there is readiness at the federal level, there are provincial, territorial and regional initiatives that have occurred and continue, and there is preparedness of the medical and nursing regulatory bodies as well as professional associations."

These are only **some** examples of testimony that affirmed the completion of the four readiness criteria required to demonstrate preparedness.

[2] Testimony from Dr. Rajji who was representing CAMH did not oppose the preparedness criteria established by the Federal Government. Instead, he called for additional guidelines to be completed by CAMH. Clinical guidelines, however, are not the responsibility of the Federal Government but rather that of credible national medical associations. Therefore, CAMH's testimony is not contradictory to the federal government's criteria of preparedness. If any province or territory wishes to impose additional criteria for preparedness in its area of jurisdiction, it can choose to do so. This would not mean that the federal government's criteria for preparedness have not been achieved.

Of the remaining five witnesses who spoke against preparedness, none represented regulatory bodies, provincial/territorial health care systems or the accrediting authorities responsible for health care standards, nor were they involved in the development of any of the preparedness components.

The committee denied Canadians' right to contribute to its deliberations

In parliamentary committees, briefs submitted by members of the public are important pieces of evidence that must be considered by the committee. In AMAD's past session in 2022, the committee received hundreds of briefs which were considered as testimony and referenced in the committee's report.

The committee asked Canadians to submit briefs pertinent and relevant to the mandate of the committee, and assured them that they would be welcomed, accepted, and considered. The committee received hundreds of submissions, not all of which were briefs addressing its mandate. We are aware of some briefs that were submitted to the committee before the noted due date, by leading provincial and territorial experts that spoke directly to provincial health system readiness. However, the committee chose to not use these briefs, and the majority report wrongly dismisses them.

The committee did not call witnesses from each province and territory to discuss MAiD MD-SUMC readiness in their jurisdiction, and therefore, can make no comments about health system readiness across Canada. Briefs from provincial and territorial regulators and MAiD providers would have been essential to getting the information needed to consider readiness in provincial and territorial jurisdictions. A number of briefs that were not considered by the committee clearly noted that readiness for MAID MDSUMC had already been reached in a number of provinces, some four months prior to the legislated date.

Essential evidence of preparedness was not considered, as members of the committee chose to use only witness testimony during committee meetings as evidence in the final report. Yet, the majority report did not consider pertinent testimony available in briefs related to preparedness that some members of the committee read into the evidence during public hearings and witness testimony. The evidence found in the briefs clearly contradicts the majority report's recommendation.

Discrediting Canada's medical education accreditation process

All medical training is accredited under the authority of the Royal College of Physicians and Surgeons (RCPS) and the College of Family Physicians and Surgeons of Canada (CFPSC). A MAiD training program was developed by the Canadian Association of MAiD Assessors and Providers (CAMAP) and accredited by the CFPSC and the RCPS. Individual clinicians may hold opinions about any medical training program, but it is the authority and responsibility of the accrediting bodies to determine if training has met national standards, not the opinion of any clinician.

One witness testified against the accredited MAID training program and may have misled the committee about the quality, nature, and content of the accredited training program and stated negative personal opinions about it. The committee report then chose to discredit the

professionally accredited program based on one witness's personal opinion. This will have a profound and negative consequence for how medical education is developed, accredited, and delivered in Canada.

Additional considerations

It is also worth noting three other major themes which were present in many of the committee's public deliberations. First, the issue of consensus was repeatedly used as an argument against MAiD MD-SUMC. However, in medicine, there is no requirement for consensus, and there no consensus within the medical profession on medical assistance in dying in general. Therefore, the committee report, in its demand of consensus in MAiD MD-SUMC, is setting a standard that is discriminatory for people with a mental disorder.

Second, the majority report contains a section titled 'ongoing concerns.' This section was not relevant to the very specific mandate of the committee—to determine if preparedness criteria had been met—and instead attempted to relitigate and rehash track two MAiD and MAiD MD-SUMC discussions that had been addressed in previous committee reports. This illustrated the committees repeated failure to address its own mandate and is contrary to the final report tabled on February 15, 2023.

Finally, prejudice and stigma against people with mental disorders has been reinforced by this committee's majority report and as a result of this flawed process, Canadians will continue to be deprived of their Charter rights regarding end-of-life care. The paternalistic view that all competent people with mental disorders are unable to make informed decisions about their medical care is archaic, not aligned with reality, and condescending. Any person who is deemed capable and meets the eligibility criteria for MAiD MD-SUMC should not be excluded from the care that is offered to all other Canadians. However, this determination was not the mandate of this committee—assessing preparedness was—and experts have indeed confirmed that the preparedness criteria established by the federal government have been achieved. Thus, from the perspective of criminal law of Canada, Canadians should no longer be excluded from decisions regarding MAID as an end-of-life choice. Our concern lies in the fact that individuals enduring profound suffering without seeing an end to their distress, as well as those who have been victims of discrimination due to the type of illness they have, are now facing additional discrimination in how they wish to die.

Conclusion

The committee failed to do its work objectively and in an unbiased manner, it did not address its mandate, and its majority report recommendation is thus invalid. It failed to:

- Properly evaluate if the federal government's preparedness criteria had been achieved.
- Allow enough time to hear from knowledgeable witnesses regarding the achievement of the preparedness criteria.
- Invite medical regulators and MAiD providers from all provinces and territories to speak about health system preparedness in provincial and territorial jurisdictions.

- Weigh evidence properly. It chose to prioritize testimony from witnesses who were not themselves involved in preparedness activities.
- The committee heard from many witnesses that simply argued against MAiD track two, and MAiD MD-SUMC in general and did not speak on the mandated topic of preparedness.
- The majority report endorsed testimony from one witness who created their own criteria of preparedness not supported by any other witness testimony and not identified by the federal government as part of its preparedness criteria.
- Unfortunately, the majority report accepted the negative, biased, and subjective testimony of a single individual regarding the accredited MAiD training program over the many witnesses who objectively and positively testified to the preparedness, quality and availability of the accredited MAiD training program.
- The majority report did not consider essential evidence made available in briefs related to provincial preparedness.
- Contrary to accepted process, the majority report did not utilize briefs addressing its mandate in its deliberations that had been submitted in good faith within the deadline for their acceptance.

When MAiD was first made available in Canada, there was no discussion of 'preparedness.' Physicians, health systems administrators and regulators worked quickly and effectively to learn the necessary procedures, create standards of care, and establish clinical pathways. Nor was there any medical practitioner consensus that MAiD should be provided. The demand for preparedness for MAiD MD-SUMC stands in sharp contrast to that historical reality and can perhaps be best understood as discrimination and stigma against those who live with and suffer from a mental disorder.

Therefore, we recommend, to ensure equitable and safe access to healthcare for all Canadians, that this report of Special Joint Committee on Medical Assistance in Dying (AMAD) not be accepted by the federal government.

Furthermore, should the Government of Canada seek extension of the exclusion of persons whose sole underlying condition is a mental disorder from accessing MAiD, it should do so concurrently with a referral to the Supreme Court of Canada.

GLOSSARY:

AMAD: The acronym for the Special Joint Committee on Medical Assistance in Dying

MAiD MD-SUMC: Medical assistance in dying for persons whose sole underlying condition is a mental disorder.

TRACK ONE: a track one MAiD request is a request from a person whose death is reasonably foreseeable and meets all the other eligibility criteria.

TRACK TWO: a track two MAiD request is a request from a person whose death is not reasonably foreseeable but meets all the other eligibility criteria.

A GREVIOUS AND IRREMEDIABLE MEDICAL CONDITION: According to the health law institute at Dalhousie University, this is a serious and incurable illness, disease or disability that leaves a person in an advanced state of irreversible decline in capability. The illness, disease, or disability or that state of decline causes enduring physical or psychological suffering that is intolerable and that cannot be relieved under conditions that the person consider acceptable

PREPAREDNESS ACTIVITIES: The four activities that the federal government undertook to ensure preparedness under federal jurisdictions.

1. **The Expert Panel Report** on MAiD and Mental Illness was commissioned.
2. **Monitoring and reporting** on MAiD in Canada**:** that revised reporting regulations be developed for data collection.
3. **Training**: that an accredited training program addressing MAiD for physicians and nurse practitioners be developed and available across Canada.
4. **Developmental Practice Standards:** that model MAiD practice standards be developed for physician and nurse regulators across the country.

CAMAP: The Canadian Association of MAiD Assessors and Providers

RCPS: The Royal College of Physicians and Surgeons

CFPSC: The College of Family Physicians and Surgeons of Canada

Respectfully submitted,

The Honourable Stan Kutcher, Senator
Nova Scotia

The Honourable Marie-Françoise Mégie, Senator
Quebec

The Honourable Pamela Wallin, Senator
Saskatchewan

With support from
The Honourable Flordeliz (Gigi) Osler
Manitoba

The Honourable Mohamed-Iqbal Ravalia
Newfoundland and Labrador

DISSENTING OPINION OF SENATOR DALPHOND

INTRODUCTION

1. A large majority of Canadians want the possibility of accessing medical assistance in dying (MAID), in well-defined circumstances, including for a severe, treatment-resistant mental illness for which individuals experience intolerable suffering, according to a January 2023 poll.[1] For most Canadians, it is a question of dignity and autonomy.

BACKGROUND ON EXCLUSION OF MENTAL ILLNESS FROM MAID ACCESS

2. In *Carter v. Canada (Attorney General)* (2015), the Supreme Court of Canada ruled on a constitutional challenge to the criminal prohibition on MAID initiated four years earlier, with the trial having proceeded on an expedited basis. The Court stated that section 7 of the *Canadian Charter of Rights and Freedoms* protects Canadians' right to decide about end-of-life issues and that provisions of the *Criminal Code* preventing MAID were unconstitutional, granting Parliament one year to legislate accordingly. The Court also said that MAID for persons with psychiatric disorders as a sole condition did not fall within the parameters of its reasons despite arguments presented by the Attorney General of Canada on that issue.

3. In June 2016, Parliament adopted Government Bill C-14, which amended the *Criminal Code* to allow access to MAID for people suffering from an irremediable illness and whose death is reasonably foreseeable.

4. In *Truchon c. Procureur général du Canada* (2019), in the context of another constitutional challenge, the Quebec Superior Court concluded that access to MAID could not be restricted to those whose death is reasonably foreseeable.

5. In response, the Government tabled Bill C-7 which extended access to people who are not terminally ill, but who suffer from an irremediable condition that has become unbearable for them. However, this bill specifically excluded all individuals suffering solely from an irremediable mental illness.

6. As stated in the Charter Statement tabled in the House of Commons on October 21, 2020, the exclusion was not based on the assumption that these individuals lack decision-making capacity and thus would not disqualify them from eligibility for MAID if they have another medical condition that was considered to be a serious and incurable illness, disease or disability. Rather, it was based on assumptions of complexity and

[1] The poll indicated that 82 percent of Canadians agree that with the appropriate safeguards in place, such an adult with the capacity to provide informed consent should be able to seek an assessment for MAID.

inherent risks of access to MAID for these individuals, such as difficulty in assessing decision-making capacity, lesser predictability over time of the course of mental illness than physical illness, and certain recent cases in the few countries that permitted MAID for people whose sole medical condition was a mental illness.

7. These assumptions were then widely accepted by the political parties in the House of Commons.

8. For its part, after reviewing the question, the Senate adopted an amendment to subject the exclusion to a sunset clause of 18 months, a period to provide for proper guidelines and training.

9. In moving the amendment, Senator Kutcher stated: "[T]he exclusion [clause] is stigmatizing, discriminatory, and thus likely unconstitutional."

10. In support of that amendment, I said:

> We have also heard that it does not make sense to exclude Canadians suffering solely from mental illness while allowing access for those who may suffer both from a mental and physical illness. In these cases, capacity assessments must also be performed, and it seems it can be done without much difficulty in practice.
>
> In reality, as many witnesses have said, the proposed exclusion reinforces, perpetuates or exacerbates myths and biases about mental illness, including that the suffering of those with mental illnesses is somewhat less legitimate than that of physical conditions and that people with mental illnesses lack the agency or capacity to make decisions about their own suffering.

11. As proposed by the Government, a majority of the House of Commons accepted the Senate's amendment, but extended the sunset clause to 24 months.

12. The House of Commons also added an obligation for the Minister of Health and the Minister of Justice to initiate an independent expert panel "respecting recommended protocols, guidance and safeguards to apply to requests made for medical assistance in dying by persons who have a mental illness."

13. On May 13, 2022, the Panel's final report was published. The Panel concluded that existing MAID eligibility criteria and safeguards, buttressed by the existing laws, standards, and practices in related areas of healthcare, can provide an adequate structure for MAID where the sole underlying condition is mental illness. However, it recommended that specialized training be made available to providers and assessors before allowing access.

14. In March 2023, through Bill C-39, Parliament extended the sunset clause by one year, ending on March 17, 2024. In bringing forward Bill C-39, the Government indicated that such extension would help ensure health care system readiness by, among other things, allowing more time for the dissemination and uptake of key resources by the medical and nursing communities, including MAID assessors and providers.

15. In the Charter Statement tabled in the House of Commons on February 15, 2023, the Minister of Justice acknowledged that Bill C-39, by temporarily prohibiting access to MAID where the sole condition identified is a mental illness, had the potential to engage liberty and security of these individuals protected by section 7 of the *Charter*. It also had the potential to engage the right to equality under section 15 because the exclusion applies only to individuals who suffer from a mental illness.

16. As a Quebec senator, I cannot ignore that in its December 2021 report, the National Assembly's Select Committee on the Evolution of the *Act respecting end-of-life care* recommended against extending access to MAID to people whose only medical problem is a mental illness. The committee made this recommendation in keeping with the precautionary principle that Quebec has favoured since the beginning of its work on MAID, considering the lack of medical and social consensus. In June 2023, the National Assembly adopted Bill 11, amending the *Act respecting end-of-life care*, to exclude MAID solely for a mental illness.

17. Finally recent debates in the House of Commons on failed private Member's Bill C-314 highlighted the fact that many MPs still want to permanently exclude MAID access to people suffering solely from a mental illness, for the same reasons that were invoked to justify the exclusion initially found in Bill C-7.

THIS COMMITTEE'S LIMITED MANDATE

18. As suggested at recommendation 13 of the previous report of this Special Joint Committee, the Committee was re-established in October 2023 to verify the degree of preparedness attained for a safe and adequate application of MAID where mental disorder is the sole underlying medical condition.

19. This limited mandate precludes any consideration of access to MAID via advance requests, applicable in well-defined circumstances, such as a diagnosis of an irreversible disease like Alzheimer's. According to a 2022 poll, 85 percent of Canadians support advance requests for those with a grievous and irremediable medical condition. Hopefully such a task will be mandated to the Special Joint Committee in the near future.

THIS COMMITTEE UNFORTUNATELY VEERED OFF COURSE

20. To respect its limited mandate of verification of the degree of preparedness attained for a safe and adequate application of MAID where mental disorder is the sole underlying medical condition, the Special Joint Committee had to focus on testimony from representatives of associations of doctors, nurses and others involved in the provision of MAID (who said they were ready), of provincial oversight bodies (who said that appropriate measures were in place to ensure proper application of the provisions of the *Criminal Code*), and of organizations involved in training the people providing MAID (who described the special training provided).

21. For details on this evidence, I refer to the detailed analysis included in the attached dissenting report of some of my Senate colleagues, essentially a group of experts in the provision of health care.

22. Despite that, the majority report concludes that the medical system in Canada is not prepared for MAID where mental disorder is the sole underlying condition. It comes to that conclusion by giving substantial weight, maybe too much, to the testimony of individuals who have long opposed any broadening of access to MAID.

23. Based on that disputable conclusion, the report recommends a blanket exclusion until the Minister of Health and the Minister of Justice are satisfied, based on recommendations from their respective departments and in consultation with their provincial and territorial counterparts and with Indigenous peoples, that MAID can be safely and adequately provided.

24. Furthermore, the report recommends that one year prior to the date on which it is anticipated that the law will permit MAID to such a group of individuals, the House of Commons and the Senate re-establish the Special Joint Committee on MAID to verify the degree of preparedness attained for safe and adequate application of MAID where mental illness is the sole underlying medical condition.

25. In other words, the majority is proposing a blanket indeterminate exclusion of access to MAID for all individuals who meet all the stringent requirements of paragraph 241.2 of the *Criminal Code* where mental illness is the sole underlying medical condition.

26. In my view, this recommendation stems largely from a belief that there is a lack of sufficient medical and social consensus in Canada for access to MAID on the sole ground of a mental illness, rather than the standalone evidence on preparedness.

27. Furthermore, this alleged lack of social acceptability is questionable. Indeed, a January 2023 poll indicated that 82 percent of Canadians agree that with the appropriate safeguards in place, an adult with the capacity to provide informed consent should be able to seek an assessment for medical assistance in dying for a severe, treatment-resistant mental illness for which they experience intolerable suffering. This support comprises 34% who strongly support and 48% who somewhat support such access.

28. In short, the Special Joint Committee's report moved away, consciously or unconsciously, from its mandate of verifying the preparedness of regulators and those involved in the assessment and provision of MAID. Rather, the focus of the majority was on a lack of medical and social consensus on ending the exclusion.

A CONSTITUTIONAL RECOMMENDATION?

29. In the Charter Statement on Bill -39 referred to above, the Justice Minister acknowledged that adding one year to the sunset clause to extend for that period the prohibition on access to MAID, where the sole condition identified is a mental illness, had the potential to engage the liberty and security right of these individuals protected by section 7 of the *Charter*, as well as the right not to be discriminated against, protected at section 15, because the exclusion applies only to individuals who suffer from a mental illness.

30. To now recommend a blanket and indeterminate exclusion for the same group of persons engages the protected rights of these individuals to an even greater degree and, in my opinion, is likely to be declared unconstitutional.

31. In *Carter* (2015), the Supreme Court of Canada stated unanimously:

> [115] […] Based on the evidence regarding assessment processes in comparable end-of-life medical decision-making in Canada, the trial judge concluded that vulnerability can be assessed on an individual basis, using the procedures that physicians apply in their assessment of informed consent and decisional capacity in the context of medical decision-making more generally. Concerns about decisional capacity and vulnerability arise in all end-of-life medical decision-making. Logically speaking, there is no reason to think that the injured, ill, and disabled who have the option to refuse or to request withdrawal of lifesaving or life-sustaining treatment, or who seek palliative sedation, are less vulnerable or less susceptible to biased decision-making than those who might seek more active assistance in dying. […]
>
> [116] As the trial judge noted, the individual assessment of vulnerability (whatever its source) is implicitly condoned for life-and-death decision-making in Canada. In some cases, these decisions are governed by advance directives, or made by a substitute decision-maker. Canada does not argue that the risk in those circumstances requires an absolute prohibition (indeed, there is currently no federal regulation of such practices). In *A.C.*, Abella J. adverted to the potential vulnerability of adolescents who are faced with life-and-death decisions about medical treatment (paras. 72-78). Yet, this Court implicitly accepted the viability of an individual assessment of decisional capacity in the context of that case. We accept the trial judge's conclusion that it is possible for

physicians, with due care and attention to the seriousness of the decision involved, to adequately assess decisional capacity. [emphasis added]

32. In 2016, after the *Carter* judgment and before the adoption of C-14, the Court of Appeal of Alberta granted access to MAID to a person suffering solely from a mental illness. In *Canada (Attorney General) v. E.F.*, that Court stated:

> [59] As can be seen, in *Carter 2015* the issue of whether psychiatric conditions should be excluded from the declaration of invalidity was squarely before the court; nevertheless the court declined to make such an express exclusion as part of its carefully crafted criteria. Our task, and that of the motions judge, is not to re-litigate those issues, but to apply the criteria set out by the Supreme Court to the individual circumstances of the applicant. The criteria in paragraph 127 and the safeguards built into them are the result of the court's careful balancing of important societal interests with a view to the *Charter* protections we all enjoy. Persons with a psychiatric illness are not explicitly or inferentially excluded if they fit the criteria.

33. In *Truchon* (2019), the Quebec Superior Court stated:

> [466] From the evidence as a whole, the Court concludes as follows:
>
> 1. Medical assistance in dying as practised in Canada is a strict and rigorous process that, in itself, displays no obvious weakness;
>
> 2. The physicians involved are able to assess the patients' capacity to consent and identify signs of ambivalence, mental disorders affecting or likely to affect the decision-making process, or cases of coercion or abuse;
>
> 3. 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". Beyond the various factors of vulnerability that physicians are able to objectify or identify, the patient's ability to understand and to consent is ultimately the decisive factor, in addition to the other legal criteria;
>
> 4. The physicians involved are able to distinguish a suicidal patient from a patient seeking medical assistance in dying. Moreover, there are important distinctions between suicide and medical assistance in dying with respect to both the characteristics of the people involved and the reasons that motivate them;
>
> 5. Neither the national data in Canada or Quebec nor the foreign data indicate any abuse, slippery slope, or even heightened risks for vulnerable people

when imminent end of life is not an eligibility criterion for medical assistance in dying.

34. In *Ontario (Attorney General) v. G* (2020), the Supreme Court of Canada dealt with a law that provided a person convicted of a sexual offence with the possibility of being removed from the sex offender registry, while denying any similar option to all individuals found not criminally responsible on account of mental disorder (NCRMD). The Court found that section 15 of the *Charter*, the equality guarantee, requires that these individuals must also have access to an exclusion mechanism, based on individualized assessments. The Court concluded that a blanket denial of potential exclusion for that group was unconstitutional. For the majority, Justice Karakatsanis wrote:

> [74] I agree with the Court of Appeal that *Christopher's Law* is not minimally impairing of the s. 15(1) rights of those who were found NCRMD of a sexual offence and discharged. *Christopher's Law* itself includes mechanisms by which, after some form of individualized assessment of their circumstances, offenders who were not found NCRMD can be removed from the registry (free pardon), relieved of the obligation to report (free pardon and record suspension), or exempted from reporting in the first place (discharge under s. 730 of the *Criminal Code*). The inclusion of *any* method of exempting and removing those found NCRMD from the registry based on individualized assessment would be less impairing of their s. 15(1) rights and could actually increase the registry's effectiveness by narrowing its application to individuals who pose a greater risk to the community. [emphasis added]

35. With respect for those who hold a different opinion on the state of the law, I prefer the one expressed by the British Columbia Civil Liberties Association in a brief on Bill C-7 filed with the Senate Standing Committee on Legal and Constitutional Affairs on December 1, 2020, when stating:

> Mental illness should not be excluded from the definition of "serious and incurable illness, disease or disability" … [in the *Criminal Code*].
>
> This absolute prohibition does not comply with the Supreme Court of Canada's decision in *Carter v. Canada (Attorney General)*, 2015 SCC 5 […], and is therefore unconstitutional. Excluding all "mentally ill" people from choosing assistance in dying, no matter how extreme their suffering, no matter how grievous and irremediable their condition, and irrespective of the competence and voluntariness of their decision, takes away a human right that was granted by the Supreme Court of Canada. In sum, the government should support human rights in mental health care – not stigmatize and abandon those suffering from mental health issues.

36. In conclusion, the majority recommendation to exclude eligibility for MAID for an indeterminate but assuredly long period for all individuals suffering solely from an irremediable mental illness, irrespective of their competence and voluntariness, the uncurable nature of their mental illness and no matter how extreme their suffering, contravenes section 7 of the *Charter* because it is excessive, and thus overbroad. In addition, this group exclusion contravenes section 15 by disallowing access that must rest in all other cases on individualized assessment of compliance with all requirements of the *Criminal Code*.

RECOMMENDATION: A REFERENCE TO THE SUPREME COURT OF CANADA

37. Parliament is constitutionally entitled to require certain processes, such as the requirement for two or more doctors' opinions and other safeguards, to determine MAID access for individuals to protect them, if reasonable in the circumstances.

38. However, it is likely unconstitutional for Parliament to exclude all members of a group, including those meeting all the applicable requirements, including valid free consent, rather than to provide for a process to conduct individual assessment of a person's eligibility to access MAID.

39. If Parliament nevertheless decides to implement the majority recommendation, the message sent to those affected by the new and indeterminate – but assuredly long – exclusion will be to resort to a constitutional challenge before the courts, forums where evidence can be objectively assessed in light of sections 7 and 15 of the *Charter*.

40. But unfortunately, such a constitutional challenge is a long, complex, and expensive process. The *Carter* challenge lasted for four years even if the trial was held on an expedited basis.

41. In the meantime, the recommended exclusion will cause some capable individuals meeting all the applicable stringent requirements to endure extreme suffering or to commit suicide.

42. Thus, should Parliament decide to extend the exclusion from MAID access for persons with a mental illness as a sole underlying condition, I recommend that the Government submit a reference question to the Supreme Court of Canada to rule on the constitutionality of such an extension as soon as possible.

The Liberal Government Must Abandon MAID for Mental Disorders

Special Joint Committee on Medical Assistance in Dying: Conservative Supplemental Opinion

This Supplemental Report reflects the views of the Conservatives who serve on the Special Joint Committee on Medical Assistance in Dying (the "Committee"): The Honourable Yonah Martin (Senator, British Columbia), Shelby Kramp-Neuman, M.P. (Hastings—Lennox and Addington), Michael Cooper M.P. (St. Albert—Edmonton), The Honourable Ed Fast, P.C., M.P. (Abbotsford).

Introduction

The evidence is clear. Canada is not ready for the expansion of MAID in cases where a mental disorder is the sole underlying medical condition (MAID MD-SUMC). Accordingly, Conservatives endorse the Committee's recommendation that the government should not proceed with MAID MD-SUMC. However, for clarity, Conservatives call on the Liberal government to forthwith introduce legislation to put an indefinite pause on MAID MD-SUMC. Based on the balance of evidence, MAID MD-SUMC cannot be safely implemented.

There are serious problems with MAID MD-SUMC, on which we wish to elaborate. Chief among these is the fact that: (1) it is difficult, if not impossible, to determine the irremediability of a mental disorder in individual cases; and (2) it is difficult for a clinician to distinguish between a "rational" request for MAID MD-SUMC and one motivated by suicidal ideation. So long as these issues remain unresolved, it is impossible to safely implement MAID MD-SUMC. There are other problems that demonstrate a lack of preparedness, including inadequate training materials and practice standards, and a lack of consensus amongst medical professionals. These and other issues are discussed in this Supplemental Report.

At the outset, we wish to highlight the incompetent approach that the Liberal government has taken with respect to MAID MD-SUMC. It has been nothing short of shambolic. This is underscored by the recommendation in the main report, supported by all recognized parties in the House of Commons, calling on the Liberal government not to proceed. It should never have come to this. This is a consequence of a government that put blind ideology ahead of evidence-based decision making.

We find ourselves, for the second time, approaching a deadline for the implementation of MAID MD-SUMC unprepared. We are here because former Justice Minister David Lametti accepted a radical, eleventh-hour Senate amendment to set in motion the expansion of MAID to cases where a mental disorder is the sole underlying medical condition. This was done absent sufficient study and consultation on what amounts to a significant expansion of MAID, impacting some of the most vulnerable persons in Canadian society. Had adequate study taken place before this decision was made, no responsible government would have moved ahead with MAID MD-SUMC.

Irremediability

Over the past year, no meaningful progress has been made towards resolving the fundamental issue of accurately determining irremediability in the context of MAID MD-SUMC. While this remains unresolved, it would be reckless and dangerous for the Liberal government to proceed with MAID MD-

SUMC for at least two reasons. First, such an expansion will lead to the premature deaths of persons with mental disorders who otherwise could have gotten better. Second, the difficulty in determining irremediability casts doubt on whether MAID MD-SUMC can be implemented in accordance with the law. That is because a prerequisite to qualifying for MAID is that a person must suffer from a "grievous and irremediable" medical condition.

Irremediability is defined in section 241.2(1) of the *Criminal Code*, as a medical condition that is "incurable" and in "an advanced state of irreversible decline."[1] In other words, to qualify, a MAID assessor must be satisfied that the person's condition will not get better.

The May 2022 report of the government's *Expert Panel on MAID and Mental Illness* (the "Expert Panel") acknowledged the difficulty in determining the irremediability of a mental disorder:

> "The evolution of many mental disorders, like some other chronic conditions, is difficult to predict for a given individual. There is limited knowledge about the long-term prognosis for many conditions, and it is difficult, if not impossible, for clinicians to make accurate predictions about the future for an individual patient."[2] [emphasis added]

The challenges with respect to determining irremediability was among the reasons cited in a December 2022 letter signed by the Association of Chairs of Psychiatry in Canada, which includes the heads of psychiatry departments at all 17 medical schools, calling on the government to delay implementation of MAID MD-SUMC.[3] Following this letter, the Liberals introduced Bill C-39 to delay the implementation of MAID MD-SUMC for one year, from March 2023 to March 2024.

The evidence before the Committee demonstrates that no progress has been made with respect to determining irremediability. When Dr. Mona Gupta, Chair of the Expert Panel, was asked whether anything had changed since the May 2022 Expert Panel report concluded that it is "difficult, if not impossible" to predict irremediability, she answered: "No, that hasn't changed since May 2022."[4]

Other psychiatrists who appeared before the Committee also agreed that nothing has changed. For example, when Dr. Jitender Sareen, Chair of the Department of Psychiatry at the University of Manitoba, was asked whether we are any closer to reliably determining irremediability compared to a year ago, he said: "No, we're not. We haven't changed from a year ago."[5] Likewise, Dr. Tarek Rajji, Chair of the Medical Advisory Committee at the Centre for Addiction and Mental Health (CAMH), said: "There's no scientific evidence on it. We still cannot, at this time, determine at the individual level whether the person has an irremediable illness or not."[6] Dr. Sonu Gaind, Chief of the Department of Psychiatry at Sunnybrook Health Sciences Centre in Toronto, noted: "worldwide evidence shows we cannot predict irremediability in cases of mental illness."[7]

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[1] *Criminal Code of Canada* (R.S.C. 1985, c.C-46), s.241.2(2).
[2] Health Canada, Final Report of the Expert Panel on MAiD and Mental Illness, p.9.
[3] Baines, Camille. "Canada should delay MAID for people with mental disorders: psychiatrists" *CTV News*, December 1, 2022
[4] Evidence: November 7, 2023 (Dr. Mona Gupta).
[5] Evidence: November 21, 2023 (Dr. Jitender Sareen).
[6] Evidence: November 28, 2023 (Dr. Tarek Rajji).
[7] Evidence: November 28, 2023 (Dr. Sonu Gaind).

The Committee was warned by several leading psychiatrists that this difficulty means that MAID MD-SUMC cannot be implemented safely. MAID decisions in the case of a mental disorder will be based on "hunches and guesswork that could be wildly inaccurate."[8] According to Dr. Gaind, evidence shows "predictions [on irremediability] are wrong over half the time."[9] [emphasis added] As such, Dr. Gaind asserted that this "means that [MAID providers] would be providing death under false pretenses."[10]

The inappropriateness of moving forward with MAID MD-SUMC, having regard for this level of uncertainty, is underscored by evidence that persons suffering with a mental disorder often can recover "with appropriate evidence-based treatments."[11] According to Dr. Sareen:

> "Unlike physical conditions that drive MAID requests, we do not understand the biological basis of mental disorders and addictions, but we know that they can resolve over time."[12]

Mental disorders are different than diseases such as terminal cancer for which Canadians can access MAID. Unlike cancer, it is difficult, if not impossible to be certain of the prospective course of any individual case involving a sole underlying mental disorder.[13]

While the Expert Panel report acknowledged the difficulty of determining irremediability, it recommended that assessments could be appropriately done on a "case-by-case basis," absent objective criteria. The Expert Panel recommended that "the requester and assessors must come to a shared understanding that the person has a serious and incurable illness," including having regard for past treatment attempts.[14]

We submit that this approach is cavalier, inadequate, and will result in the premature deaths of persons who could get better. It faultily assumes that because a person has not yet found relief from a mental disorder, that he or she cannot find relief. Relying on an agreement of an assessor and a requestor on a "case-by-case basis" is especially reckless in the face of a paucity of evidence that the person suffering will not get better.

Dr. Sareen, speaking on behalf of eight chairs of psychiatry at medical schools across Canada, "strongly recommend[ed] an extended pause on expanding MAID to include mental disorders as the sole underlying medical condition in Canada." As Dr. Sareen succinctly put it: "We're simply not ready." This assessment was shared by other leading psychiatrists who appeared before the Committee.[15]

Conservatives agree. Considering that Canada's MAID provisions are intended to be reserved for those who cannot get better, MAID MD-SUMC cannot appropriately move forward before the fundamental

[8] Evidence; May 26, 2022 (Dr. Mark Sinyor).
[9] Evidence: November 28, 2023 (Dr. Sonu Gaind); Nicolini ME, Jardas EJ, Zarate CA, Gastmans C, Kim SYH. Irremediability in psychiatric euthanasia: examining the objective standard. Psychological Medicine. 2023;53(12):5729-5747. doi:10.1017/S0033291722002951
[10] Evidence: November 28, 2023 (Dr. Sonu Gaind).
[11] Evidence: November 21, 2023 (Dr. Jitender Sareen).
[12] Ibid.
[13] Evidence: May 26, 2022 (Dr. John Maher).
[14] Health Canada, Final Report of the Expert Panel on MAiD and Mental Illness, p.12-13.
[15] Evidence: November 21, 2023 (Dr. Jitender Sareen); Evidence: November 28, 2023 (Dr. Sonu Gaind).

issue of irremediability is resolved. Moreover, it would be legally incoherent, having regard for the prerequisite of suffering from a disease or illness that is irremediable to qualify for MAID.

Suicidality

The balance of evidence demonstrates difficulty on the part of clinicians in distinguishing a "rational" MAID MD-SUMC request from one motivated by suicidal ideation. This is underscored by the fact that approximately 90% of those who commit suicide have a diagnosable mental disorder. [16] This difficulty is clinically and socially problematic. So long as this difficulty is present, the line between suicide prevention and suicide assistance will be blurred.[17]

Dr. Gaind explained:

> "Scientific evidence shows we cannot distinguish suicidality caused by mental illness from motivations leading to psychiatric MAID requests, with overlapping characteristics suggesting there may be no distinction to make."[18]

Dr. Sareen, when asked how psychiatrists are trained to separate suicidal ideation from psychiatric MAID requests, said:

> "[T]here is no clear operational definition differentiating between when someone is asking for MAID and when someone is asking for suicide when they're not dying. Internationally, this is the differentiation. If somebody is dying, then it can be considered MAID. When they're not dying, it is considered suicide. It's very difficult, and there's no operational definition on it."[19]

In a similar vein, Dr. Rajji noted:

> "There is no clear way to separate suicidal ideation or a suicide plan from requests for MAID. Therefore, there needs to be some discussion to see a consensus and agreement, as professionals, on what part of an individual's history with a particular illness would constitute that separation. It's not simple."[20]

Dr. Sareen cautioned that MAID MD-SUMC will facilitate unnecessary deaths and undermine suicide prevention efforts.[21] He also highlighted the phenomenon of MAID-related suicide contagion saying:

> "When a society makes MAID available, the population believes it is a way to end suffering. In other jurisdictions that have had MAID available for mental disorders, not only are there deaths due to MAID, but there are also deaths related to non-MAID suicides. I just want to emphasize

[16] Evidence: May 25, 2022 (Dr. Brian Mishara); Evidence: May 26, 2022 (Dr. Georgia Vrakas); Council of Canadian Academies, The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder Is the Sole Underlying Medical Condition, pp. 42 and 169.
[17] Evidence: May 26, 2022 (Dr. John Maher); Evidence: May 25, 2022 (Dr. Brian Mishara).
[18] Evidence: November 28, 2023 (Dr. Sonu Gaind).
[19] Evidence: November 21, 2023 (Dr. Jitender Sareen).
[20] Evidence: November 28, 2023 (Dr. Tarek Rajji).
[21] Evidence: November 21, 2023 (Dr. Jitender Sareen).

> that it's not a suicide prevention mechanism... We're actually going to make not only suicide deaths go up, but also MAID deaths go up."[22]

Having regard for the foregoing, Conservatives abhor the inevitability that MAID MD-SUMC will lead to state-facilitated suicide. The Expert Panel flippantly dismissed this serious concern, stating:

> "In allowing MAiD in [MD-SUMC] cases, society is making an ethical choice to enable certain people to receive MAiD on a case-by-case basis regardless of whether MAiD and suicide are considered to be distinct or not."[23]

Without more, this reasoning is morally perverse and out of step with the ethical mores of most Canadians. Most Canadians do not wish to see suicide made easier or facilitated by the state as a solution to psychological suffering.[24] Conservatives believe that persons who are suffering from mental health issues deserve help and hope, not state-facilitated suicide. MAID MD-SUMC will inhibit the former while guaranteeing the latter. In the face of this, we submit that moving ahead with MAID MD-SUMC is wrong-headed and profoundly unwise.

Inadequate Practice Standards and Training Resources

Proponents of implementing MAID MD-SUMC point to the development of training resources and practice standards as demonstrating readiness. More specifically, they point to a curriculum developed by the Canadian Association of MAID Assessors and Providers (CAMAP), as well as the Model Practice Standard (MPS) developed by the Liberal-government-appointed Task Group. Conservatives disagree. Neither the development of the CAMAP curriculum nor the MPS are satisfactory. They both fail to address the fundamental issues of irremediability and suicidality, which for the reasons explained above, are a prerequisite to readiness.

Committee witnesses Julie Campbell, who appeared on behalf of CAMAP, and Dr. Gordon Gubitz, who appeared on behalf of Nova Scotia Health, were unable to identify any specific criteria in the CAMAP curriculum to aid clinicians in determining irremediability.[25] Without more, the absence of criteria on a question as significant as irremediability represents a complete failure on the part of CAMAP to properly prepare clinicians for MAID MD-SUMC.

Consistent with this, Dr. Gaind characterized the curriculum as "wholly inadequate."[26] Specific to suicidality, Dr. Gaind expressed shock, stating that the curriculum "consists of 10 pages of which 5 slides have content and a four-and-a-half-minute audio clip."[27] He described the training as

[22] Ibid.
[23] Health Canada, Final Report of the Expert Panel on MAiD and Mental Illness, p.66.
[24] Angus Reid Institute, Mental Health and MAID: Canadians who struggle to get help more likely to support expanding eligibility, September 28, 2023.
[25] Evidence: November 21, 2023 (Ms. Julie Campbell); Evidence: November 21, 2023 (Dr. Gordon Gubitz).
[26] Evidence: November 28, 2023 (Dr. Sonu Gaind).
[27] Ibid.

"dangerous," because it would lead assessors to believe they can separate suicidality from a psychiatric MAID request absent evidence to support that.[28]

Similar problems exist with the MPS. The MPS offers no guidelines on determining irremediability nor on distinguishing suicidality from a psychiatric MAID request.

We are also alarmed by the expansive definition of "mental disorder" provided for in the MPS. It states that anything listed in the DSM5-TR could be considered a mental disorder for the purposes of accessing MAID.[29] The DSM5-TR lists a wide range of disorders and conditions, including depression, anxiety, schizophrenia, and personality disorders, among others.[30] Though the Liberal government's *Legislative Backgrounder on Bill C-7* states that "mental illness" for the purpose of MAID generally refers "to those conditions which are primarily within the domain of psychiatry,"[31] there are no legislative safeguards to guarantee protections for those who suffer from mental disorders that are typically treated by specialties outside of psychiatry, such as autism spectrum disorders. Multiple witnesses confirmed that this expansive definition could even render persons suffering from a substance abuse disorder eligible for MAID MD-SUMC.[32]

This radically expansive eligibility illustrates how far Canada is falling down a forewarned, but too often ignored, "slippery slope." If implemented, the scope of MAID would fundamentally change to something resembling state-sanctioned, state-facilitated suicide, undermining human dignity and the sanctity of life.

Putting aside our substantive concerns with the CAMAP curriculum and the MPS, there are other issues with the rollout of these materials that speak to a lack of readiness. There has been an uneven adoption of the MPS across the provinces and territories. We note that Quebec has amended its MAID law to expressly prohibit MAID MD-SUMC. The CAMAP curriculum has seen a limited uptake on the part of medical professionals. A miniscule two percent of psychiatrists across Canada have registered for the CAMAP curriculum[33] – a curriculum that was not unveiled until the fall of 2023.

Committee testimony also highlighted that clinical practice guidelines do not yet exist. Dr. Rajji, appearing at the Committee on behalf of CMAH, said that CAMH is "hearing loud and clear" from medical professionals that "more clarity and directions" are needed.[34] All of these practical and logistical shortcomings demonstrate that, regardless of whether there are merits to MAID MD-SUMC, Canada is not ready for MAID MD-SUMC to come into effect in March 2024.

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[28] Ibid.
[29] Health Canada, Model Practice Standard for Medical Assistance in Dying (MAID), March 2023, p.23.
[30] American Psychiatric Association. (2013). Diagnostic and statistical manual of mental disorders (5th ed.).
[31] Legislative Background Bill C-7: Government of Canada's Legislative Response to the Superior Court of Québec Truchon Decision.
[32] Evidence: November 7, 2023 (Dr. Mona Gupta); Evidence: November 21, 2023 (Dr. Gordon Gubitz).
[33] Evidence: November 7, 2023 (Dr. Alison Freeland).
[34] Evidence: November 28, 2023 (Dr. Tarek Rajji).

A Lack of Consensus Amongst Medical Professionals

Our position that MAID MD-SUMC should not be implemented is underscored by a lack of consensus, and in fact general opposition, on the part of medical professionals. This lack of consensus, and general opposition, goes beyond the question of readiness effective March 2024. It also applies to whether MAID MD-SUMC is at all appropriate.

When asked about consensus among psychiatrists, Dr. Alison Freeland, representing the Canadian Psychiatric Association (CPA), was unable to confirm that a consensus exists.[35] Dr. Sareen noted that "[t]he majority of surveys have shown that the majority of psychiatrists are against MAID for mental illness."[36]

An October 2023 survey of Manitoba psychiatrists found that 49% of psychiatrists in that province oppose the legislation legalizing MAID MD-SUMC compared to just 33% who support it.[37] The survey also found that an overwhelming 80% of Manitoba psychiatrists believe that Canada is not ready to implement MAID MD-SUMC.[38] An October 2021 survey of the Ontario Medical Association found that 56% of respondents disagree or strongly disagree that MAID MD-SUMC should be available, compared to only 28% of respondents who agree or strongly agree.[39]

These survey results reflect the balance of testimony from non-activist expert witnesses who appeared before the Committee. We observe that much of the testimony the Committee heard in favour of implementing MAID MD-SUMC came from individuals with a history of MAID activism, as well as involvement in developing the MPS and CAMAP curriculum, who unsurprisingly "graded their own homework" favourably.

This lack of consensus and general opposition should give the government significant pause. We submit that there must be something approaching a professional consensus before MAID MD-SUMC can be implemented. After all, MAID MD-SUMC involves life-and-death decisions and will impact some of the most vulnerable persons in Canadian society. Anything less than overwhelming support from medical professionals casts serious doubt on the appropriateness of the concept of MAID MD-SUMC, let alone a question of readiness.

Additional Considerations

MAID MD-SUMC is not Constitutionally Required, it is a Political Decision

The implementation of MAID MD-SUMC is a political decision on the part of the Liberal government.

[35] Evidence: November 7, 2023 (Dr. Alison Freeland).
[36] Evidence: November 21, 2023 (Dr. Jitender Sareen).
[37] University of Manitoba, Medical Assistance in Dying for Mental Disorders: A Survey of University of Manitoba Faculty and Residents, January 2023.
[38] Ibid.
[39] Ontario Medical Association, MAID Survey of OMA Section on Psychiatry Members, October 2021.

Some proponents of MAID MD-SUMC have attempted to "muddy the waters" by claiming that MAID MD-SUMC is constitutionally required. For instance, prominent MAID activist, Professor Jocelyn Downie, at Committee, cited the Supreme Court of Canada's *Carter* decision, as well as the Alberta Court of Appeal's *EF* decision, as supporting this assertion.[40] Former Justice Minister David Lametti claimed to be compelled by the courts as he attempted to justify this expansion.

Respectfully, this assertion is without merit. Our view is supported by the analysis of 28 law professors who signed a letter stating that MAID MD-SUMC is not constitutionally required.[41]

The law professors noted that in *Carter*, the Supreme Court explicitly stated that MAID in cases of psychiatric disorders would "not fall within the parameters" of the decision.[42] The parameters of *Carter* are limited to the narrow facts of that case. Accordingly, as the professors observe: "Our Supreme Court has never confirmed that there is a broad constitutional right to obtain help with suicide via health-care provider ending-of-life."

In *EF*, the Alberta Court of Appeal interpreted *Carter* as not excluding mental illness. However, *EF* was decided before the passage of Bill C-14, the effect of which was to prohibit MAID MD-SUMC. Moreover, the Alberta Court of Appeal qualified its ruling by stating: "Issues that might arise regarding the interpretation and constitutionality of eventual legislation should obviously wait until the legislation has been enacted."[43] The decision was not appealed to the Supreme Court, and no other court has pronounced on the matter.

In short, there is no binding precedent with respect to MAID MD-SUMC. Any future court precedent is purely speculative. We do not believe it is prudent to implement MAID MD-SUMC based on such speculative opinion, especially in the face of significant clinical and ethical challenges surrounding MAID MD-SUMC.

<u>Unsupported Claims of Likely Limited Uptake for MAID MD-SUMC</u>

Several witnesses attempted to minimize concerns regarding the impact of MAID MD-SUMC on vulnerable Canadians, claiming, without evidence, that only a minute segment of the population would qualify.[44] MAID practitioner, Dr. Stephanie Green, boldly claimed that the annual uptake could be as little as "in the teens."[45]

We have no confidence that this expansion would be so limited. It was noted that the uptake has been relatively small in the Benelux countries.[46] In fact, in the Netherlands, only approximately 5% to 10% of MAID MD-SUMC requests are granted.[47]

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[40] Evidence: November 21, 2023 (Dr. Jocelyn Downie).
[41] Dr. Trudeau Lemmens et al., <u>Parliament is not forced by the courts to legalize MAID for mental illness: Law Professor's Letter to Cabinet</u>, February 2, 2023.
[42] Ibid; *Carter v. Canada*, 2015 SCC, para 111.
[43] Ibid; *Canada (Attorney General) v E.F.,* 2016 ABCA 155, para 72.
[44] Evidence: November 7, 2023 (Dr. Mona Gupta); Evidence: November 7, 2023 (Dr. Alison Freeland).
[45] Evidence: November 21, 2023 (Dr. Stefanie Green).
[46] Evidence: November 7, 2023 (Senator Dr. Stan Kutcher).
[47] Evidence: November 28, 2023 (Dr. Sonu Gaind).

We submit that the Benelux countries are a poor comparator, because in those countries, patients by law must exhaust all treatment options to qualify for MAID MD-SUMC. There is no such safeguard in Canada, and shockingly, the Expert Panel recommended against any additional legislative safeguards. Absent Benelux-style safeguards, there is every reason to expect that the uptake will be considerably higher in Canada.

We further note that Canada arguably already has the most permissive MAID regime in the world. Consistent with that, even without this expansion, there has been a significant increase in MAID cases in Canada since Bill C-14 became law in 2016. The latest data show that there were 13,241 MAID deaths in Canada in 2022, which amounts to 4.1% of all deaths.[48] This represents a sizable 31% increase from 2021 and a staggering 1,216% increase from the first year MAID was available.[49] By contrast, in California, which requires the self-administration of the drugs used to end a person's life, there were only 853 MAID deaths in 2022.[50] We cite California as a comparator because it is a jurisdiction with a similar population to Canada and one which legalized MAID at around the same time (2016). These numbers are in themselves concerning and lend no confidence to the claim that there will be limited uptake of MAID MD-SUMC.

Inadequate Consultation with Indigenous Peoples

The political decision by the Liberal government to expand MAID MD-SUMC was made without any meaningful consultation with Indigenous peoples. Based on the testimony of Jocelyne Voisin of Health Canada, it is apparent that consultation has only commenced recently. According to Ms. Voisin, the results of this consultation will be published in a "What We Heard" report in 2025 – one year after the scheduled expansion of MAID MD-SUMC.[51]

This lack of consultation is unacceptable, especially in the face of unique vulnerabilities and health needs faced by Indigenous communities.[52] It underscores the lack of readiness for the implementation of MAID MD-SUMC.

Hundreds of Briefs Overlooked

There was a high level of public engagement on this study. Close to 900 briefs were submitted to the Clerk of the Committee. Constrained resources did not allow these briefs to be translated in sufficient time to be considered as evidence for the Committee's report. This is a profoundly disappointing failure and unacceptable for a G7 Parliament.

As a result, important voices, including from vulnerable Canadians who might be impacted by MAID MD-SUMC, were denied their voice. We anticipate that the balance of evidence in the briefs would have further supported our position that the government should not proceed with MAID MD-SUMC.

[48] Health Canada, Fourth Annual Report on Medical Assistance in Dying 2022, p.5.
[49] Health Canada, First Annual Report on Medical Assistance in Dying 2019, p.18.
[50] California Department of Public Health, California End of Life Option Act 2022 Data Report, July 2023, p.3.
[51] Evidence: November 21, 2023 (Ms. Joycelyn Voisin).
[52] Evidence: November 28, 2023 (Professor Archibald Kaiser).

Conclusion

The fundamental problems around accurately determining irremediability and suicidality in the context of MAID MD-SUMC are as present today as they were a year ago. Until these issues are resolved, MAID MD-SUMC cannot be safely implemented. Accordingly, it would be reckless and dangerous for the Liberal government to allow MAID MD-SUMC to go forward in March 2024.

There is no reason to believe that these fundamental problems will be resolved in the foreseeable future. As such, another arbitrary deadline extending the sunset clause, while better than proceeding as planned, is not the path forward.

Rather, the Liberal government must immediately introduce legislation to amend the *Criminal Code* to provide that a mental disorder is not a medical condition for which a person could receive MAID. In other words, the Liberal government must permanently abandon this expansion of MAID. Failing to do so will inevitably lead to the premature deaths of vulnerable Canadians who could have gotten better. Such an outcome is unacceptable, and preventable, but only if the Liberal government acts. We urge them to do so, before it is too late.

Respectfully submitted,

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British Columbia

Shelby Kramp-Neuman, M.P.
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This report is intended to be complementary, but I would like to raise certain questions about the wording of the final recommendation and reservations about the methodology and organization of our work in order to fulfill our task (e.g. sitting and deliberating by extended deadlines) since them beginning of the work of the Joint Special Committee (JSC) on the MA. I would like to pay tribute to the staff of the Library of Parliament for the commitment they have shown and the work they have accomplished during the course of this study, and above all I would like to thank all the witnesses who have participated in this study in whatever way, by giving evidence and/or sending a brief.

The source of the problem

1- We deplore the fact that, since the Carter decision[1] , the federal government has been dragging its feet when it comes to MA, forcing parliamentarians to work in a hurry to meet often unrealistic deadlines in conditions that are far from optimal from both a methodological and work organization standpoint. Our latest meeting is a clear example of this.

From extension to extension

2- Extending a deadline **without changing** the organization of the work once the deadline has been obtained, which was initially unstable due to the lack of time, merely perpetuates an unstable extension of the work. Just think of the requests for extensions of time since the CARTER RULING. On the other hand, throughout the work of the Joint Special Committee, we need only list all the times when, in the closing remarks of a panel or session, the committee chairmen, addressing the witnesses, apologized for the short time we had devoted to them. For example, receiving three specialists in the same hour and giving them just 5 minutes of presentation time, without having received their briefs in advance (sometimes because they had been called in at the last minute, or because there wasn't enough time for translation), in order to better prepare the exchanges. Or placing three expert panellists per hour, some of whom will barely be questioned because the witness is of no interest to the other parties... This is far from optimal. We should have drawn inspiration from the exemplary methodology used by ASSNAT (Quebec's National Assembly) in its work on MA.

3- The other source of the problem is that, unlike ASSNAT, the Canadian Parliament will never see a consensual or transparent approach to the organization of work, because the Conservatives are incapable of being non-partisan when it comes to MA. Any means are good enough to put obstacles in the way.

4- While Ottawa was incapable of proactivity and a transparent approach, in 2012 the Quebec National Assembly (ASSNAT) began transparent work and consultations that

[1] *Carter v. Canada* (Attorney General), 2015 SCC 5.

would lead three years later to the first "law concerning end-of-life care[2] ". As for the Canadian government and the House of Commons, they refused to be proactive on the subject of MAID, rejecting Francine Lalonde's bills, for example, and failing to introduce any government legislation on the subject.

5- In fact, when it comes to MAID, it was the Supreme Court that forced the House of Commons in 2015 to amend the Criminal Code in response to patients' demands that their constitutional rights be violated.

6- As for our recent work in connection with recommendation 13 of the report of the Joint Special Committee (JSC) on the MAID tabled in February 2023[3] , it is clear that the government's reluctance to reconstitute the committee at the end of September, so that the JSC could sit at the beginning of October, will have had the effect of limiting the timetable of work sessions and adopting a more appropriate methodology. It is regrettable that we did not have access to the briefs of the main expert witnesses directly related to the specific mandate under study, nor did we have access to the additional information requested to establish the relevance of certain testimonies.

On the substance: the need to open medical aid in dying (MAID) to MD-SUMC

7- The Bloc Québécois is of the opinion that the Carter decision and the Beaudoin ruling[4] justify opening up MAID to people with MD-SUMC whose chronic suffering has become intolerable.

8- The courts (Carter decision, Beaudoin ruling) have established that, on the merits, an absolute ban on MAID for people with a mental disorder as their only claimed medical problem (MD-SUMC) would be discriminatory and unjustified. Why should the State infringe or restrict the right to self-determination of a person with a MD when his or her decision-making capacity is not affected?

9- The role of the State is not to pretend (in a matter as intimate as one's own death) to know better than the person facing intolerable suffering what is best for him or her (beneficence). The **role of the State is to ensure the conditions for the exercise of a free and enlightened choice on the part of the individual**.

10- Law and clinical ethics have already recognized the patient's right to self-determination. **Free and informed consent, an informed decision, the exercise of the patient's decision-making capacity when it has been properly established according to the rules of the art, is opposed to medical paternalism**. Thus, bioethics literature explains that we have moved on from the notion of therapeutic obstinacy to the recognition of the right to die. From that point onwards, curative relentlessness motivated by medical

[2] Québec, *An Act respecting end-of-life care*, ch. S-32.0001, 40th legislature, 1st session.
[3] Parliament of Canada, *Special Joint Committee on Physician-Assisted Dying, Physician-Assisted Dying in Canada: Choices for Canadians*, 1st Session, 44th Parliament, February 2023.
[4] *Truchon v. Attorney General of Canada*, Attorney General of Canada. 2019, QCCS 3792.

paternalism had to make way for the patient's will and right to avail himself of palliative care, comfort care and, later, MAID. On the other hand, this respect for the suffering patient's autonomy and right to self-determination has led, in clinical practice and in law, to the **recognition of the refusal of vital treatment and** the **cessation of treatment** as elements of **good medical practice**.

11- **Why should** it be any different for certain patients with a mental disorder whose suffering has become intolerable and whose chronicity has been established over time, and whose medical records show beyond doubt that all available treatments have been given without any permanent improvement or significant alleviation of the suffering that has become intolerable?

Applying does not mean being eligible

12- The Report of the expert group[5] which suggested the conditions under which MAID could be extended to MD-SUMC are clear. Just because a patient applies does not mean he or she is eligible.

13- According to Stephanie Green[6] , a person is ineligible:

a) In suicidal crisis
b) Newly treated and diagnosed
c) Demand based on structural vulnerabilities
d) Refuses without justification all treatments that could improve his condition
e) If there are accessible and effective treatments
f) If the assessors are unable to give an opinion on all or some of the criteria

14- Recognizing that irremediability and incurability are not always as easy to establish for MD as for Track 1 illnesses (although the intensity of suffering may be similar), and that suicidal ideations must be distinguished from a thoughtful and constant desire for MAID, the Collège des médecins du Québec has drawn up guidelines, five conditions to avoid any drift[7] :

a) **Firstly,** the decision to grant medical aid in dying in a case of mental disorder must not be part of a single episode of care, but must be based on a comprehensive and fair assessment of the patient's situation.
b) **Secondly**, there must be no suicidal ideation, as in a case of major depressive disorder.
c) **Thirdly**, intense and continuous psychological suffering, confirmed by severe symptoms and impairment of overall functioning, is present over a long period and deprives the patient of any hope of relief from the severity of his or her

[5] Health Canada, *Final Report of the Expert Panel on WMA and Mental Illness*, 2022.
[6] Stephanie Green, *Written submission to the Special Joint Committee on Medical Assistance in Dying (MAID) Regarding our readiness to allow access to MAID for people whose only underlying medical condition is a mental disorder (MD-SUMC),* November 2023.
[7] Collège des médecins, *Testimony - AMAD-no.40-Parliament of Canada,* November 28, 2023.

situation. It prevents them from realizing a life project, and makes their existence meaningless.

d) **Fourthly, there** must be a long course of care, with appropriate follow-up, multiple trials of available therapies recognized as effective, and sustained, proven psychosocial support.

e) **Fifth,** a multidisciplinary assessment of the request must have been carried out in the essential presence of the physician or specialized mental health nurse-practitioner who followed the person, and a psychiatrist consulted in the specific context of the request for medical assistance in dying.

15- The CMQ concludes:

a) We believe that, if these guidelines were respected, people suffering from a serious and irreversible mental health disorder could also benefit from medical assistance in dying. We must avoid a situation where people who do not have access to appropriate care, who do not find the services offered acceptable - for example, prolonged accommodation with no prospect of regaining greater autonomy - opt, in desperation, for medical aid in dying.

Preparedness for safe and effective application

16- Evidence of **de facto accessibility** linked to a uniform degree of preparedness across Canada for safe and adequate application of MAID for MD-SUMC **has not been demonstrated,** because the JSC (Joint Special Committee) did not hear from all regulatory authorities from coast to coast. However, we cannot ignore the fact that Quebec has decided not to go ahead with MAID for MD-SUMC and that the Collège des médecins, while in favour of MAID for MD-SUMC, clearly indicated in response to Senator Mégie's questions that it was still at the conversation stage, and that there was still work to be done in Quebec, while reaffirming that it would be desirable "one day" for MAID for MD-SUMC to be accessible to patients[8] .

Resistance in care settings and patient suffering

17- Psychiatrists are divided on the question of MAID for MD-SUMC, practically into two groups, mainly on the question of irremediability and irreversibility. Patients cannot be left to grapple with the potential consequences of this **field resistance**. For example, let's not forget the lessons of the Morgentaler ruling[9] , the Badgley and Powel reports on provincial and institutionnal limitations on access to exculpatory measures, which became illusory in practice, and the harm this could cause patients. The Committee did not have the opportunity to explore the concrete clinical and practical consequences that its resistance would have on patients.

a) It has to be said that the «social consensus » that may or may not be necessary to move forward is clearly not there when compared to degenerative neurocognitive problems (dementia, Alzheimer's...).

[8] Collège des médecins, *Evidence - AMAD (44-1) - no 40 - Parliament of Canada*, November 28, 2023.
[9] *R. v. Morgentaler - SCC Decisions*, 1988,1 S.C.R. 30.

b) In both medical circles and the general public, there is a consensus in favor of for advance requests for degenerative cognitive diseases.
c) Yet to date, the government has given no indication that it intends to table a bill by the end of this legislation to go ahead with early applications, despite the fact that Quebec's ASSNAT has just passed a law and that from coast to coast there is a broad consensus on the matter, with approval rates, depending on the poll, ranging from + or - 87 to 60%. This was an important recommendation in the previous CSM report. Is the government still dragging its feet? Will we have to wait for patients to commit suicide and end their lives prematurely?

The CSM report

18- So, while the report does indeed reflect what we heard and what was available to us (testimony at the hearings) to arrive at recommendations, the shaky wording of the final recommendation and the vagueness it introduces as to the timeframes required to make the MAID available to MD-SUMC accurately reflect the Committee's inability to decide the issue. However, it remains an inescapable fact that, while it must be acknowledged that some work has been done, even if the federal government has had work done upstream, with the establishment of the Task Force on Standards of Practice in accordance with the recommendation of the Expert Panel, it has not been able to give the Joint Ad Hoc Committee the time it needs to carry out rigorous, methodologically sound work to settle the issue, beyond the conviction that the degree of preparation is not uniform across the country, and that there is still work to be done.

a) The unfortunate consequence of this situation is that in the meantime, in real life, it is likely that MD patients like SUMC will once again find themselves before the courts to assert their constitutional rights.
b) Why leave this burden on the shoulders of suffering patients? **Why not ask the Supreme Court right now to clarify and <u>specifically</u> rule on this issue.**

19- Reservations regarding the wording of the CSM's sole recommendation

"Whereas the Committee concludes that the medical system in Canada is not prepared for Medical Assistance in Dying where mental disorder is the sole underlying medical condition (hereafter "MAID MD-SUMC), the committee recommends:

a) The MAID MD-SUMC should not be made available in Canada until the Minister of Health and the Minister of Justice are satisfied, based on recommendations from their respective departments and in consultation with their provincial and territorial counterparts and with Indigenous peoples, that it can be safely and adequately provided; and
b) That one year prior to the date on which it is anticipated that the law will permit MAID MD-SUMC, pursuant to subparagraph (a), the House of Commons and the Senate re-establish the special Joint Committee on Medical Assistance In Dying in order to verify the degree of preparedness attained for a safe and adequate application of MAID MD-SUMC."

a) There isn't "one health care system"; there are many health care systems in Canada, each under the responsibility of the territories, the provinces and Quebec.
b) The Criminal Code falls under federal jurisdiction, but health care is provided by Quebec, the provinces and territories. There's no escaping this reality.
c) It is up to the legislator and the House to decide on the MD-SUMC MAID. However, the wording of the motion refers this responsibility to the discretionary power of the executive via the Ministers of Health and Justice and their departmental officials. This makes it unclear, to say the least, whether the law will be applied by March 17, 2024. What are the time frames involved here?
d) And if, by any chance, the Ministers of Health and Justice (before or after the next election?) decide that the fruit is suddenly ripe, the special joint committee should be reconstituted at least a year before the implementation of this decision, to measure the state of preparation of the ground for a safe and adequate application of the MAID for MD-SUMC. How many years would this mean?
e) The wording of the recommendation testifies to the committee's inability in three working sessions to make a serious decision on anything other than the fact that we are not in a position to make a decision or recommend anything to the House. Aside from one conviction, the ground is not uniformly prepared throughout the territory.
f) In this sense, the Bloc considers that the ground is not ready. The degree of preparation is not the same from coast to coast. In fact, as far as Quebec is concerned, the testimony of the Collège des médecins, as the regulatory body responsible for producing not only guidelines in line with the standards of practice produced by the federal working group, but also guidelines for practice, clearly indicated that there was still work to be done, and that we were still at the **discussion stage,** even if we did hope **one day to make** MAID possible for MD-SUMC.